

# FORTIETH DAY

(LEGISLATIVE DAY OF MARCH 11)

## MORNING SESSION.

TUESDAY, March 19, 1912.

The Convention met pursuant to recess, was called to order by the president and opened with prayer by the Rev. F. L. Wharton, of Columbus, Ohio.

The PRESIDENT: The gentleman from Mahoning [Mr. ANDERSON] is recognized.

Mr. DOTY: Will the member from Mahoning [Mr. ANDERSON] yield for a motion?

Mr. ANDERSON: Yes.

Mr. DOTY: I move that the further consideration of Proposal No. 2 be postponed until 10:55 o'clock, this morning.

The motion was carried.

Mr. DOTY: I now move that the proposals on the calendar be read and referred to committees. I will state for the benefit of the members that the list will be found on page three of the journal of Monday, March 11, except one, introduced by Dr. Brown, which will be found on page two of the journal of March 12. The calendar has not been printed since because we are on the legislative day of a week ago yesterday.

The motion was carried.

## REFERENCE TO COMMITTEES OF PROPOSALS.

The following proposals were read the second time by their titles and referred as follows:

Proposal No. 303—Mr. Halfhill. To the committee on Judiciary and Bill of Rights.

Proposal No. 304—Mr. Halfhill. To the committee on Judiciary and Bill of Rights.

Proposal No. 305—Mr. Hoskins. To the committee on Judiciary and Bill of Rights.

Proposal No. 306—Mr. Hoskins. To the committee on Taxation.

Proposal No. 307—Mr. Riley. To the committee on Method of Amending the Constitution.

Proposal No. 308—Mr. Brown, of Highland. To the committee on Taxation.

Mr. PECK: I ask unanimous permission to offer certain reports from the Judiciary committee which have been accumulating for some time past and we are anxious to get them before the Convention.

Consent was given.

## REPORTS OF STANDING COMMITTEES.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 62—Mr. Pierce, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out all after line 3 and in lieu thereof insert the following:

"SECTION 1. At the time when the vote of the electors shall be taken for the adoption or rejection of any revision, alteration or amendments made to the constitution by this Convention, the following section, independently of the submission of any revision, alteration or other amendments, submitted to them, shall be separately submitted to the electors in the words following to-wit:

"ARTICLE I, SECTION 9. All persons shall be bailable by sufficient sureties, except in cases of homicide, where proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted; nor shall life be taken as a punishment for crime.

"SECTION 2. At such election a separate ballot shall be provided for the voters in the following form:

### TO ABOLISH CAPITAL PUNISHMENT.

|  |                                       |
|--|---------------------------------------|
|  | Abolition of capital punishment, YES. |
|  | Abolition of capital punishment, NO.  |

"SECTION 3. The voter shall indicate his choice by placing a cross-mark within the blank space opposite the words, 'Abolition of capital punishment, YES', if he desire to vote in favor of the section above mentioned, and within the blank space opposite the words, 'Abolition of capital punishment, NO', if he desire to vote against the section above mentioned.

"SECTION 4. If the votes in favor of the section above mentioned shall exceed the votes against the same, then said section shall take the place of section 9 of article I of the constitution, regardless of whether any revision, alteration or other amendments submitted to the people, shall be adopted or rejected."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck the proposal, as amended, was ordered printed.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 230—Mr. Tetlow, having had the same under consideration, reports it back with the following

## Reports of Standing Committees.

amendments, and recommends its passage when so amended:

In line 5 strike out the words "the mineral" and in lieu thereof insert the words "all the natural."

At the end of line 5 and the beginning of line 6 strike out the words "both as to the method of mining and operation, and the general assembly shall" and in lieu thereof insert the words "and may."

Strike out all after the word "regulation" in line 6 and also all of line 7 and in lieu thereof insert the following: "of the mining, weighing, measuring and marketing of all minerals."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Tetlow the proposal, as amended, was ordered printed.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 276 — Mr. Hoffman, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed, because covered by another proposal heretofore reported by this committee.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 264 — Mr. Dunn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 290 — Mr. King, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 75 — Mr. Evans, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 232 — Mr. Doty, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

Mr. DOTY: I do not complain about the committee. I had supposed that I had made arrangements for a hearing upon the proposal. I have never had a chance. I don't mean to say that the committee didn't give me

a chance, because I have not been to the committee for two weeks. I have been on other things, but I regret that this proposal should come up at this time in this way. I think we should have had a hearing. There were several people who desired to be heard. I do not accuse anybody of taking snap judgment, but I think it was a misunderstanding, and I move that it be referred back to the committee.

Mr. PECK: I have no objection to the gentleman's motion. The proposal may be recommitted if the Convention thinks it is proper. We were not aware that the gentleman was expecting to be heard.

The motion to recommit was carried.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 80 — Mr. Evans, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 287 — Mr. Thomas, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 291 — Mr. Watson, having had the same under consideration, reports it back with the recommendation that it be referred to the committee on Initiative and Referendum.

The report was agreed to, and the proposal was so referred.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 200 — Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 277 — Mr. Bowdle, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 202 — Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

## Reports of Standing Committees.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 201 — Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 199 — Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 110 — Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 192 — Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 223 — Mr. Elson, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 112 — Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 147 — Mr. Stalter, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 63 — Mr. Farrell, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 146 — Mr. Taggart, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 3 — Mr. Thomas, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

Mr. THOMAS: I do not want to charge the committee with being unfair on that proposal. I was to be given a hearing and I was to be notified of the time for the hearing, but I have not been given that opportunity and I more that that matter be referred back to the committee.

The motion was carried.

Mr. Harbarger submitted the following report:

The standing committee on Legislative and Executive Departments, to which was referred Proposal No. 241 — Mr. Dwyer, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In line 14, after the word "attorneys" insert the following: "or ten citizens," and after the word "county" in the same line insert the words "or judicial, circuit or district."

In line 15, strike out the word "resides" and insert in lieu thereof the word "presides."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Harbarger the proposal, as amended, was ordered printed.

Mr. Cassidy submitted the following report:

The standing committee on Claims against the Convention, to which was referred Resolution No. 80 — Mr. Cassidy, having had the same under consideration, reports it back with the following amendments, and recommends its adoption when so amended:

Strike out all of line 3, as follows: "The Beggs Co., labor and supplies \$22.54."

In line 4 strike out the figures "\$202.70" and in lieu thereof insert the figures "\$189.95."

Strike out all of line 10, as follows: "George F. Jelleff, labor and supplies, \$20.85."

Strike out all of line 21, as follows: "Andrew Earl, supplies \$17.40."

The question being "Shall the report of the committee be agreed to?" The yeas and nays were taken, and resulted — yeas 92, nays none, as follows:

## Adoption of Committee Report—Address of Senator Theodore E. Burton.

Those who voted in the affirmative are:

|                 |                    |                  |
|-----------------|--------------------|------------------|
| Antrim,         | Harbarger,         | Partington,      |
| Baum,           | Harris, Ashtabula, | Peck,            |
| Beatty, Morrow, | Harter, Huron,     | Pettit,          |
| Beatty, Wood,   | Harter, Stark,     | Pierce,          |
| Brattain,       | Hoffman,           | Read,            |
| Brown of Lucas, | Holtz,             | Redington,       |
| Brown, of Pike, | Hoskins,           | Riley,           |
| Campbell,       | Hursh,             | Rockel,          |
| Cassidy,        | Johnson, Madison,  | Roehm,           |
| Cody,           | Johnson, Williams, | Shaffer,         |
| Collett,        | Kehoe,             | Shaw,            |
| Colton,         | Keller,            | Smith, Geauga,   |
| Cordes,         | Kerr,              | Smith, Hamilton, |
| Cunningham,     | Kilpatrick,        | Stalter,         |
| Davio,          | Knight,            | Stamm,           |
| DeFrees,        | Kunkel,            | Stevens,         |
| Donahey,        | Lambert,           | Stewart,         |
| Doty,           | Lampson,           | Stokes,          |
| Dunlap,         | Leete,             | Tannehill,       |
| Dwyer,          | Leslie,            | Tetlow,          |
| Earnhart,       | Ludey,             | Thomas,          |
| Elson,          | Malin,             | Ulmer,           |
| Evans,          | Marriott,          | Wagner,          |
| Farnsworth,     | Marshall,          | Walker,          |
| Fess,           | Mauck,             | Watson,          |
| FitzSimons,     | McClelland,        | Weybrecht,       |
| Fluke,          | Miller, Crawford,  | Wise,            |
| Fox,            | Miller, Fairfield, | Woods,           |
| Hahn,           | Norris,            | Worthington,     |
| Halenkamp,      | Nye,               | Mr. President.   |
| Halhill,        | Okey,              |                  |

The report was agreed to.

Mr. DOTY: I now call up Proposal No. 2.

The PRESIDENT: The question is on the adoption of the substitute and the member from Mahoning has the floor.

Senator Burton here appeared at the bar of the house and was escorted to the president's chair.

The VICE PRESIDENT: Gentlemen of the Convention: One of the virtues of any democracy is the opportunity the people have to hear from the representatives of that democracy as they come to us. We are very glad that we have present with us one of Ohio's great representatives, the Honorable Theodore Burton of the United States Senate, who will address you.

## ADDRESS OF SENATOR BURTON.

Mr. President and Gentlemen of the Constitutional Convention: At the very outset I wish to emphasize the far-reaching consequences of your work. It is source of genuine regret to me that the glamour of national affairs and the absorbing interest in the pending campaign for the nomination and election of a president tend to divert the attention of the people from the vital importance of your deliberations. Upon you must depend in a very great degree the future of the state, and it is the earnest wish of every one who prizes the welfare of our splendid commonwealth, whatever his political affiliations, that the propositions framed and submitted by you may be such as shall promote the well-being of the people of Ohio and shall insure to all the supremacy of law and order, wholesome progress and equality of opportunity.

I congratulate you, the members of the Convention, upon your action in deciding upon an amendment for the issuance of bonds in the sum of \$50,000,000 for the construction of improved highways. There is no im-

provement more necessary than better means of communication between the farms of the state and the markets for their products. Genuine social and economic progress and improved means of communication have always kept pace one with the other, and thus the campaign for good roads has a most rational foundation. At the same time I most earnestly deprecate attempts which are made to obtain national aid for highways within the borders of any state. The tendency of such a policy would be to diminish local initiative and to vest increasing authority in the federal government. I am not ready for a regime under which the states are to become mere historical monuments or their boundaries vanishing traces on the map. When you transfer to Washington activities which should be managed by local communities, you destroy civic pride and responsibility and deprive the state and county of the brightest jewel in their political diadem. Such a course must necessarily dwarf the political activity and the importance of communities and foster a disposition to look to congress for the prosecution of all necessary reforms and improvements.

Again, the federal government already has enough to do. The enlargement of the scope of distinctively national activities already manifested, and sure to be more in evidence in the future, will require additional national revenues and will tax to the fullest extent the resources of the federal government. Nothing can be more demoralizing than the widely prevalent idea that whatever is obtained from the national treasury is a clear gain to a community or a state. Ohio pays a share of national taxes larger than her proportionate share, based on the relative population of this state and of the whole country. This is unquestionably true, because of the wealth of the state, the large industrial interests which must pay a considerable duty on raw materials, and the very considerable manufacture of articles subject to internal revenue taxes.

In this connection there is another potent reason why the citizens of this state should not advocate national aid. Recent figures show that with a single exception a larger share of the highways is improved in Ohio than in any other state. We have expended millions for this purpose and are spending millions more. Other commonwealths have been content with the policy under which muddy roads and almost insuperable grades may remain rather than to incur the burden of taxation necessary for their improvement. By a computation of the relative proportion of Ohio roads to be improved in comparison with the relative contribution the people of Ohio would have to make for the improvement of all the highways of the country, it has been shown that for every \$1.33 which the state of Ohio would receive from the federal government she will contribute \$5.00. This comparison is based upon population merely. In view of her large proportionate share of taxation, it is not an exaggeration to say that she would pay \$6.00 or even more for every dollar she would receive.

Again, national aid would point to the establishment of the principle that the federal government helps those who do not help themselves and places alert progressive communities on the same footing with those which neglect or refuse to provide for their own needs. Why not carry this same principle farther and apply it to families

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and to individuals, helping those who are indolent and laying burdens on those who are brave and energetic in the race of life?

It would be far from me to advocate a plan which is based merely upon avoiding the burdens of taxation, provided the best interests of the nation or state required the expenditure, but I think the disproportionate burden imposed upon the people of Ohio, in case this plan were adopted, should be thoroughly understood. To advocate it would mean unintentional altruism, if that term expresses a consistent idea. The people of the state would be disregarding their own interests in consenting to bear an unequal share of the burdens of the government. If it is advocated, let every one clearly understand what is meant, namely, that he is spending \$6 for every \$1 that he receives and is fostering a policy which places those who have no energy or spirit of self-reliance on the same footing with those who meet their full responsibilities.

I am glad to note that the question of woman's suffrage and the regulation of the liquor traffic is left to a vote of the people, each as a separate proposition. There has been a long continued agitation for the former and whatever our views may be on the subject, it is but fair that the people have an opportunity for an expression on this question. I trust that any question relating to the liquor traffic shall be presented in a form which is clear and readily understood. The people of the state should vote on that question with a full understanding of what they are doing. Nothing is more to be desired than that this question may be removed from politics. That commonwealth is fortunate—and so is the nation fortunate—when the questions for decision in the mighty contests of each election are few in number and of a distinctively political character. No campaign in my own time has ever been more interesting than the national campaign of 1896, in which there was one all-absorbing question before the people, that of the free and unlimited coinage of silver. A multiplicity of issues, especially of those questions which are apart from the ordinary functions of government, confuses the electors and leads to a disregard of the importance of vital questions. In all this I do not mean to say that the liquor question is not an important one, but it should be kept as far as possible distinct from the issues presented to the people or considered by the legislature.

In this connection I wish merely to suggest to the Convention the desirability of submitting the constitution to the vote of the people separate from any other issue. You, its members, know better than I whether it is practicable to prescribe a vote at a different date from that of the coming presidential election. The issues of the general election and the decisions to be reached relating to the constitution are, both alike, questions of surpassing moment, and it is desirable that without complication they may be separately considered by the people.

The question of taxation has evoked much discussion in the state. I am especially opposed to the present rigid rule of uniformity in laying taxes. It is impossible to place intangible assets on the same footing with land and tangible property which are in the public view and readily open to the inspection of the assessor. Taxes upon the former can be readily evaded and a law subjecting them to the same rate as physical properties generally has the effect of putting a premium on dishonesty. In a meas-

ure the same is true of certain classes of tangible property as well. It is a question whether it is best to place any rigid limits upon the right of the legislature to classify objects of taxation.

There is a large field for obtaining contributions for public expenses by means of an excise or privilege tax on both public service and private corporations. One of the most serious defects of the present Ohio constitution is the doubtful authority it confers on the legislature to impose excise taxes. The new instrument should leave no doubt as to this power.

Inheritance taxes have been adopted in nearly all the states. While this species of tax lays a reasonable tribute on wealth, it occasions less disarrangement in the prosecution of enterprises than a levy on active capital. A graded inheritance tax also tends to prevent the accumulation and transmission of what are called "swollen fortunes."

It is by no means incredible that at some time a tax may be levied similar to that recently adopted in England, under which all real property is valued, and in case of subsequent sale or the death of the owner, twenty per cent of all increase in value goes to the state. This is in recognition of what the individual owner owes to the growth of the community.

In a well adjusted system of taxation there should be some dividing line between the respective levies of the federal and state governments. The most natural division would seem to leave income taxes to the federal government and inheritance taxes to the states.

I am not unaware of the tendency on the part of wealthy men to remove from one commonwealth to another in order to secure domicile in a jurisdiction which is lenient in its regulations regarding the taxation of wealth. This, however, is a condition incident to our political system and cannot be avoided. The probable result will be an increasing approximation to similarity of taxation laws among the states, so that this disadvantage will in a measure be removed.

I should question the advisability of any constitutional limitations of the rate of taxation, however welcome it may be to the taxpayers of the state. One thing is inevitable—that with the growth of the functions of government, public undertakings will tend to increase. This increase has been most noticeable in the expenditures of the federal government during the last twelve years. It has been constantly engaging in new lines of activity, making greater provision for the health and protection of citizens, and the scope of national appropriations has thereby necessarily been enlarged. The same tendency is manifest in state activities, and will inevitably be more manifest in the future. There will be a variety of public measures for the relief of suffering and disease, for the care of defective classes, for ameliorating the conditions of the poor and the aged, and for various public improvements. All these are incident to a progressive society, in which greater regard is had for humanity and for securing a better utilization of the resources of the state. Sanitariums for consumptives and good roads are illustrations of forms of public expenditure which will surely increase in the future.

While taxation is always regarded as a burden, it should not be an object of dread, if there is economical and efficient administration and public funds are devoted

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to purposes which admittedly promote the public welfare. The greatest pains should be taken not to foster the inefficient or objectionable classes of society, but anything which tends toward better physical conditions or the preservation of public health adds to the efficiency and the happiness of the people.

A rule for the imposition of the so-called double liability on stockholders of banks is certainly worthy of your consideration. The national banking law has a rule to this effect. It is obvious that the injury to the public from the failure of a banking institution is far greater than that arising from the failure of an ordinary corporation. Consequently national and state laws and regulations very generally provide for stricter supervision over banks and a larger liability for the stockholders. Single institutions have a hundred thousand depositors, and the ruin wrought by suspension of payment or failure to meet obligations is widespread. In this connection it may be said that the prevalent apprehension of the dangers from publicity in requiring statements from corporations and from supervision over them has been absolutely disproved by the experience of the national banks which, under severe laws and regulations requiring frequent statements and examinations, have afforded investments of capital among the most profitable in the country.

I am aware that the one question before you which attracts the most earnest attention today is that of the initiative and referendum. As I interpret the vote of the people last autumn, it was in favor of the adoption of these two methods in legislation, and, when properly safeguarded, I not only do not oppose but favor giving to each a trial, and, within limits, making them a part of the political policy of the state. At the same time I must say with emphasis that these new methods for expressing the popular will should neither be regarded with grave apprehension nor be depended upon for a regeneration of the body politic. Perfect government cannot be obtained by a change of methods, but only by a stimulation of the civic virtues and a quickened sense of the responsibilities of citizenship.

Kindly bear with me for a few minutes while I seek to dwell, in language which will lack popular quality, upon certain fundamental principles pertaining to political philosophy. All political conditions are shaped by the ideals of the people. Those ideals result from a multitude of causes, from traditions, religious beliefs, political opinions and environment. Physical conditions must also be taken into account. This is especially true in our own country where the unparalleled opportunity for material advancement is the most potent factor. Here between the lesser and the greater oceans, with the treasures of the forest and the mine, the farm and the workshop, there is an opportunity nowhere equalled for the accumulation of wealth and for the betterment of material conditions. No one is satisfied with that which he has. There is no rigidity or crystallization in our society. The poor of one generation may become the millionaires of the next. There is a constant struggle for advancement, in which the weaker are often forced to the wall. Unrelenting, pitiless competition is visible on every side. These are the facts which confront us in our own country, and in all civilized countries distinctive features exist which give direction to laws and in-

stitutions. We are prone to overrate the effect of the enfranchisement of new classes of voters or of laws which seek to give to the people a larger participation in the government. If there is sufficient interest in any reform or innovation, that reform or innovation will be adopted whether the lawmaking power is vested in a single legislative body, in two legislative bodies, or in the people at large. With the advancement of science and the greater diffusion of intelligence, the influence of the individual is constantly made broader, and this influence is reflected in all the functions of government. If the industrial and commercial classes make more effective use of the ballot and exert larger political influence than formerly, it is because in more fundamental ways they are playing an increasingly prominent part in the life of the nation.

Moral forces are constantly at work asserting the rights of mankind, demanding innovations and reforms, and this gives a certain trend which kings, executives and legislators must all alike obey. In every country, no matter where the lawmaking power may be vested, there will be certain forces which will take the form of despotism. In this country that despotism is public opinion. All history reveals the controlling power of certain great forces which are independent of the forms of government and even of the prerogatives of the privileged classes. The Roman senate existed for more than a thousand years with marvelous contrasts of glory and shame, of magnificent power and abject weakness, of honesty and corruption, but during all those thousand years the senate was a public mirror of the Roman people. Would the referendum have stayed the rampant spirit of imperialism which characterized the time of Julius Caesar, would it have cured the profligacy of the days of Caligula? Was the initiative necessary for the introduction of the Christian religion? Whenever reforms are adopted or great changes made, they are in an important sense the expression of the best thought of the whole people, and that thought will find expression, no matter to what methods it may be limited. In the year 1866 the liberty party of England advocated enlarging the franchise and including a million or more of voters among the electorate. The conservative party opposed, but the next year when it assumed power it passed a bill for that very purpose. Why was this? It was because they were compelled to obey the great forces which were at work, the general sentiment of the people.

Mr. Benjamin Kidd, in his very learned work on Social Evolution, presents a new conception of the guiding forces of the French Revolution. He says, in speaking of the ruling classes:

It has been the custom to attribute the success of the Revolution to the decay, misrule, and corruption of these classes; but history, while recognizing these causes, will probably regard them as but incidental. Its calmer verdict must be, that it was in the hearts of these classes and not in the streets that the cause of the people was won. \* \* \* Effective resistance was impossible. \* \* \* The conceptions of which the Revolution was born had given enthusiasm to the people. \* \* \* But their natural opponents

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were without either enthusiasm or cohesion; they were indirectly almost as profoundly affected as the people by the force which was reconstituting the world.

If we analyze the forces which have caused the so-called progressive legislation in numerous states of the Union and which have given strength and success to humanitarian movements, it must be conceded that the general sentiment of the people rather than any methods for the enactment of laws affords the adequate explanation of whatever reforms have been accomplished.

It is my desire to state at some length the arguments for and against the initiative and referendum:

In their favor:

1. They provide a means for obtaining an expression from all the citizens of the body politic. Every shade of public opinion can be represented at the polls, and theoretically at least there would seem no more perfect method for ascertaining the popular will.

2. The infirmities and dangers pertaining to legislative bodies cannot be ascribed to the whole body of the electorate. Corruption, favoritism, machine domination, and considerations of partisan advantage would naturally be less effective with the mass of the people than with a limited number of legislators.

3. They provide a method for a test of public judgment upon any question which is of interest to a considerable number of citizens. Such a test is often denied in a legislative body by the pressure of business, the complexities of parliamentary procedure, or the undue influence of party leaders or powerful interests.

4. Measures of a most salutary nature are oftentimes defeated by the strenuous opposition of an active minority of citizens whose condemnation legislators fear to incur. On the other hand, an aggressive and interested group, by insistent demands or threats of retaliation, may secure legislation which is not conducive to the general welfare.

5. In an ideal commonwealth, the initiative or referendum would tend to divert the minds of the voters from absorbing interest in party success and the election of favorite candidates to questions of principle and the broader aspects of legislative policies of universal interest.

6. Special emphasis should be laid on the fact that the adoption of the initiative and referendum would be a most powerful influence to stimulate the interest of the people in public affairs and to a sense of their responsibilities as American citizens. This interest is now painfully lacking, and the inattention of the average citizen to political affairs seems to be increasing rather than diminishing. It is probable that if this method of legislation be adopted, certain elements in the body politic will occasionally receive a rude jolt from the submission of propositions which run counter to their wishes or interests. I cannot altogether agree with those who emphasize the probable neglect of the electors to study questions presented. If indifference to public questions prevails, it is high time there should be a change, and that the citizens of the state should give the proposed legislation the same kind of attention which they bestow upon their private affairs. To say that it is unsafe to leave important legislative propositions to the people

is to confess the existence of a condition which should be remedied. We must always bear in mind that we are under a popular government and that ultimately the people must rule. A severe awakening may have its salutary effect in increasing political activity.

Obvious objections are:

1. The general apathy in the performance of political duties makes it difficult to awaken sufficient interest in the mind of the average voter to enable him to reach correct conclusions upon public questions. Wherever the initiative and referendum have been tried the vote for candidates for office has invariably been greater than that upon legal or constitutional propositions submitted at the same time. Even in Oregon, where this new method has received its most thorough trial, there has been an apparent decrease in the interest of the voters. In 1904, 78.5 per cent of the electorate voted upon the propositions presented, but in 1910 the percentage was 73 5-8 per cent. Both of the two intervening elections in 1906 and 1908 showed a decrease from 1904.

2. Closely connected with the former objection is the question of the competency of the average elector. It has been customary to refer to the American voter as a man endowed with extraordinary capacity, as one who understands, as it were, by intuition, the most complicated problems of statecraft. Such qualifications are rare in a country where unlimited opportunities for material advancement and professional success are so exceptionally inviting as in the United States. In a land of such boundless opportunities the interest of the great mass of voters is in the direction of business rather than of politics. It is the custom of many public men—and especially of candidates for office—in addressing audiences to expatiate upon the capacity of their hearers and to state that they all alike are qualified to decide upon every public question. Such statements may be ascribed to a Chesterfieldian politeness, employed to please not merely a single individual, but a multitude, and under circumstances in which some aberration from accuracy of statement may be regarded as allowable. The general body of the electorate may be competent to decide great fundamental questions and to pass judgment upon any subject to which the average citizen gives sufficient attention, but the serious difficulty in the way of a wise determination is inattention to public affairs and the predominant interest in subjects other than political. Lack of adequate information is partially responsible for want of interest in questions of really vital public importance.

In this connection I may relate an incident which occurred last year. A new member of the house of representatives at Washington from Ohio made a decided hit in an address upon the initiative, referendum and recall. He was first allowed but a few minutes for his address, but by unanimous consent he was listened to with marked attention for more than two hours. The galleries were filled and his remarks evoked the closest attention. To what extent did his speech receive publicity? Not a single paper in New York city mentioned it. One newspaper in Washington stated Mr. So and So, a new member, also spoke. Another newspaper in Washington, which gives special attention to the discussions of congress, gave five lines to his remarks. Yet that same newspaper gave to gossip of foreign capitals one column, to an account of the prospective coronation of the king

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at London, three columns, and to baseball, fourteen columns, giving more space to conjectures as to the probable pitcher on that day than to the debates in the house of representatives on the initiative, referendum and recall. This incident emphasizes the lamentable absence of sufficient study of public questions, for the newspapers publish what their readers demand.

3. The intense individuality of the typical American too often leads him to regard political activity as a means for personal advantage. The voter is likely to express his choice upon questions submitted to him under the promptings of personal interest, without any adequate sense of responsibility to the public. There is danger that, under the initiative and referendum, there will be a tendency to form groups dominated by a selfish desire to promote the advancement of their own particular interests.

4. Legislation of the most helpful and enduring character is always the result of ample discussion and a careful comparison of views. Very few of the important statutes which have benefited the state and nation were finally enacted in the form in which they were first proposed. The opportunity for consultation and mature judgment is lacking in case propositions are voted upon in the form in which they are first presented. One of the worst illusions which can be entertained is that of regarding the lawmaking power as requiring less skill and consideration than other branches of human endeavor.

5. Deny it as we may, a great multitude of voters are often swayed by passion or influenced by superficial judgments or demagogical appeals. It is the exception rather than the rule that the first judgment of the voters, even upon questions of the utmost importance, has been accepted as final. In 1888 a national house of representatives was chosen a majority of whose members were pledged to enact a tariff law of a highly protective character. They sought to obey the supposed will of the people, but in less than six weeks after that mandate was embodied in law the party which passed it was almost swept from the political map. As a result of the election in 1892 the house of representatives contained a majority pledged to the idea that protection was a fraud, a robbery of the many for the benefit of the few. In 1894 this majority obeyed its supposed mandate and passed a law in conformity thereto; but in an election held in a few months after its passage the party enacting this law came near disappearing beyond the political horizon. It was not until 1897 that a law was passed in which people acquiesced.

The different judgments at intervals of three years in counties of the state of Ohio relating to the liquor traffic is an illustration of the same instability of opinion. In matters of less moment the judgment of the people has been even more fickle. In the autumn of 1909 the world was thrilled by the news that an explorer had discovered the North Pole. The alleged discoverer became the popular hero of two continents and delivered lectures to admiring throngs describing the beautiful cerulean blue which entranced him when reached the topmost summit of the globe. But another explorer appeared who treated his claim with disdain and even with ridicule. An enterprising newspaper in an adjoining state decided to settle their respective claims by a referendum and this

was the vote: Cook did not discover the North Pole, 2,814; Cook did discover the North Pole, 72,238. The vote was published with much solemnity, as if the question of the respective claims of the explorers were settled for all time by that most conclusive appeal, a vote of the people.

6. The adoption of direct legislation would diminish the prestige and usefulness of legislative bodies and lower the quality of their membership. The members would become accustomed to evading responsibility in the face of popular agitation and would refer to a popular vote questions which they themselves should decide. In this connection I may frankly say from long experience in a legislative capacity that it oftentimes would be very acceptable to legislators to leave many perplexing questions, concerning which there are marked differences of opinion and bitter controversies, to a vote of the people, in order to relieve the legislator of an unpleasant responsibility. It is often the disposition of legislators to avoid as far as possible an expression upon controverted questions. After the present legislature of the state of Ohio had sent me numerous resolutions requesting my support, in the national legislature, for certain propositions about which there was no special difference of opinion, a bill for removing the tax on oleomargarine was introduced in the house of representatives at Washington. It seemed to me most fitting that the legislature should express its wish on this measure, notwithstanding the fact that there was a wide diversity of views in the state in regard to it. I addressed a communication to the respective presiding officers of the senate and house, suggesting that as they had offered advice in a considerable number of cases, an expression of an opinion of both houses by vote would be helpful in this case. It is enough to say that no action was taken. Indeed, I barely heard from the communication at all.

It may be conceded that the adoption of direct legislation is contrary to the original plan upon which both the national and state constitutions were based. That is not a conclusive argument against it. The essential ideas in that plan were:

1. That it is impracticable to govern by a direct democracy in any country having a large population or extended territory.

2. That the best substitute for direct participation is to give the lawmaking power to representative bodies, the members of which presumably will be chosen with a view to securing men of superior natural qualifications and who by experience will acquire ability for the performance of their duties.

A further reason for this plan was the opinion that men in public office who perform their duties under the sanction of an oath and who must be responsible to their constituencies for their conduct, will presumably feel a deeper sense of responsibility than those who make up the general electorate.

Through all discussions relating to the adoption of the federal constitution may be noticed two co-ordinate ideas — first, that the will of the people should prevail, and second, and equally important, that it should be deliberately expressed. The framers of the constitution believed that wisdom in legislation is not always the result of first impressions or temporary impulses. It has been said that they were alike afraid of the despot and the mob. In



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regard to the danger of ill-advised or erroneous conclusions, Abraham Lincoln said, "You can fool all of the people some of the time."

If the initiative and referendum are to be adopted, and, as already stated, the vote of the people in the state of Ohio last autumn seems to be conclusive of a desire to that effect, certain safeguards should be insisted upon.

1. The plan adopted by the Swiss Confederation should be followed, under which propositions for initiative are first submitted to the legislative body for acceptance or rejection, as well as for revision, and the presentation of an alternative proposition before they are submitted to the electorate. This plan will insure adequate discussion of the propositions in question, will afford opportunity for accepting them, or if rejected, for submitting them in such form that they may be readily understood. It will also be possible to present alternative propositions similar in nature for the consideration of the people.

2. It should also be within the power of the legislature to govern the method of signing petitions and to prevent corrupt practices in relation thereto. If the percentage required is small, an active element could obtain the necessary signatures of many persons who are proverbially reluctant to refuse to sign petitions whatever their character may be. It might be well to require that petitions be left at some public office where they may be signed only in the presence of qualified officers. The manner in which signatures are secured may assume greater importance than the number required, though this number should be sufficiently large to prevent a vote except in pursuance of the desire of a considerable portion of the electorate. And it is of equal importance that petitions should be signed not merely in large cities or one portion of the state, but that the petitioners should be distributed throughout a reasonable proportion of all the political subdivisions of the state. This does not mean that a single county should be able to prevent the submission of a question, but it does mean that there should not be the possibility of contests between city and county, or the necessity of asking an election with all its burdens on the initiative of petitioners in a limited portion of the commonwealth.

Should a certain percentage of the electorate be required for the adoption of any proposition? On this subject it must be said that there are manifest objections to a rule which gives the power of negative to those voters who are indifferent or inattentive. The functions of government must be performed, and those who discharge the high responsibilities of the franchise ought not to be defeated by those who ignore it. In the practical working of the initiative and referendum, I regard it as more important that there be a limit on the number of propositions submitted at one time. There is a most wholesome agitation for what is called the short ballot, and it is to be hoped that the number of elective offices may be diminished so as to concentrate the attention of the voters on a limited number of officers. But is it not probable that some one with an acute sense of humor will detect an incongruity in the views of those who would limit the number of candidates for whom the voter must cast his ballot, but at the same time would indefinitely enlarge the list of legislative propositions upon which he is asked to express his opinion? In this, as in other

matters, it is desirable that a considerable degree of discretion be left to the legislature. It is manifest that the popular expression will be more accurate and valuable when the issues to be passed upon are clean cut and free from complication.

It goes without saying that material distinction should be made between mere statutory provisions and those which pertain to constitutions and basic law. In no other way can the rights of minorities be protected and that stability be secured which is an essential part of the civic life and industrial and commercial prosperity of every community.

I regard it as hardly worth while to take your time in opposing arguments for the recall of judges or judicial decisions. To my mind both of these alike are unthinkable. The function of judges is not to pass laws; it is to interpret them, to maintain justice and right between man and man. One important part of their duty is to stand firmly against the oppression of majorities and the power of selfish interests. It is of the utmost importance that judges should as far as possible be removed from the turmoil and strife of political contests and from the demands which are based upon excitement or clamor. A defeated litigant is seldom philosophical. Oftentimes decisions must be rendered which offend numerous citizens, and that judge, who by reason of the fear of an abrupt removal must constantly stand in awe of discontent or excitement, cannot properly perform his duty.

I must say that the natural sequence of the recall of judges would be the recall of judicial decisions. If you remove a judge for his conduct of a murder trial, why not hold a popular vote to determine whether the criminal should be hanged or freed? Why not subject the question of pardoning convicts to a popular vote?

The judiciary is the distinctively characteristic feature of our political system, and we cannot allow its dignity or stability to be menaced without causing the whole fabric of our government to totter. I do not say this because of any exaggerated reverence for judges. Sometimes their decisions have been biased, sometimes incorrect, and on rare occasions tainted by corruption, but adequate remedies can be provided to correct their decisions or to remove the judges from office. There have no doubt been some instances of late where a removal would have had a salutary effect. We cannot condemn the muck-rakers when they sustain their attacks upon judges by specific facts, but we must condemn them when they indulge in generalities and visit unfounded criticism upon the bench or any other branch of our official life.

I should be untrue to my association of more than twenty years if I did not say a few words in defense of that much abused citizen, the legislator. Some of the most radical advocates of the initiative and referendum base their arguments upon the most absurd contention that there are no honest men to be found who can be trusted to make laws, or, if there are such men, the people are incompetent to find them. If this is true, can you trust the whole body of the electorate? Others advocate an equally absurd opinion that a citizen may be very honest as such, but when he is elected to represent his county or his district in legislative bodies he becomes subject to such influence as to warp his judgment and render him untrustworthy. The legislator, my friend, is a mirror of the people. He is just that quality of man

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which the people desire. If they wish him to be as sturdy as an oak and to go down in defeat rather than to swerve one iota from principle, that is the kind of a man you will have in the legislatures of the state or nation. If you wish him to be subservient to every changing current of excitement or clamor, to be constantly seeking to maintain his place by devious means or otherwise, that is the kind of a man you will have. The demand of powerful elements in society, antagonistic, one against the other, that every man at Columbus or Washington shall conform to their wishes, tends to make of these chosen representatives past masters in petty politics, evasive and devoid of independence or courage. It is not so much in the office of the legislator itself, but in the selfish insistence of these numerous and oftentimes noisy elements that the danger lies. I say this with due allowance for recent disclosures of corruption in state legislatures and elsewhere. Dark shadows have flitted across the body politic; shadows which have the aspect of corruption and danger. But these disclosures expose weaknesses of legislators which are exceptional and not the rule. Let the people support their lawmakers to aid in the framing of great statutes for public welfare and progress, and the standard will be raised. If, on the other hand, they are to be regarded as mere local agents to be judged by what they accomplish for localities or individuals, for their access to various pork barrels, the standard will be lowered. Not in all cases but in most, wherever human aspiration has found a voice or pleading hands have been raised for help, there assistance has come from legislative bodies or from legislators who in language that is often sublime and with thoughts that are inspiring have framed statutes and erected institutions that stand like pillars of hope and strength along the pathway of nations. Cato and Cicero did their part in the Roman senate. John Hampden, Chatham, Burke and Gladstone ornamented the house of commons of England, and I might allude to an almost innumerable array in our own country who have aided in building it up and bringing it to its present position of greatness.

The legislator will get along very well if you do not keep him busy dodging brickbats all the while. It is sometimes like a ray of kindly light to a man in a legislative body to find among the mass of requests which come to him a letter or a telegram asking his aid for some measure great or small, which makes for the upbuilding of the nation, for the uplifting of the poor or weak, or in some way gives him to understand that the work which is expected of him is to be the servant of the nation, and not the promoter of a constant succession of private interests.

In line with what I said in the beginning, no method of enacting laws will bring us to the gates of the millennium or better conditions unless it be supported by a sane, patriotic and wholesome public opinion. What is needed most of all is that the great body of the people should study the problems of state-craft and give to the management of public affairs an attention like unto that which they give to their own interests.

Sometimes the days seem dark, but although the currents of popular opinion are muddied by ignorance and debased by selfishness, nevertheless the heart of the people is sound. The all prevailing sentiment is one which, whenever aroused, makes for the good, the beautiful and

the true. On this we may rely and let it be our lasting hope. Let no one be discouraged or pessimistic, but look forward hoping for the dawn of a better day.

"I asked the roses as they grew  
Richer and lovelier in their hue,  
What made their tints so rich and bright;  
They answered, "Looking toward the light."

We will look toward the light, assured that this great framework of government cannot fail, whatever methods we may adopt.

By unanimous consent, Mr. Harris, of Ashtabula, offered the following resolution:

Resolution No. 87:

*Resolved*, That the thanks of the Convention are hereby extended to Senator Theodore E. Burton, for the instructive and scholarly address just delivered.

By unanimous consent the rules were suspended and the resolution was considered at once.

The resolution was unanimously adopted.

On motion of Mr. Doty the Convention recessed until 2 o'clock p. m.

#### AFTERNOON SESSION.

The Convention met pursuant to recess.

Consideration of Proposal No. 2—Mr. Crosser, was resumed.

Mr. Anderson, having previously yielded the floor for other business, was recognized by the president.

Mr. Anderson yielded the floor for a motion.

Mr. Halenkamp moved that further consideration of the proposal be postponed until 2:15 o'clock p. m.

The motion was agreed to.

By unanimous consent Mr. Kilpatrick submitted the following report:

The standing committee on Equal Suffrage and Elective Franchise, to which was referred Proposal No. 242—Mr. Roehm, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

In line 4, after the word "be" insert "either" and after the word "ballot" strike out the comma and the remainder of said line.

Strike out lines 5, 6 and 7.

After the word "ballot" in line 4 insert the following, to-wit: "or mechanical device or both preserving the secrecy of the ballot.

The general assembly may regulate the preparation of the ballot and determine the application of such mechanical device."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Woods the proposal, as amended, was ordered printed.

Mr. Watson submitted the following report:

The standing committee on Education, to which was referred Proposal No. 297—Mr. Hoffman, having had the same under consideration, reports

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it back and recommends its indefinite postponement.

The report was agreed to.

Mr. Stilwell submitted the following report:

The standing committee on Labor, to which was referred Proposal No. 122—Mr. Farrell, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out all after resolving clause and insert the following:

"Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Woods the proposal, as amended, was ordered printed.

Mr. Johnson, of Madison, submitted the following report:

The standing committee on Education, to which was referred Proposal No. 65—Mr. Miller, of Fairfield, having had the same under consideration, reports it back and recommends its indefinite postponement.

The report was agreed to.

Mr. Stilwell submitted the following report:

The standing committee on Labor, to which was referred Proposal No. 123—Mr. Farrell, having had the same under consideration, reports it back and recommends its indefinite postponement.

The report was agreed to.

Mr. Stilwell submitted the following report:

The standing committee on Labor, to which was referred Proposal No. 209—Mr. Tetlow, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended: Strike out all after the resolving clause and insert the following:

"Not to exceed eight hours shall constitute a day's work and not to exceed forty-eight hours a week's work, on the construction, replacement, alteration, repair, maintenance and operation of all public works, buildings, plants, machinery at which laborers, workmen and mechanics are employed, carried on or aided by the state or any political subdivision thereof, whether done by contract or otherwise, except in cases of extraordinary emergency."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Woods the proposal, as amended, was ordered printed.

Mr. Stilwell submitted the following report:

The standing committee on Labor, to which was referred Proposal No. 101—Mr. Hahn, having had the same under consideration, reports it back and recommends its indefinite postponement.

The report was agreed to.

Mr. Stilwell submitted the following report:

The standing committee on Labor, to which was referred Proposal No. 6—Mr. Nye, having had the same under consideration, reports it back and recommends its indefinite postponement.

The report was agreed to.

Mr. Stilwell submitted the following report:

The standing committee on Labor, to which was referred Proposal No. 24—Mr. Cordes, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended: Strike out all after the resolving clause and insert the following:

#### SECTION II.

"SECTION 33. For the purpose of providing compensation from a state fund, to workmen and their dependents, for death, injuries or occupational diseases, occasioned in the course of such workmen's employment, laws may be passed establishing a fund to be created and administered by the state and by compulsory contribution thereto by employers; determining the terms and conditions upon which payment shall be made therefrom and taking away any or all rights of action or defenses from employees and employers but no right of action shall be taken away from any employees when the injury, disease or death arises from failure of the employer to comply with any lawful requirement for the protection of the lives, health, and safety of employees. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard; fix rates of contribution to such fund according to the general rule of classification and to collect, administer and distribute such fund and to determine all rights of claimants thereto."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Woods the proposal, as amended, was ordered printed.

Mr. Lambert submitted the following report:

The standing committee on Legislative and Executive Departments, to which was referred Proposal No. 177—Mr. Read, having had the same under consideration, reports it back and recommends its reference to the committee on Short Ballot.

## Introduction of Proposals—Reports of Standing Committees—Initiative and Referendum.

The report was agreed to and the proposal was so referred.

By unanimous consent the following proposal was introduced and read the first time.

Proposal No. 310—Mr. Read. To submit an amendment to article II, section 25, of the constitution.—Relative to sessions of the general assembly.

By unanimous consent Mr. Kramer submitted the following report:

The standing committee on Legislative and Executive Departments, to which was referred Proposal No. 162—Mr. Elson, having had the same under consideration, reports it back and recommends its indefinite postponement.

The report was agreed to.

Mr. WOODS: I move that each of the proposals just reported to the Convention with amendments be reprinted as amended.

The motion was carried.

Mr. HALENKAMP: I now move that we proceed with the consideration of Proposal No. 2.

The motion was carried.

The PRESIDENT: The question is on the adoption of the substitute amendment offered by the member from Crawford [Mr. MILLER] and the member from Mahoning has the floor.

Mr. ANDERSON: Gentlemen: It is a rather embarrassing time to begin to discuss this question immediately after Senator Burton has made his speech, for all the good things he said in reference to the initiative and referendum I intended to say myself, but he having said them much better than I can, I shall save that much time.

Something has been said to the effect that later on, when the roll call comes and each one of us answers "yea" or "nay," there will be a division of the sheep and the goats, and the gentleman from Cuyahoga [Mr. FACKLER] will stand ready to pin the word "sheep" or the word "goat" upon the different delegates. And then he very graciously and kindly says that he will permit amendments to this later on when we come to free discussion. I want to thank him for permitting this body of one hundred and eighteen men other than himself to have that privilege. He suggested that some men who were apparently friends of the initiative and referendum some time ago have changed, and the only reason that he could think of was political. It is really strange how we look through colored glasses and everything is of that color to us, but it seems to me that we who have been elected delegates should do our duty as delegates without regard to any office that we may wish later on. It seems to me that a man does not do his full duty who comes here and permits himself to be swayed in any way whatever by any hope of political preferment, be it congress or prosecuting attorney or anything else. If the people are as intelligent as their champions tried to make us believe, they will understand true worth and will not condemn a man for standing for what he believes is right whether they agree with him or not. If politics or party political preferment might be injected into our vote how many delegates would vote right, for you can

not throw a book in any direction without hitting some candidate.

Mr. PECK: You can throw it in my direction.

Mr. ANDERSON: How about the supreme court?

Mr. PECK: There is nothing in that for me.

Mr. ANDERSON: I saw it in the paper.

Mr. PECK: You can throw all the books in your library in my direction and you won't hit a candidate.

Mr. ANDERSON: Now I want to discuss this question from the standpoint of one who is really in favor of the initiative and referendum. It was no sudden spasm on my part to aid my election, because I was in favor of it years before I ever thought we were going to have a constitutional convention, and when before election I showed my willingness to vote for 8, 10 and 12 per cent., I meant it, and I mean it now. Before this Convention convened many of the delegates had gone on record in favor of 8, 10 and 12 per cent. Then we arrived here, but before coming the newspapers told us we were not friends of progress if we did not vote for a certain man for the presidency, because he in himself comprised all the progress in Ohio. If that is true it would be a pity if something were to happen to him. Then that was followed up by telling us that we should change as progress had decided to change from 8, 10 and 12 per cent. to something else without our even having any opportunity of going into the caucus. I was not denied that privilege because I was unfriendly to initiative and referendum. Why it was denied me I don't know, but the caucus went behind closed doors and changed from that which they came here pledged to support. Therefore we had no opportunity to go before or into the caucus and finding out why they changed on hearing the arguments. We are deemed enemies of the initiative and referendum because we will not swallow the bait, hook, sinker, line, pole, reel and everything else.

Mr. HALENKAMP: Were you not invited into the so-called conference?

Mr. ANDERSON: I was not invited —

Mr. HALENKAMP: Didn't you take the floor one time and denounce the president of the Convention for asking you into it?

Mr. ANDERSON: No, sir; I did not. I took the floor because the delegate from Hamilton [Mr. HARRIS] asked me a question that I could not answer until I first got the permission of the president, because it was a matter that I thought a gentleman had no right to answer under the circumstances without first the permission. The president gave me that permission and that question was whether I had signed the petition, and I do not wish now to tell what was on it because it would offend good taste. I refused to sign that petition. That was no invitation to the caucus. That was simply an invitation to sign the petition, or rather the agreement. At that time you hadn't had any caucuses and from that time on I never received an invitation of any kind.

Mr. HALENKAMP: What is it you call a petition?

Mr. ANDERSON: I mean the agreement or contract.

Mr. HALENKAMP: That was an invitation, was it not? It was what we considered an invitation to the so-called conference.

Mr. ANDERSON: Did you sign it?

## Initiative and Referendum.

Mr. HALENKAMP: I have no reluctance whatever in saying that I did sign it.

Mr. ANDERSON: Then you read it before you signed it?

Mr. HALENKAMP: I did.

Mr. ANDERSON: Don't you know it was not an invitation, but an agreement that would tie us up so we could not do anything but one thing?

Mr. HALENKAMP: I am not saying whether it was an agreement or an invitation, but it was what some of us considered an invitation and you were asked to sign that.

Mr. ANDERSON: Yes.

Mr. HALENKAMP: And you refused?

Mr. ANDERSON: Certainly. But I want to say, that there were other men who did not sign that who were asked to attend the caucus and did attend the caucus. In other words, if you are correct in your position no one but a person who signed the agreement, from which there was no escape, had any right to go into the caucus. Do you want to put that interpretation on it? I didn't think it was that bad. I didn't think you had gone quite that far. In other words, that paper we were asked to sign meant that we agreed to do a definite thing in the way of voting about an indefinite thing called a proposal and we didn't have any liberty at all. And the reason I didn't sign that was because I didn't think as a gentleman I should be asked to sign it. I don't believe very much in signing every paper that is stuck under one's nose. It does seem to me a little latitude should be given to men supposed to be of high class elected to represent their counties. I think it ought to be taken for granted that they should not be required to sign contracts as to their future conduct. But under the agreement there was no way of changing or amending after the proposal came out and it was not to be subject to the acid test of criticism—none whatever. This Convention was assembled and delegates were elected for the purpose of coming here and discussing these different things that might come before us, each from his individual standpoint and view point. That is the reason we have the Constitutional Convention, so that all minds with their different environment in the past, might criticise and mold and help to frame, so that it would be a composite work of all. I will come later on to show why that is necessary, and I will show it by this very proposition we are discussing. I am not one who believes the initiative and referendum is as great a thing as some of the gentlemen from Cuyahoga would make us believe. At best it is only a tool. There is no substance in it itself. It is only a tool that enables the people to build something, and that something may be a chicken coop or a palace.

Why, Peck's Proposal No. 184 is so much more important than the initiative and referendum that there is no comparison in the good that will immediately follow all over the state when that proposal becomes a part of the constitution. Anyone of these measures introduced by the Labor committee is of more importance in the good they will accomplish immediately than the initiative and referendum. I grant you you can not build such a political boom on them, but in substance and in the producing of permanent and lasting good to the people any one of them is more important than the initiative and

referendum. I think one of the most important things about the initiative and referendum is that it spells good morals. That is a thing that should make more friends for initiative and referendum than anything else—that it takes away the incentive from the big interests to bribe and corrupt lawmakers. I think that is the biggest thing to be accomplished in bringing about this reform.

We are prone to criticise. How easy it is to criticise a man who falls and say, "You are a briber; you should be behind the bars of the penitentiary;" but let us analyze that a moment. Coming from our county are two lawmakers. We are proud of them both. They both did splendid work. One of the men inherited a million dollars. He has everything that could be desired, all the luxuries at his home. He has a million dollars invested in such a way in the iron mills that he can not spend the amount of his income. The other man was a locomotive engineer. Each has a family. Do these men occupy the same position when temptation comes in the way of bribery? Both are lawmakers. Each is as important as the other to the briber. But it means nothing to the wealthy man when he is offered \$5,000, and he can indignantly turn aside, and that is a worthy act. But how about the locomotive engineer? His family is dear to him, his children are dear to him, and he wants his children educated, because every man in the United States wants his boy to be a greater man than he is (except just one person and that is the president of the United States, who cannot have a boy greater than he).

The locomotive engineer is anxious to have his boy grow up and become something. How much does that \$5,000 mean to a poor man! To the wealthy it means nothing. I am in favor of the initiative and referendum because it takes away that temptation.

We are prone to say a condition is brought about which we recognize as bad and one that ought to be reformed. In other words, we treat the symptom instead of the disease. It is just as reasonable for me to think that if you would go out on a cold day and find the thermometer way down and would take a stick and break the thermometer that that would make the day get warm as it would to believe that all you have to do is to place in the organic law the initiative and referendum to make everything glorious and happy. It is only a tool to be used by the people, the dear people you have all agreed to represent.

Mr. ELSON: What has been the experience under the Crosser municipality law?

Mr. ANDERSON: Nothing has done so much to make votes against the initiative and referendum as the Crosser municipality law. You will find that nobody understands what it means. The author has written to a gentleman saying that there are words in it of which he does not know the meaning.

Mr. CROSSER: What do you refer to?

Mr. ANDERSON: Haven't you written a gentleman telling him that there are words in the Crosser municipality law you don't know the meaning of?

Mr. CROSSER: No.

Mr. ANDERSON: Didn't you tell Judge Roberts that there is a word in there and you don't know how it got in?

Mr. CROSSER: No.

Mr. LAMPSON: Is it not possible for fifteen per

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cent of the voters to absolutely block all public improvements under the Crosser municipal referendum?

Mr. ANDERSON: One of the delegates has been kind enough to furnish me some figures on municipalities. Now these are the things that are necessary for you to do to get street paving:

1. Resolution of necessity.
2. Notice to the owner of property to be assessed.
3. Claim for damages.
4. Ordinance to proceed with the improvement.
5. Application for a jury.
6. Advertisement for bids.
7. Award and execution of contract.
8. Appointment of three disinterested freeholders, to assess damages.
9. Assessing ordinances.

So under the Crosser municipal law you can not make a single public improvement if you have fifteen per cent. of the voters against you. And let me repeat, nothing has done so much harm to the initiative and referendum as the Crosser bill that is now a law.

Mr. ELSON: Do you think that has anything to do with the fact that public interest has subsided to some extent? For instance, in my county there was a great deal said about the initiative and referendum in the early summer, but for the last two months before the election interest waned; it was entirely out of the view of the people—they had lost interest in it.

Mr. ANDERSON: Over at Akron the Men's Club had different public speakers come and speak to them at different times, and they were very much in favor of the initiative and referendum. By reason of the operation of the Crosser law and the trouble they had in Akron because they could not proceed with their work, they are very much opposed to the initiative and referendum. I did not know your neighborhood had had the same experience, but I will say throughout the state the change of sentiment is largely due to a fear, whether rightly or wrongly founded, of a single tax.

Mr. THOMAS: Point out any public improvement in the municipalities that has been interfered with by the Crosser act.

Mr. ANDERSON: At Akron—that is one place. I have known of several. I know that Judge Roberts, of Ashtabula, presided in a case where they stopped one improvement and stopped it for good. I know I was consulted from another city and there was no remedy there.

Mr. THOMAS: Was a petition circulated and did fifteen per cent. sign it on a referendum vote on those public improvements?

Mr. ANDERSON: So I understood it.

Mr. THOMAS: That is the first I heard of it.

Mr. ANDERSON: Is that startling? Woodrow Wilson described the initiative and referendum as the shotgun behind the door, to be used only in case of emergency, probably never to be used, but it was a good thing to put it there and let the people who wanted to do you harm know that the gun was there and loaded. I agree with Woodrow Wilson, but he didn't go quite far enough. He should have safeguarded the gun against agitators and children.

Now let us analyze this proposed law and if you will turn to your proposal book—

Mr. EBY: One of my friends back of me wants to know if it wouldn't be better to use the gun on some of the agitators?

Mr. ANDERSON: It would be a good way to have them recalled. Now you will please turn in your proposal book to Proposal No. 2 so there will be no mistake, and please remember if I am wrong at any time I want to know it; correct me.

Remember, gentlemen, that this proposal and the original proposal were prepared long before this Convention assembled.

Mr. CROSSER: Do you know it?

Mr. ANDERSON: Don't you?

Mr. CROSSER: You seem to know it.

Mr. ANDERSON: Well, was it? Will you tell us that?

Mr. CROSSER: Not for you.

Mr. ANDERSON: It may have been taken and dictated to a stenographer and turned out in an hour, but it was all prepared beforehand. Now I was trying to be kind, hoping it would meet with consideration at your hands, but I want to say that appearances resolve the doubt the other way. But take this proposal. It is fair to say that a delegate would give as much attention to it and know more than he would if we had the initiative and referendum and he were initiating the law. Yet when it goes to the committee—and it was in the hands of the committee for probably two months—and the committee reports out this second proposition after the committee had considered it—the committee of twenty-one—and after it had gone into the parliamentary body and into the committee and was talked over and became the especial care of our president, what is the result? Here is the result, and I suggest this to you, gentlemen, to show the necessity of—and I base this argument on the proposal itself—the necessity of putting proposals of this kind into a deliberative body instead of submitting them to the people by direct initiative. Now start with "Resolved by the Constitutional Convention of the state of Ohio that article II shall be as follows," so this will be the whole of article II under our constitution. Just turn and see what the second article of our present constitution is and see what you do away with entirely in the organic law of the state. Just see the important provisions that this, if adopted by the people, would make null and void.

Now go down to the tenth line: "The first aforesaid power reserved by the people is designated the initiative, and the signatures of not more than eight per centum of the voters shall be required upon a petition to propose any law, and of not more than twelve per centum upon a petition to propose an amendment to the constitution."

If you would get eight per cent. it might be illegal. If there were such an uprising of the people that they would run to the petitions the law might be carried, and if more than eight per cent. signed it it would be illegal. And, as this proposal came out of the committee one man could initiate it.

Mr. FACKLER: Will you look at the report of the committee? If you will, you will find that the words "not more than" in each place where they occur were stricken out in the committee.

Mr. ANDERSON: When did you strike them out?

Mr. FACKLER: In the committee.

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Mr. ANDERSON: How long ago?

Mr. FACKLER: Two weeks tomorrow night.

Mr. ANDERSON: How long were they in that shape in committee before you struck them out?

Mr. FACKLER: One evening.

Mr. ANDERSON: You had it two months.

Mr. FACKLER: That was the original proposal. We didn't have the amended proposal two months. Don't you know it is a fact that those words have been stricken out by the committee?

Mr. ANDERSON: Those words were stricken out after this amended Proposal No. 2 had been put in our proposal book, but not until then.

Mr. FACKLER: Were they not stricken out by the committee?

Mr. ANDERSON: Yes. Is it not true that after some one discovered it it was done? I don't think that twenty-one intelligent gentlemen would allow a fool thing of that kind to remain permanently, but the point I make is after the committee had had it for a certain time and reported it out and it was printed and went into the proposal book the mistake was discovered and not until then.

Mr. FACKLER: Is it not a fact that it was reported for printing and the minority members signed it only for the purpose of printing?

Mr. ANDERSON: So much the worse for the minority members. I am not defending them in any way, but the point I am trying to make is to emphasize the fact that you can not have a direct initiative if this is a sample of it.

Mr. HALFHILL: Don't you think it is a little unfair to call this a sample of submitting work.

Mr. ANDERSON: From what you said the other day I think that is correct.

Mr. HALFHILL: The initiative and referendum had very little to do with this.

Mr. ANDERSON: I am not prepared to answer the question. Probably he knows more about it than I do. But the fact remains, gentlemen, that as this appears in our proposal book one man could have initiated the law. Of course it would have taken one man because you could not divide a man in two. There would have to be one man in each of the other forty-three counties. Now that is the kind of perfection in laws which they want to introduce by direct initiative, laws which can not be changed by any process after they start on the way. Let me repeat: This bill received a great deal of consideration before it came out in the proposal book, more consideration than ninety per cent of those that will be initiated through the direct initiative will receive.

Mr. FACKLER: I will ask you if the constitutional provision in the state of Oregon does not provide in those specific terms?

Mr. ANDERSON: I hope it does not. I thought they knew more than that.

Mr. FACKLER: It does appear that way.

Mr. ANDERSON: Do you mean to say that this committee has only exercised its brain to the extent of copying another law?

Mr. FACKLER: No, sir; I mean that your construction of "not more than" is entirely unwarranted by the practice in the state where this law obtains.

Mr. ANDERSON: I suggest that you attach as Ex-

hibit A the ruling in the state of Oregon on this subject.

Mr. FACKLER: Turn to article IV of the Oregon constitution and you will find—

Mr. ANDERSON: I thought we were making the organic law for the state of Ohio.

Now I do not believe that anybody will not agree with me that "not more than eight per cent"—that the meaning of ordinary language is changed because they have it out in Oregon.

Mr. ELSON: May I suggest too, if those words were all right, coming from Oregon, why did the committee change them?

Mr. FACKLER: Do you want me to answer that?

Mr. ANDERSON: Yes; answer it.

Mr. FACKLER: The committee cut it out because they thought it would tend to definiteness and the argument based on such false logic as the gentleman from Mahoning is now making could not be brought forward.

Mr. ANDERSON: Well, if you are no better on logic than you are on the English language I don't care for your definition of it.

But let us proceed. The next is line 15: "When there shall have been presented to the secretary of state a petition signed by the aforesaid required number of voters," which means not less than eight per cent.

Now these are only small criticisms, but they go to show the reason why all proposed laws should go through a parliamentary body.

The same mistake occurs in line 68, on page 4, where it says not more than six per cent of the voters shall be required.

Then line 70 says, "Any law or any item, section or part of any law passed by the general assembly." I would like to ask, and I only ask for information, since words which seem to be plain have a somewhat different meaning when the Oregon interpretation is applied, can there be a referendum on any part of the law or any section or any item? Can you take from any law any section or any part of it or any item and submit that to the referendum and then have all the remainder of the law become a law and operate until the referendum is passed on?

Mr. THOMAS: Is not that within the power of the governor's veto now? Does not the governor have power to veto any item or provision in the law?

Mr. ANDERSON: I presume he has.

Mr. THOMAS: Then why not give the people the same chance?

Mr. ANDERSON: Are you in favor of the veto?

Mr. THOMAS: No.

Mr. ANDERSON: Then I wouldn't use the argument.

Mr. THOMAS: Not of the governor's veto, but I am of the people's veto.

Mr. ANDERSON: I would say to you that the referendum with that kind of language is a dangerous thing for the people, not dangerous to the corporations or the big interests, but when you can take from any law passed in favor of the people any item or any word or sentence in it or any part of it and submit that to a referendum and allow all the rest of the law to remain on your statute books that is dangerous. Is that what you mean?

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Mr. LAMPSON: Under that provision could not the word "not" be taken out and submitted to a referendum and thus change entirely the meaning of the law that is left?

Mr. ANDERSON: That is just what I am contending. According to this that which remains becomes the law because everything is left except that which you have submitted to the referendum. Then suppose you succeed in your referendum and you strike the "not" out, what kind of law will you have?

Mr. THOMAS: Does the member consider that "item" will mean one word?

Mr. ANDERSON: Well, let us see about it: "Any item, section or part." Would not "part" cover any word, or would you have to go to Oregon for an interpretation of that?

But to show you I am correct I want to read line 85. "If, however, a referendum petition is filed against any item, section or part of any law, the remainder shall not thereby be prevented or delayed from going into effect." That is because they are emergencies. They shall go into effect immediately upon passage. That means the expenditure of money. It means thousands of dollars can be expended. It means that in time of flood certain money can be used in building bridges.

But let us go on; let us read a little bit further: "A referendum petition may be filed upon any such emergency law in the same manner as upon other laws, but such law shall nevertheless remain in effect until the same shall have been voted upon, and if it shall then be rejected by a majority of those voting upon such law, it shall thereafter cease to be law."

Now the word "cease" is the controlling word in that sentence. That is, as soon as passed it becomes the law. It is an emergency law and it remains the law until after the legislature adjourns because you can not have a referendum until the legislature adjourns. It may pass a law in the first part of the session and not adjourn for five months and meanwhile the law is in effect. Then within ninety days after the legislature adjourns they can get up a referendum petition and have an election—which in all probabilities would be eight or nine months after the law goes into operation—and the money not then spent under the emergency measure you can get back.

Mr. WOODS: Suppose under an emergency measure of this kind a bridge was building and was just about half done when the vote was taken rejecting it?

Mr. ANDERSON: You would have to leave it. That would be one of the monuments to the phraseology used in Oregon. Now I did intend to say something along the line of this soliciting of signatures, but my friend Kramer has used all my thunder and a good deal more. It did seem to me that if the public were getting along reasonably content paid men ought not to be allowed to go out and tell them they were improperly treated and thereby get up a petition. They shouldn't be allowed to run around and cry about some great wrong being done. If the people don't know it, let them go about their every-day work.

Mr. ELSON: Don't you think there should be an amendment offered making it illegal to send men around soliciting names?

Mr. ANDERSON: I certainly believe that petitions ought to be deposited at the office of some public official.

Senator Burton stole some of my thunder there. I think the petition should be put at some public place, and I agree with Senator Burton that the per cent is not such a big protection. I never thought it was nor do I believe it now.

Now I have come to the dangerous part of this strange measure, section 1-D, line 100: "Local initiative and referendum. The initiative and referendum powers of the people are hereby further reserved to the voters of each city, village, county, township, school district or other political subdivision of the state, to be exercised in the manner to be provided by law."

Now, "other political subdivision of the state" must be wards or precincts. I can't think of anything else. In other words, the great state of Ohio writes into its organic law that school districts shall reserve to themselves the right of the initiative and referendum. Will the author of this bill please tell me how? I will stop for him to do it—will he please tell me how, under the wildest conception of Oregon interpretation, you could have the initiative and referendum in a township? How would it be initiated in a township? Through what division would it pass?

Mr. ELSON: Is not the farmer a subdivision of the school district?

Mr. ANDERSON: I want to say to you, gentlemen, that the only reason that was placed in there is because the singletaxers, few in number, but all powerful in this body, are so afraid they can not introduce the single tax anywhere else that they want to start in on the school district, and all they have to do is to move five singletaxers and their families into a school district and they can introduce it. If that is not the reason, what is it?

Mr. STALTER: Haven't we now the initiative in municipalities?

Mr. ANDERSON: Yes; you know we have.

Mr. STALTER: I understood you to say that you didn't understand how we could have the initiative in a municipality.

Mr. ANDERSON: No; I said school districts, townships, precincts and wards. Can you tell me?

Mr. STALTER: If you will explain to me the meaning of the last part of 103—I think that will explain it—"in the manner provided by law," line 103.

Mr. ANDERSON: That is it, is it? Well, I want simply to suggest what kind of a law you can pass. Thank you for making it clear, and if you can't answer that go on.

Mr. STALTER: Do you want me to answer that?

Mr. ANDERSON: Yes; anybody can answer it.

Mr. STALTER: I presume it would be easy to provide in a school district that an election could be held by the petition being circulated, and that that district by law could be created a voting precinct for that purpose.

Mr. ANDERSON: What kind of a law would you initiate?

Mr. STALTER: Whatever the people saw fit.

Mr. ANDERSON: Who would make the law, the township trustees or the school directors?

Mr. STALTER: The voters would make the law if they approved it by voting.

Mr. ANDERSON: What kind of a law you want?

Mr. STALTER: Probably some law with reference to employes.



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Mr. ANDERSON: I beg your pardon. Then the organic law of Ohio ought to be employed to allow them to fire and discharge school teachers?

Mr. LAMPSON: Don't you think that under that kind of a proposition one board of education could resolve to pay \$10 a month and another \$40 a month and another \$25?

Mr. ANDERSON: That would not interfere among friends.

Mr. THOMAS: Is it not a fact that boards of education could also be presented by referendum in school districts from paying enormous salaries?

Mr. ANDERSON: Is it the purpose of the men drawing this or the committee back of it—whoever may be back of it—that this Constitutional Convention should consume our time in legislating into the organic law of Ohio matters in reference to the employment of school teachers?

Mr. THOMAS: No; it is intended that we shall confer the power on the people to do so where there are some restrictions now.

Mr. ANDERSON: Do you know that they could get those powers now by statute law?

Mr. THOMAS: If the legislature could pass the law.

Mr. ANDERSON: You have the initiative and referendum for municipalities now without any change in the organic law of Ohio, and it seems to me you could have it as to school boards or townships or wards or precincts if anybody would be ingenious enough to get up the kind of law that the legislature would pay any attention to.

Mr. ELSON: I just wondered if any of those who are supporting this measure will acknowledge that it gives the power to the school district to fix the wages of the teachers in spite of the state law passed a few years ago. I would like to know if that is the real intent?

Mr. ANDERSON: I will yield if anyone wants to answer.

Mr. CROSSER: Do you think for a moment that this proposal aims to give any right in the way of substantive law which will at all apply—is it not simply specifying how the legal rights shall be exercised?

Mr. ANDERSON: Don't you remember what you put in your proposal? Reading at line 156: "The foregoing sections of this article shall be self-executing, but legislation may be enacted to facilitate their operation, but in no way limiting or restricting either their provisions or the power therein." In other words, if the legislature does not see fit to make the law under section 1-D, this is self-executing in reference to every section in it.

Mr. TETLOW: Don't we provide by statute that counties and townships and municipalities can vote upon and exclude the liquor traffic from the different subdivisions?

Mr. ANDERSON: Don't they do it now as the organic law of Ohio stands today?

Mr. TETLOW: They do.

Mr. ANDERSON: Then is any change required?

Mr. TETLOW: The only difference is that this provides a constitutional provision and the other is by statute. But your argument is that we have no right to

do those things and that we can not work them out, and still we have worked them out with reference to traffic in intoxicating liquors in some of the political subdivisions of the state.

Mr. ANDERSON: The point I am driving at is this: That section 1-D is not needed at all, because everything that it pretends to give you have already. Does anyone challenge that?

Mr. FACKLER: Has the supreme court so decided?

Mr. ANDERSON: Yes.

Mr. FACKLER: Is not that question before them now?

Mr. ANDERSON: Yes; thirty different cases have gone up there on the liquor question.

Mr. FACKLER: I mean in reference to the initiative and referendum applying to municipalities.

Mr. ANDERSON: Not that I know of. It is not under the state constitution.

Mr. FACKLER: No, sir; but it is under the law.

Mr. ANDERSON: Do you want to change the federal constitution?

Mr. FACKLER: No, sir; and it is not before the supreme court by reason of any contention that it is in violation of the federal constitution.

Mr. ANDERSON: I think it was taken up under the ordinance of 1787.

Mr. TETLOW: What is the reason that in all our discussions, upon every question we have taken up, matters which are fundamental, organic propositions become legislative and statutory provisions in the eyes of those opposed to progressive proposals? Why is it that the trend is in that direction? Is it not because under the open, broad scope of the organic proposition the people have been deprived of certain rights to which they were fundamentally entitled? Is not that the reason they are tending toward legislative matters in our organic law?

Mr. ANDERSON: I shall be glad to attempt to answer your speech. I believe where you have all the remedy under the statutory laws that you could possibly need without changing the constitution, there is no necessity of changing the constitution, and everything you ask under section 1-D you can get under statutory law of Ohio as the constitution is today.

Mr. MAUCK: How many such redundancies appear in your license proposal?

Mr. ANDERSON: No. 151?

Mr. MAUCK: Yes.

Mr. ANDERSON: I am coming to that now.

If that is true it is another argument why you should not vote for a direct initiative. We voted on that proposal and helped to frame amendments to it, and if it is not right today it merely shows it would not be right if we had it under the direct initiative. I understand the committee on Phraseology has taken the three-fourths jury proposal and changed it in many ways after the Judiciary committee, of which you and I are members, worked at it and thought we had it all right, and after Professor Elson, one of the English scholars of the state, gave his best efforts to it. Then it came out on the floor of the Convention and was debated a day or so, and I understand the committee on Phraseology now has made some needed changes in it, is not that so?

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Mr. WORTHINGTON: I would not say that they had to make them.

Mr. ANDERSON: You made them and you would not have done it if it had not been necessary.

Mr. WORTHINGTON: The committee has not reported yet.

Mr. ANDERSON: Well, that is another argument why direct initiative would be imperfect. I believe the gentlemen who drew the proposal were intelligent. I believe they knew all they asked in section 1-D could be obtained through statutory law. I may be mistaken, but I believe they had a purpose in putting it in, and the only purpose I can see is that if section 1-D becomes the organic law of the state it is in direct conflict with Proposal No. 151. Let me repeat it. If section 1-D becomes the organic law of the state it is in direct conflict with the liquor proposal already passed, and it practically nullifies it or it would be a matter of controversy in the court.

Mr. THOMAS: The gentleman has been referring to the laws which we have so far adopted, striving to make it appear impossible to have a direct initiative. Was he not also complaining of the Crosser law which was enacted by the last general assembly?

Mr. ANDERSON: Then I will tell you the reason. In the legislature the same kind of threats were made that were made here last night, that if they in any way changed or interfered with anything introduced by Mr. Crosser something dreadful would happen to them in their political careers. That law is the result of that kind of threats.

Mr. THOMAS: Is it not a fact that the senate materially changed the Crosser law from the way Mr. Crosser wanted it?

Mr. ANDERSON: That is true, as I understand it.

Mr. WOODS: Do I understand, Mr. Anderson, that somebody has been threatening around here to do something to some of us if we don't vote right?

Mr. ANDERSON: If the gentleman wants to give that publicity which he knows to be true, yes.

Now let us read section 1-D.

Mr. HALFHILL: Read all of the substitute for section 1-D.

Mr. ANDERSON: Will the secretary read that as it appears.

The secretary read the amendment.

Mr. HALFHILL: In that amendment just read is there not absolute authority given to establish the single tax if the people vote for it?

Mr. ANDERSON: Certainly.

Mr. THOMAS: Then does not that demonstrate the single tax and the opinion of the delegate is at issue?

Mr. ANDERSON: It couldn't mean anything else. It is predicated upon the single tax, but the only trouble is it does not inhibit the single tax. The only thing the Miller amendment does—purport of it—is to prevent a city voting with the rural district to get a rural tax. If the city wants it, it has to get it separately from the country; if the country wants it, it has to get it separately from the city. Now if I am wrong correct me.

Mr. ANTRIM: In any event if that amendment were to go through and the people were to ratify a million dollar tax on the city under the single tax, what would become of the city?

Mr. ANDERSON: Maybe the men who have thought that out can answer. I have a good imagination, but I can not conceive what would happen. It would permit one kind of taxation in one township and another kind in another township. In other words, you would have a crazy-quilt system of taxation over the county.

Mr. LAMPSON: What effect would that have on the building and loan associations which have their securities based upon land?

Mr. ANDERSON: I do not know how familiar I am with single tax. Of course it is based upon the site value of the property. I would say that I would not want any stock in a building and loan association if this goes through.

Mr. STALTER: I would like to ask if in the gentleman's opinion he believes there is in fact any danger of a single tax proposition in this proposal, especially if the women have a right to vote?

Mr. ANDERSON: The women haven't a right to vote yet, and you voted against it. In other words, this is safeguarded, for if enough people are not like you and vote for it we will have woman's suffrage and it will make it safe. That will be a splendid argument to use to those who are afraid of the initiative and referendum because of the possibility of single tax. You would make a lot of votes. I advise you to report that to the committee which has in charge getting votes for our constitution.

Mr. LAMPSON: Don't you think if there were a clear inhibition against the use of the initiative and referendum for the purpose of levying a single tax it would greatly strengthen this proposal as an initiative and referendum proposal?

Mr. ANDERSON: I am firmly of that belief, and that is the reason I am being critical in analyzing this proposal and insisting that we inhibit the single tax and do away with the direct initiative. Then we shall have no trouble in carrying it at the polls. Of course I decide that from my individual standpoint—from my environment—taking in consideration the men I have come in contact with. I have tried to find the sentiment in Mahoning county and elsewhere with reference to the initiative and referendum, because, as a friend of it, I wanted it to go out from the Convention in a vote-getting way, and I am firmly convinced it will make us thousands of votes. Now what arguments have you heard from these brainy men who have addressed us advising against inhibiting the single tax or against striking out the direct initiative? What argument have you heard? Not a word. So I say to you, inhibit single tax so that we know it is inhibited and then give us the indirect initiative. I want to say if you have the indirect initiative first, you can, if the people want it, get the direct initiative, and if at any time in the future the people want to write into the organic law of the state of Ohio—any time that a majority of the people in Ohio want the single tax, they can get it, because they will have the power to change the constitution, and we can not make any law that will prevent it.

Mr. FACKLER: Will the gentleman allow me to read from a brief for the defendant in error in case No. 13314, now before the supreme court, the contention in which case is that the Crosser initiative and referendum

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is in violation of the present constitution of the state of Ohio, so that that issue is now before the supreme court?

Mr. ANDERSON: I want to ask you as a lawyer, if you ever put anything in a brief that you thought had no merit?

Mr. FACKLER: I would not put anything in that I didn't think had merit. I say to you and show to you that the question of the constitutionality of the Crosser initiative and referendum law is before the supreme court.

Mr. ANDERSON: Now one other thing. This conflicts with No. 151, and there is where I see a reason for the bitter opposition to this.

Mr. FACKLER: Can you see a reason that we might not have initiative and referendum in a municipality?

Mr. ANDERSON: No; I wouldn't say that.

Mr. FACKLER: This is from a brief in a case pending in the supreme court, and I have just cited it.

Mr. ANDERSON: Oh, I never regard seriously any contention made in a brief. I never advise my clients to follow that kind of law.

Mr. FACKLER: That question has not been decided by the supreme court, and we have heard speakers explain thoroughly—at least to our satisfaction—why there might be a change in the organic law to permit municipalities to have the initiative and referendum.

Mr. THOMAS: Do you not believe that the whole single tax proposition was injected into this initiative and referendum proposal for the purpose of prejudicing the farmers through the fear that they might be outvoted by the city in adopting such a proposal, and thus get them to vote against the initiative and referendum?

Mr. ANDERSON: Doesn't your question admit that the farmers are prejudiced?

Mr. THOMAS: No.

Mr. ANDERSON: I think it does. It may awaken prejudice. I am firmly of the opinion, since the single tax question has been injected here, if we do nothing to demonstrate to the outside world that we are not favoring single tax the people will say we are favoring it, and the people opposed to the initiative and referendum will use that argument all over the state after we adjourn and it will lose us thousands and thousands of votes.

Mr. LAMPSON: And does not the Miller substitute demonstrate that there are people here who are in favor of the single tax?

Mr. ANDERSON: It couldn't demonstrate anything else, but I don't know that it was needed for that purpose. We knew that without it.

Mr. THOMAS: Does not the Miller substitute demonstrate the fact that the people in the various districts should have the right to adopt the single tax if they want to?

Mr. ANDERSON: Then take off the mask and admit it. Come out frankly and say we want the single tax and want to do everything we can to get it, and then we will give you the credit of being honest and fearless.

Mr. DWYER: Is it not a fact, Mr. Anderson, that it has gone out all over the state that the initiative and referendum was but a means of securing the single tax, and if that is so, unless we expressly inhibit the single tax will it not embarrass the vote on the initiative and referendum all over the state, and won't it reduce the number of votes for it?

Mr. ANDERSON: As you show, you are all right.

Mr. DWYER: I believe the only way to save the initiative and referendum is to inhibit the single tax.

Mr. ANDERSON: That is my opinion exactly and better expressed than I could do it, and I believe every person who favors the initiative and referendum will vote that way. If you are for the single tax and if you look on the initiative and referendum just as a means to the end, you will vote for the Miller substitute.

Mr. HOSKINS: Is it not a fact that if you provide for the amendment of the constitution by the initiative, or by any form, it is impossible by tacking on either the Miller substitute, the Lampson amendment or any other to prevent the people hereafter, if they so desire, from amending the constitution and thus wipe out the inhibition?

Mr. ANDERSON: When they get ready to do it and want to do it they can do it.

Mr. HOSKINS: Then to adopt either the Miller substitute or the Lampson amendment is just a piece of buncombe for the purpose of fooling the people, since if the people decide to have single tax, can not they secure it by amendment to the constitution as soon as they have the initiative?

Mr. ANDERSON: Yes; but the difference is this, that you can not have single tax until a majority of the voters of the state are in favor of it. If this goes through you can have the single tax in school districts. I want the single tax when a majority of the people are in favor of it, but I don't want the single tax until then.

Mr. HOSKINS: If you want the single tax when a majority of the people of the state of Ohio are in favor of it, do you want it in municipalities when a majority of the people in municipalities vote for it?

Mr. ANDERSON: You have it now.

Mr. HOSKINS: Yes; your only opposition is because we already have the power?

Mr. ANDERSON: Yes; so far as section 1-D is concerned that is true, and for the reason that it is not needed I think it is simply put in there by somebody for the purpose of nullifying No. 151, and I have not heard anybody criticise that either.

Mr. HOSKINS: I have nothing to say to that. You are not then opposed to the single tax when a majority of the people are for it?

Mr. ANDERSON: I shall vote against it, but when a majority of the people vote for it, with the issue clearly before them, it is not for me to gainsay their having it.

Mr. HOSKINS: You don't desire to put any hobbles on the constitution?

Mr. ANDERSON: No; I don't want to hobble the constitution, but you want to hobble the townships, the precincts and the school districts.

Mr. HOSKINS: If it is right to allow the people to have the single tax in these smaller districts why is it not right to allow them to have it in the larger districts?

Mr. ANDERSON: That is the same old question, if three meals a day are good why not eat a dozen? There is a pivotal point in all logic and you have forgotten it.

Mr. HALFHILL: As a matter of fact if the establishment of the single tax is inhibited in the fundamental law, then it can never be established until a square issue is made on that inhibition and that is determined by a vote of the people?

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Mr. ANDERSON: That is exactly it.

Mr. HALFHILL: If this substitute amendment of the delegate from Crawford [Mr. MILLER], allowing the single tax, is established by a vote of the municipality, does it not interfere and conflict with the sovereign power of taxation as defined by section 2 of the constitution which now enforces taxation by a uniform rule?

Mr. ANDERSON: It never would have been introduced if it had not been intended to do so.

Mr. FACKLER: Do you seriously contend that the Miller substitute, which prohibits the adoption of the single tax, authorizes it in certain sections?

Mr. ANDERSON: It says so. Just take it and read it. There is some more interpretation that has to be made. "That shall take effect in any municipality." What shall take effect? The inhibition?

Mr. FACKLER: Not inhibition. The inhibition applies to this part, "The powers shall never be used to amend or repeal any of the provisions." Therefore, is it not a fact that before municipalities or counties or sections of counties outside of municipalities could adopt the single tax our state laws would have to be changed by the initiative or by the legislature?

Mr. ANDERSON: I don't believe it, because this is self-enacting, self-executing. It simply becomes a law. All that the Miller substitute means, it seems to me, is that the city people can not vote with the country people to give them the single tax, nor can the country people vote with the city people to give them the single tax. At least that was Mr. Miller's idea.

Mr. FACKLER: Is it not a fact that what it does mean is that no law shall ever be passed by the initiative which would authorize any system of single tax in any community except by that community.

Mr. ANDERSON: No law shall be passed except to permit a municipality to vote separately and the township to vote separately, but if I read this correctly—and I don't care to go clear through it again—it is self-enacting and provides the machinery, and if no law is passed by the legislature whatever—if the legislature never passes anything—and this becomes the organic law of Ohio you may have the single tax in Ohio, but the people living in the country can not vote the single tax on the people living in the city, nor can the people living in the city vote the single tax on the people living in the country.

Mr. FACKLER: Then you contend this prohibition is equivalent to an authorization?

Mr. ANDERSON: I don't know that I have stated it that way.

Mr. FACKLER: That is the way you stated it.

Mr. ANDERSON: If you have the broad powers specifying the machinery so you could put it into execution and then say that those powers shall not be used where the city and the country are together, the situation then is that each can use it separately.

Mr. THOMAS: Is not the purpose of the Lampson amendment to prevent a majority of the people of Ohio from getting the single tax providing they want it?

Mr. ANDERSON: I do not know the purpose of it, but I will tell you my interpretation. I have tried to explain that I don't want the single tax in Ohio by townships.

Mr. THOMAS: I don't either.

Mr. ANDERSON: I am glad to have you vote my way. I don't want it for school districts, but whenever there is a single tax proposition in Ohio I want a majority of the voters of Ohio to vote in favor of it, and I don't want to permit under our organic law the single tax in townships, precincts, wards or school districts until all the people have an opportunity to vote on it.

Mr. HALENKAMP: You say you are not in favor of the single tax in a municipality. You think it should be general all over the state?

Mr. ANDERSON: Yes.

Mr. HALENKAMP: You are not in favor of the local system of taxation?

Mr. ANDERSON: I am not in favor of the local system of single tax entirely different from any other—

Mr. HALENKAMP: If this proposal is redrawn, so that it would destroy the single tax idea, would not you prefer submitting it to the people on the initiative and referendum proposition without any riders?

Mr. ANDERSON: I don't call it a rider. I prefer to submit this proposal to the people of Ohio so that we can get the largest vote possible in favor of it, because I am not one of those who believe that the people are waiting for an opportunity to vote in favor of it.

Mr. HALENKAMP: Then the initiative and referendum in itself has tacked on to it this single tax idea, you think?

Mr. ANDERSON: That is it.

Mr. HALENKAMP: And you think this will nullify No. 151?

Mr. ANDERSON: I say it is in conflict with it. If the initiative and referendum in reference to municipalities become a part of the organic law then can't they change that 1 to 500 in No. 151?

Mr. CROSSER: No.

Mr. ANDERSON: Who said no?

Mr. CROSSER: I did.

Mr. ANDERSON: Thank you.

Mr. THOMAS: Do you mean that a municipality can change statutory laws or constitutional requirements?

Mr. ANDERSON: I wish to say this, if you please; Mr. Okey, I would rather you would ask your questions directly and not be prompting some one else to ask them for you. I will treat you kindly. Mr. Thomas is getting tired. I mean when you have all the powers you are now asking in section 1-D under the statutory law, there can be only one reason to place it in the organic law, and that is it may come in conflict with No. 151 and get the few wet votes.

Mr. THOMAS: The member does not mean to infer that under this provision we can change the organic law as No. 151 provides?

Mr. ANDERSON: I don't know that I understand your question.

Mr. STAMM: In your opinion is it necessary to have a provision against the single tax in connection with the initiative and referendum, and if so, would it not be proper also to have an anti-vaccination provision in connection with the initiative and referendum?

Mr. ANDERSON: You would not vote for it?

Mr. STAMM: I don't say I would vote for it anyway.

Mr. ANDERSON: Do you really think that vac-

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cination has anything to do with this question? Is that a witticism or is it meant as such?

Mr. STAMM: Are not there two camps, vaccination and anti-vaccination, and are they not about as violently opposed to each other as anybody can be?

Mr. ANDERSON: I don't know about that. I never studied it.

Mr. STAMM: In my cool and humble judgment I can not see any connection between the single tax and the initiative and referendum. In Switzerland, after over twenty years of experience, the single tax question is about as far from their minds as from mine.

Mr. ANDERSON: You are now speaking for the people of Switzerland, I suppose. I am not surprised, however, that you do not see the connection. Did you read the editorial the other day—or do you read the daily papers or only vaccination journals?

Mr. STAMM: I do not pay much attention to editorials. I look at it more in a scientific light than in an editorial light.

Mr. ANDERSON: Let me ask you a question. If by inquiring of each delegate here, seventy-five or more would tell you that it would mean a great many more votes in their counties if you inhibit the single tax, don't you think we ought to do it whether you can see the connection between the two or not?

Mr. STAMM: Is that the main question, because you want more votes? Can't you settle that question independently of the initiative and referendum? Is it necessary to hitch the two together like a mule and an ox? In my opinion they would pull together just about as well. Would it not be fair to deal with the single tax proposition when the taxation matter comes up before the Convention? We have a committee on taxation; why not settle this single tax matter there?

Mr. ANDERSON: For weeks and weeks resolutions have been introduced on the floor of this Convention demanding that we separately submit to the people every proposition that comes before us. The men who are especially desirous of having that single tax idea in the organic law are the men who have been busy in the way of holding caucuses in order that we may submit everything as a separate measure. Put it in the tax law and not anywhere else, and then the friends of single tax will get busy and they will defeat your tax measure and let the initiative and referendum stand. That is the only reason men have been so busy trying to have each proposition submitted separately.

Mr. STALTER: I find in Proposal No. 151 this language: "No legislation shall authorize more than one license to each township or municipality of less than five hundred population, nor more than one for each five hundred population in other townships and municipalities." If this passes the people then it is not within the power of the legislature under this proposal, to enact a law different from that, as I understand it. Is that true?

Mr. ANDERSON: I have said all I care to about that. I say that in all courtesy to you.

Mr. STALTER: I would like a little light.

Mr. ANDERSON: Do you think you were asking for light?

Mr. STALTER: Yes.

Mr. ANDERSON: Then come around after I finish and I will fully explain it to you.

The PRESIDENT: The member declines to answer.

Mr. ANDERSON: Now let us find out what Governor Harmon said on this question. The point I am trying to make is that no argument can be used against the initiative and referendum if we here inhibit the single tax and do away with the direct initiative. Here is what Governor Harmon says:

"I believe the work of legislation can be properly done only by bodies small enough for each member to get the advantage of conference, debate and deliberation, with the concurrence of both required and absolute rules to prevent hasty action by either, as well as final approval by another and independent factor in the proceedings. This is one of the main features which made our government 'a broad and liberal democracy' but 'compatible with ingrained respect for parliamentary methods and constitutional checks,' as it has been well described."

Now let us see what Theodore Roosevelt said. I am sorry the gentleman from Cuyahoga [Mr. FACKLER] has gone out.

Mr. FACKLER: No, I am here. I was not very seriously interested. I have changed my seat.

Mr. ANDERSON: Here is a speech delivered by Theodore Roosevelt at Phoenix, Arizona, March 20, 1911:

I believe that it would be a good thing to have the principle of the initiative and referendum applied in most of the states, always provided that it be so safeguarded as to prevent its being used either wantonly or in a spirit of levity. In other words, if the legislature fails to act one way or the other on some bill as to which there is a genuine popular demand, then there should unquestionably be power in the people through the initiative to compel such action. Similarly, on any bill important enough to arouse genuine public interest there should be power for the people to insist upon the bill being referred to popular vote, so that the constituents may authoritatively determine whether or not their representatives have misrepresented them. But if it is rendered too easy to invoke process, the result can only work mischief.

Again, in his speech to this Convention, he said:

I do not believe that it should be made the easy or ordinary way of taking action.

And I want to say that if the people back of this proposal do not intend to use it in the ordinary way, then no objection can be made to the indirect initiative. I have been told in talking with the delegates that the direct initiative will never be used, that the indirect will always be used. If that is true, it means many more votes at the polls, and why not cut out the direct initiative provided we are really the friends of the initiative and referendum? Mr. Roosevelt says further:

In a great majority of cases, it is far better that action on legislative matters should be taken by

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those specially delegated to perform the task; in other words, that the work should be done by the experts chosen to perform it. But where the men thus delegated fail to perform their duty, then it should be in the power of the people themselves to perform the duty. In a recent speech Governor McGovern, of Wisconsin, has described the plan which has been adopted there. Under this plan the effort to obtain the law is first to be made through the legislature, the bill being pushed as far as it will go; so that the details of the proposed measure may be threshed over in actual legislative debate. This gives opportunity to perfect it in form and invite public scrutiny. Then, if the legislature fails to enact it, it can be enacted by the people on their own initiative, taken at least four months before the election.

I am only asking you to do that. I am in favor of the proposition of the initiative and referendum in the form that Roosevelt advises.

Again (and I will not read this because you will find it in your books), LaFollette for years and years has had absolute charge of Wisconsin to the extent that he could have enacted into law anything he pleased so long as it was within reason, and I want to say that Wisconsin is the most progressive state in the Union and has the best laws. Then, if the direct initiative is the right thing, why haven't they had it there in the years past?

Mr. FACKLER: For the same reason that they have not had the indirect.

Mr. ANDERSON: I wish you would explain your explanation.

Mr. FACKLER: The initiative has not yet been adopted there.

Mr. ANDERSON: Is there any doubt that LaFollette has had control of the legislature in Wisconsin for years?

Mr. THOMAS: Is it not a fact that the plan now being worked out in Wisconsin is the indirect plan which has already passed one branch of the legislature?

Mr. ANDERSON: Certainly; it is the indirect plan.

Now, a few words and I will finish. Under the four per cent in this proposal forty-two counties would need to have 4,290 signers of the petition and that would permit one or two counties to raise 32,000. Adams county would have 128, Auglaize 120, Ashland 111, Brown 118, Carroll 70; in other words, all the names that you have to have would be from 125 down to 50 in order to have all your petitioners scattered over forty-four counties. That is not very much protection. How long would it take any one of us to get the required number in our county if we had four or five men helping us? If that is true, what objection is there to eight, instead of four per cent in the indirect initiative? I prepared a proposal, and if I can get the opportunity I am going to introduce it, which provides for eight per cent on the initiative and referendum and on the initiative in reference to amendments to the constitution, and no one can complain that eight per cent is a hardship, because it cannot be a hardship if these figures are correct and I have taken them from the election returns of 1910. I have made the corrections here of striking out the word "more" and inserting "less," and I have taken out en-

tirely—so that you will understand what this means—the so-called direct initiative, because it is not needed they say, and I have inhibited the single tax and the single tax alone. In other words, if my amendment becomes part of the constitution all proposed laws would go through the legislature, and if the legislature saw fit not to make them into laws, then they would have to submit them to the voters. At the same time, if the legislature saw fit a substitute measure could be introduced as the original proposal designates, and in that way through the substitute measure, you get the benefit of having it passed through the parliamentary body, you get the advantage of having it discussed in committee and reported out of committee, and you have the acid test of criticism by those who are unfriendly to it on the floor of the house, and then, after it goes through all that process of purification and correction, it is submitted to the people. We have been told that no one cares to use the direct initiative, but that everybody will use the indirect. If that is true, I believe every true friend of the initiative and referendum who wants the proposed amendment to receive enough votes to become the organic law of Ohio, should vote to so change the original proposal as to take out the direct initiative.

Mr. MARRIOTT: I would like to ask a question. You have pointed out some of the claimed inconsistencies of the proposal. I notice line 153 of the substitute proposal reads, "The style of all laws shall be, 'Be it enacted by the people of the state of Ohio?'" That is to be the style of all the laws in this state, "Be it enacted by the people of the state of Ohio." You will concede that this proposal only changes section 1, of article II?

Mr. ANDERSON: Yes.

Mr. MARRIOTT: Then, turning to section 18 of article II of our constitution, we find it reads, "The style of all laws shall be, 'Be it enacted by the general assembly.'" If this provision is now adopted by the people, what would be the effect? Would it not suspend section 18 of the present constitution?

Mr. ANDERSON: I had not noticed that mistake. The question answers itself. But I suggest that the true friends will try to wipe out the indirect initiative before it goes before the people, and I believe it is the duty of every one to do that and have it in the shape that will receive the most votes.

The chair recognized the delegate from Trumbull.

Mr. KILPATRICK: Mr. President and Gentlemen of the Convention: It is my desire to say just a few words in regard to this proposal. We have heard in this hall a goodly number of great men discuss this proposition. We have listened to democrats and republicans. Now it is up to this Convention to frame some sort of proposal which shall go to the electors for their adoption or rejection. It is my belief that the amendments which have been offered to this proposal on the floor of this Convention have been put in for the express purpose of defeating the measure, if possible, in this Convention, and if not here, to defeat it at the polls.

My friend from Ashtabula [Mr. LAMPSON] proposes an amendment and I want to take that amendment up and discuss it for a few moments.

In the proposal now before the Convention, divorcing it from the amendments which have been offered, it will be left to the people of this state to vote upon any

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proposition which they desire. A short time ago this Convention saw fit, and I voted in the affirmative, to provide ways and means for building good roads by issuing bonds. Everyone will concede that those bonds will have to be paid by the taxpayers of this state, now and hereafter. We passed a proposal which bonds the oncoming generation, which will make our children and our children's children pay taxes. In other words, they must go down into their pockets and pay for those good roads.

Mr. LAMPSON: Does the gentleman state that all those taxes on generations to come should be levied on land?

Mr. KILPATRICK: No, sir; I do not.

Mr. LAMPSON: Then will the gentleman join with me and help as far as he can to prevent that.

Mr. KILPATRICK: No, sir; I will not, because, as I expect to show within just a few minutes, I have infinitely more confidence in the people than you have.

Mr. LAMPSON: Why should the gentleman stand there and impugn the motives of any delegate on this floor?

Mr. KILPATRICK: Because of your statement. I voted for the proposal allowing the legislature to issue bonds for the purpose of good roads, and I stand absolutely upon that proposal as I voted at that time. Mr. Lampson offers an amendment to this proposal in which he wants to keep the people of this state from having laws they may want and which, in their good judgment, they think the best laws for them. If we adopt Mr. Lampson's amendment, we will show our desire to appoint ourselves guardians for the future generations.

Mr. LAMPSON: Does the gentleman think that Mr. Lampson can secure the adoption of this amendment by this Convention unless a majority agree with him?

Mr. KILPATRICK: Certainly not. The point I desire to make is that if this Convention foists upon the generations to come (as already done by a majority of votes) taxation that is to take out of their pockets the money to pay taxes, why should not we let them have a right to pass such laws as they want when they come up to that time? Is it not absolutely unfair to foist on the people something which they don't have anything to say about and yet not permit them to do what they please and what they think best when the time comes that they may want to decide on it?

Mr. HALFHILL: If an inhibition were placed in this present fundamental law which provided that the single tax could not be established, could not that inhibition be removed by the initiative and referendum and would not that make a fair issue?

Mr. KILPATRICK: Not according to this amendment. It says nothing in this proposal shall have any effect upon the single tax, and the only way it could be changed would be to go back under the present constitution.

Mr. HALFHILL: It would make a fair and square issue.

Mr. KILPATRICK: Not on this matter.

Mr. HALFHILL: Is it your understanding that it could not be changed after we put it in the constitution?

Mr. KILPATRICK: Not under the provisions in the initiative and referendum proposal. That is the way I understand it, but I may be mistaken.

Mr. HALFHILL: When you speak of binding the future generations to a certain plan of taxation you leave out of consideration the fact that that could be changed, and then the issue would be a fair and square one and everybody would know what was being done all over the state.

Mr. KILPATRICK: Not under this Lampson amendment. We could not under the Lampson amendment by the initiative and referendum.

Mr. HALFHILL: We could change the constitution. If we put it in there we can change it.

Mr. KILPATRICK: Probably.

Mr. HALFHILL: And then the issue would be a fair and square one. Has it occurred to you that those who are insisting now upon having this provision in here do it so that when the change to the single tax system comes the issue will be a fair and square one? In other words, so that nothing will be slipped in at any time, but that the issue of single tax will be fairly and squarely presented.

Mr. KILPATRICK: Not under this proposal. In order to have a change in the constitution under the Lampson amendment we would have to go through the legislature as now provided in the constitution of 1851.

Mr. HALFHILL: The question is this: You may impugn somebody's motives for not thinking properly on this, but some of us are opposed to the single tax. We know, however, if a majority of the people of the state want it they can establish it. Our idea is to put an inhibition in the constitution now, and then if the people want to establish the single tax they can take it out, but that will make the issue fairly and squarely.

Mr. KILPATRICK: Yes. Now let me ask you a question.

Mr. HALFHILL: All right.

Mr. KILPATRICK: You are opposed to this initiative and referendum proposition in toto?

Mr. HALFHILL: What proposition?

Mr. KILPATRICK: The proposition for the initiative and referendum.

Mr. HALFHILL: I am not opposed to the initiative and referendum in toto. But I am opposed to many features of the proposal now before the house.

Mr. KILPATRICK: Are you in favor of the initiative and referendum?

Mr. HALFHILL: I have already so said.

Mr. KILPATRICK: Why not let the people settle the question of single tax under this proposal or any amendment, but let the people settle it?

Mr. HALFHILL: Because I am opposed to the single tax and I want the inhibition in here, and then if they want to saddle the single tax on the state let them take it out under the initiative and referendum.

Mr. KILPATRICK: Why not let it be settled by the people? They could do it this way just as well as the other.

Mr. HALFHILL: Because I am afraid of the single-taxers after what they did in Oregon, and I should think they would attempt the same thing here.

Mr. KILPATRICK: Then you are afraid of the majority of the people.

Mr. HALFHILL: Are you in favor of the substitute proposal of the delegate from Crawford [Mr. MILLER]?

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Mr. KILPATRICK: I am in favor of the initiative and referendum with everything out — every amendment that has been offered.

Mr. HALFHILL: Don't you recognize that Miller substitute as a thinly disguised arrangement to establish the single tax?

Mr. KILPATRICK: I am against the Miller amendment.

Mr. HALFHILL: So am I. We are agreed on one point.

Mr. DOTY: Don't you think you are wrong, Mr. Kilpatrick?

Mr. KILPATRICK: That is one thing that makes me think I may be wrong.

Mr. HALFHILL: We were together on woman's suffrage?

Mr. KILPATRICK: Yes.

Mr. HALFHILL: And on good roads?

Mr. KILPATRICK: Yes. Now we have had so many questions in regard to this proposal that I want to get back to the point where I started. I cannot understand the method of reasoning of the gentlemen who want to tax the generations which are to come and yet are not willing to allow the generations which are to come to settle questions that come up in their time.

Mr. LAMPSON: Don't you know that the Ashtabula Grange, representing the whole county and having three thousand members, being the largest Grange in the state of Ohio, unanimously requested the two delegates from Ashtabula county to oppose the single tax proposition through the initiative and referendum?

Mr. KILPATRICK: I do not know that.

Mr. LAMPSON: It was published in the paper in the form of a resolution and the resolution was introduced here.

Mr. KILPATRICK: We have had so many papers brought before the minds of the people on this question of single tax that I can't remember them all. One paper was mentioned by the gentleman who just left the floor. We have also had the Ohio Journal of Commerce, which, long before the delegates were selected for this Convention, brought up this question of single tax. It is put into this proposal for one purpose, and for one purpose only, and that is to keep the people from having what they may want at some future time and which the members of this Convention think they ought not to have. If it be right to put into this proposal a prohibition of single tax, why not put in the prohibition of liquor traffic, and why not put in an amendment that the legislature could never bond the state in the future?

Mr. LAMPSON: Don't you think it would be right to put in the inhibition against the liquor traffic?

Mr. KILPATRICK: Not in this proposal. If that proposition were up today I would vote in the affirmative. I would not put it in the initiative and referendum proposal, because I want the people who follow me to act upon their propositions just as I want to act upon mine today — voice their own conviction. Mr. Anderson, in discussing this proposal, said that the reason he wants the inhibition of the single tax and the reason why he wants the indirect initiative is that the proposal may get more votes at the polls. Do you suppose, gentlemen of the Convention, if the gentleman from Mahoning were in favor of this proposal he would stand before the

Convention and use every bit of power which he has within him to defeat it? You will recall that there was one Mark Antony who made a speech and everyone here remembers well what the outcome of that speech was. So it is with the arguments set forth by Mr. Anderson before this Convention. It is done for the express purpose of defeating this proposal. Mr. Anderson quotes Governor Harmon. We all know how he stands on this proposition. He also quotes Colonel Roosevelt. We know how he stands on this proposition.

Mr. ANDERSON: Well, how do I stand on it? You say we all know — that would include yourself.

Mr. KILPATRICK: I have listened very attentively to your argument on the proposal and I have been unable to determine where you stand, but I should rather conclude that you are opposed to it.

Mr. ANDERSON: Opposed to what?

Mr. KILPATRICK: To the proposal we have under consideration, this Crosser proposal.

Mr. ANDERSON: Yes; as it is worded, I am opposed to it.

Mr. KILPATRICK: And every thing that was said by you was said for the purpose of injuring this proposal in the minds of the men of the Convention.

Mr. ANDERSON: You said a while ago that I was against the whole proposition, that I was not in favor of the initiative and referendum.

Mr. KILPATRICK: I said on the proposal under discussion before the Convention. You are in favor of the initiative and referendum I know, because you have admitted it.

Mr. ANDERSON: I am in favor of the initiative and referendum with the eight, ten and twelve per cent, and I will support it in every way that you can think of if you will put that kind of a proposal in here, but if you people change from the position you occupied before the Convention met I don't have to take everything that you people offer.

Mr. KILPATRICK: Just one word more, then I shall have done. There is one thing, gentlemen of the Convention, which we must keep in mind all the time in regard to this proposal. It is not a question of framing it so that we will get the votes of the electors at the polls, but it is the question whether we will frame a proposal which is right.

If we keep that in mind then I think the proposal which we will ultimately submit will be the kind of a proposal that those who are in favor of true initiative and referendum principles will support.

Mr. WORTHINGTON: Mr. President and Gentlemen of the Convention: At first I had not intended to speak to you upon this proposal. My life for over forty years has been spent in advocacy before courts, and during that time I have learned one or two lessons. One of those is that there are certain classes of cases in which it is not well for the advocate to speak to the tribunal. Where the tribunal has in advance stated that it is of the same opinion which the advocate would urge, then it is dangerous to speak to the tribunal, because the tribunal may change its mind by reason of something he says. Then upon the other hand, where the tribunal has said that it is obstinately and absolutely opposed to the argument that the advocate would use, there it is futile for him to speak. And, following the course that I have pursued



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in my profession, I was going to keep the same silence here that I would there, because when the president of this Convention left his seat in the chair and came down here to the desk where I am now standing and told this Convention this matter was going to be settled outside of the Convention by a minority of the whole Convention, but a majority of a certain caucus that would attend the deliberations, that it would not be reported to the Convention until that caucus had agreed upon a measure upon which they would stand absolutely, voting down all amendments that opposed the views that they took up outside of the Convention, there certainly was a case where it was useless, it seemed to me, to speak in advocacy or support of the views that I have entertained heretofore and still entertain. But further reflection showed me this was not a case in which I could pursue the course that I would were I advocating merely a private right.

I stand here elected by the citizens of Hamilton county either because of or in spite of what my colleague who sits in the chair behind me, called my well-known views in opposition to the initiative and referendum. I owe it to the constituents who sent me here to express those views whether they have any effect upon you gentlemen or not. That is not my lookout. I shall at least have done my duty when I make confession here of the faith that is in me.

I hold in my hand a certificate from the board of elections at Cincinnati showing that there were 104,064 voters casting votes for candidates for this Convention. There were forty candidates. My colleagues who were elected here received a total of 264,093 votes. The one who received the largest vote is the chairman of the Judiciary committee, whose vote came to 39,095. The votes for the others elected ranged from that down to my own vote which was 26,261.

Those gentlemen, other than myself, were nominated and elected by an organization upon a specific pledge to support the initiative and referendum. They were the persons who distinctly carried the banner of that party to the polls, and we may fairly take the vote cast for that organized party, representing the initiative and referendum, as an indication of the strength this proposition has in Hamilton county. I wish to read the pledge which each of these gentlemen took in my county as a condition of their nomination and as a basis for their election:

*Resolved*, That it be the sense of this association that the new constitution of the state of Ohio or any amendments to the present constitution shall include a provision for what is known as the initiative and referendum, applicable to the state as a whole and to every political subdivision of the state, and that such provision provide:

1. That for the purpose of submitting to the people any amendment to the constitution the maximum percentage of petitioners required therefor shall not exceed twelve per cent of the total vote cast for governor at the last preceding election.

2. That for the purpose of compulsory submission of a proposed statute to the people for approval or rejection the maximum percentage of

petitioners required therefore shall not exceed ten per cent of the total vote cast for governor at the last preceding election.

3. That initiation propositions provided for above shall be submitted to the legislature for adoption prior to their submission to the vote of the people.

4. That for the purpose of a compulsory referendum of any statute passed by the legislature to the people for approval or rejection the maximum percentage of petitioners therefor shall not exceed eight per cent of the total vote cast for governor at the last preceding election.

5. That the success or failure of any measure submitted to the people under any of the above provisions shall be determined by a majority of the votes cast on the proposition.

6. That the governor be prohibited from vetoing any measure approved by the people.

Gentlemen, you will see that if there is one thing that is distinctly and positively laid down in this platform, it is that the gentlemen who stood upon it should vote against the direct initiative, and vote for the indirect initiative and that only, and as I feel called upon to stand here and explain my own views before this Convention, I trust that each one of my colleagues will also feel called upon to stand here and explain to this Convention, and to his constituents who sent him here upon a pledge that he would support the indirect initiative and that only, if he is going to vote for this proposition as it stands here now.

Now, gentlemen, I am not one of those who oppose all change. I have been called a conservative at home, and I stated there before I came here that I thought the people would be astonished if they knew how radical I was. Why, I have been too radical for the Judiciary committee on the jury proposition before them. I am too radical for some of the rest. I am not opposed to change, but I am opposed to useless changes, changes that won't accomplish the good intended.

When there is talk of a change, in my opinion, we should consider three things:

1. What is the evil that makes the change necessary?
2. What is the cause of that evil?
3. Whether the remedy proposed is the best remedy that can be obtained for that evil.

Wherever the evil is agreed upon, wherever the cause is agreed upon, I shall be for the best remedy, as against any inferior remedy.

Now, I am against the initiative. As far as the referendum is concerned, it is an entirely different proposition, and my repugnance is not so strong, although there are some things that I object to for reasons that I shall presently declare. But the initiative seems to be open to very serious objections.

Some of these objections have been stated by the former senator of Ohio who spoke to us last week. Some others have been told to you by the present incumbent of that office who spoke to you this morning. Without repeating what they have said, I agree most heartily in the objections they have taken, but I do not want to repeat those any further than is necessary to illustrate some particular feature of what they have said. But there

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are other objections that they did not elaborate, which seem to me more fundamental than those mentioned by them.

The initiative is supposed to be applied to two kinds of legislation, amending the constitution and amending the statutes. Those are two entirely distinct and different kinds of legislation, although both are legislation. The constitution, as we have known it in this country in the earlier history of the country, was ordinarily a matter of representative legislation, because many of the earlier conventions adopted the constitution for their respective states without referring it to the people. Yet in the growth and development of public law that has become practically an impossibility. I do not suppose the people of any state at this present day would stand for a convention which put its work into operation without first referring it to them. So I say that may be fairly considered, with our present view of government, as a subject in itself for direct legislation.

But statutory matters are different. The constitution, properly defined, is fundamental law and that only. Statutes are matters of temporary law, to govern the exigency of the moment and as long as the people see fit to maintain them upon the statute books, but it is always understood they are to be freely amended as occasion requires.

Now let me talk about what constitutions are. In their essence constitutions are nothing but fetters imposed by the sovereign power upon its own power, of its own free will. I care not what the constitution is, or what kind of a constitution it is. It is that in its essence.

When the czar of Russia, who theretofore had been an autocrat, governing by his own will, granted a constitution to the people of Russia, he thereby fettered his power of action in certain particulars.

When the English constitution, which is unwritten but which is called a constitution, in its operation meant to fetter the action of the king, and it did amount to that, it required measures to be submitted to the house of lords before they became law. Prior to the Revolution they had also to be approved by the sovereign, but that was in effect abrogated then. The English constitution differs from all other constitutions in that it is subject to change at any time practically by the house of commons, because they can compel the house of lords to agree with them, as has recently been shown.

Now you come to this country, and our constitutions do two things. First, they establish the form or organization of government, and that is a matter upon which the people ordinarily do not disagree very much. The second is to fetter the government, which is the majority, in their action with reference to the minority—to put fetters on the sovereign, the sovereign in effect being the majority of the people, as to how they shall treat the minority.

Now I am very far from saying that a constitution once formed should never be changed, that because a majority once agreed to put certain fetters upon themselves in their action with reference to others, therefore they should continue those fetters for all time indefinitely. All constitutions properly drawn contain provisions for their amendment; but the sole purpose of those provisions—I should not say sole purpose, for that is putting

it too strongly,—but all of those provisions are intended to secure deliberation in the making of amendments. That deliberation sometimes takes the form of requiring a measure to pass to different general assemblies or legislatures, and sometimes other forms. In this state it must pass through one general assembly and then be concurred in by a majority of the people who vote at the election, or else it must pass through a convention which is gathered, as we are here, by delegates elected in the same way that the lower house of the general assembly is elected, and then be submitted to the people and voted for by a majority of those who vote upon the proposition. Those are the fetters.

Now if this proposal goes through in the form in which it stands, or if any other proposal goes through which allows a majority, upon initiative petition, to submit an amendment and carry it, you will take away practically every fetter there is, because you put it in the power of a majority at any time to strike away every fetter there is on them.

Mr. REDINGTON: Would it not be wise to put the percentage to petition for a constitutional amendment down to four per cent, instead of twelve or fifteen per cent, so that we can at any time wipe out the proposal whenever we see proper?

Mr. WORTHINGTON: I shall leave the question of the percentages to other people. I am not going to talk about detail. I am opposed to this proposition root and branch, and the matter of percentages is a matter of indifference to me. What I say is, you put it in the power of a majority to take away all fetters on them whenever enough signatures to the petition can be obtained. That is an easy matter; I know it from my own case.

My candidacy was announced Friday afternoon, and the petition had to be filed the following Sunday, and my good friends got busy and they got the twenty-four hundred names by Sunday noon.

Mr. DOTY: You don't contend that that could be done for any citizen in Hamilton county?

Mr. WORTHINGTON: Yes; just as easy as it was done for me.

Mr. DOTY: I have my doubts on that. I think your personality had something to do with that.

Mr. WORTHINGTON: Getting a petition signed is not a serious matter. It is the voting upon the petition when it is presented, and, as I say, the fundamental objection to the amendment to the constitution by initiative is that it enables the majority in the state for the time being to take away any protection that has been given by the constitution to the minority. It practically—and I wish you could recognize it—it practically in effect does away absolutely with constitutional government as we know it, and substitutes social democracy, which is a government by a majority for the time being; for it enables that majority for the time being to carry its will into effect. That is my fundamental reason for objecting to a state-wide constitutional initiative. It is a different thing when it comes to a municipality and the smaller districts of the state, and one reason is that those localities are unified in their interest in a general way, so that there is not the same occasion to protect the minority.

But in the state at large it is a matter of compromises all the way through. We have one example of that in the way in which the convention called in 1851 protected

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the rural parts of the state against the urban in the provision as to apportionment for the general assembly. Under the constitution as it stood until 1902, section 2 of article XI read: "Every county having a population equal to one-half of said ratio"—that is, the ratio fixed by section 1—"shall be entitled to one representative; every county containing said ratio and three-fourths over, shall be entitled to two representatives; every county containing three times said ratio, shall be entitled to three representatives; and so on, requiring after the first two, an entire ratio for each additional representative." That is the way it stood until 1902, and then this amendment was adopted: "Provided, however, that each county shall have one representative." Prior to that time the counties that had a population equal to one-half the ratio were entitled to one representative and those in which there was a ratio and three-fourths were entitled to two. Prior to that time the smaller counties, as I read the amendment, did not have as secure representation in this body, or in the general assembly, as they have now. The cities were growing larger, and they were overlapping with their representation the votes of the rural counties, and this amendment was introduced, as I suppose, and carried to restore the restraint that the rural counties would have upon the cities. I may be wrong about that. I see the gentleman from Cuyahoga [Mr. DOTY] smiling at me as if I were. But as it stands, it gives a protection to the rural districts against the urban county, but if this proposal goes through, the majority of the urban counties can sweep that protection away, and it becomes not a government of the state with representatives apportioned around through the various districts of the state, according to their several interests, but a government by a majority, no matter where the majority can be found.

Mr. DOTY: I was only smiling because it was done to insure the political supremacy of a certain party.

Mr. WORTHINGTON: You are more versed in that than I am.

Mr. DOTY: That is what happened.

Mr. WORTHINGTON: Then there are other provisions in the constitution that could be alluded to, but that is the most striking one that illustrates the theory upon which the government has been formed. Fetters are swept aside and it become a question of brute strength, a question of majority.

On all civic questions each county is entitled to be heard. It is given representatives disproportionate to its population for the express purpose of giving it more strength in the balance of power when it comes to voting, not only in the general assembly, but in a convention called as this one has been to consider a modification of the constitution.

Now I shall pass on to legislation. I have said that whenever a change is proposed there are three things that should be considered, the evil which makes it necessary, the cause of that evil and the remedy.

I have heard in the discussions here and elsewhere but two evils alleged. While the senator who spoke this morning mentioned many others, in the last analysis, I think, they all boil themselves down to two. One is that the power of the majority is not permitted to prevail all the time. That I have discussed and I care not to go further. We have had hitherto a representative government formed for the express purpose of preventing the

power of the majority from prevailing all the time. It must be not a bare majority, but a majority that preponderates throughout the state, or a considerable portion of the state, to give it the power which controls.

The other is that legislators are evil; that they come here pledged to do one thing, as are my colleagues, and they go away from here having done another thing, which I hope my colleagues will not do. How is that to be remedied? The proposal here is to remedy it, first by enacting the law without consulting the legislature at all, and secondly by reserving the veto power over what the legislature does.

I admit the evil. There is no question about that in my mind. The legislature has been recreant; and I hope you will pardon me for saying it, but I think delegates in this Convention have been recreant in voting to submit to the people propositions which they do not believe in themselves, because I do not think that is the function of a legislator or of a delegate to this Convention. I do not think he should be a mere puppet on the one hand, or a faithless renegade on the other. I know of no better description of the duties of a man who acts in a representative capacity in a legislative body than what was said by Edmund Burke, which I quote from an address of President Butler, of Columbia College, to the Commercial Club of St. Louis, of which you have all received copies. Burke said:

It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinions high respect; their business unremitting attention; but his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man or to any set of men living. Your representative owes you not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion. You choose a representative indeed, but when he is chosen he is not a member of Bristol, but a member of parliament.

And so everyone of us here present is not a member from Hamilton, or Cuyahoga, or Montgomery, or any other county, but we are representatives of the state of Ohio, in this Convention assembled to frame for the people of Ohio the very best constitution we can according to our own light, and submit it to them for their approval or rejection.

And now, as to the legislators. If a man comes here unpledged and acts according to the light of his own conscience, he will receive his reward in the applause of his constituents, no matter whether he disappoints their expectations or not. So, coming back to my colleagues, they will be able doubtless to justify their votes to their constituents; but they will have a little harder task, because a man who comes to a general assembly pledged to support a certain measure is not so free as one who comes unpledged.

But what is the reason legislators disappoint the confidence that the people repose in them when they send them here? To my mind there is one reason, and that is

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because the legislator owes supreme fealty not to his constituents but to some one else. There is the crux of the situation; and if you destroy that power, if you make your legislators responsible to the people, then you will have no need for either initiative or referendum. Now can that be done? He is responsible now as I say, to his creator, who does not happen to be the people.

The creator is a person who controls the political organization which happens to be in control in the particular county from which the legislator comes, and I care not whether he be called boss or leader; it makes no difference; he is the same person. The real question for you to solve is, how are you going to curb the power of the boss? And until you solve that anything else you propose is simply a useless remedy. It may do you no harm, but on the other hand it may. If it changes the structure of your existing form of government it is very apt to do you very serious harm.

How is it that the boss has the power which we all must recognize that he has in American politics today? There is but one reason for that, and that is that politics has become in itself a business; and whenever you have a business the man who devotes himself to that business to the exclusion of other matters is the man who is going to succeed; and the boss is the man who makes politics his business and when he does that he succeeds. Now how is he able to make politics his business?

Politics, as we know it, is a very complex subject, not so much possibly now as it was before the biennial election plan was adopted, but still very complex; and the more you increase its complexity, the more you make it a matter of inducement to some person to give up other things and devote his attention to that; and the way he gets his reward out of it is, he controls the legislature, controls council; he sells franchises and the money that should come into the people's pockets goes into his, or he takes his toll out of it, and thereby gets his pay. The sole inducement to the corrupt man to become a boss, and they are not all corrupt, is his ability to sell the public in some way. He can do it by selling franchises, or by preventing people from getting public contracts who don't pay him; and in many other ways he can get his usufruct without violating the statutes. We have had no violation of the statute law in Cincinnati arising out of misgovernment for, I should say, fifteen years barring—I was going to bar the matter of interest and the county treasurer's office, but I believe the court decided there was not any there. We had plenty of misgovernment, and our bosses have grown rich. How? In the manner the president of the United States declared when he was secretary of war, when speaking at Akron. How are you going to stop it? You have to see where the boss gets his power. Politics, as I say, has become a business. It is a business in the sense of warfare. It is one man making war upon the community, and that man has an army behind him, and that army consists of the placeholders who get into office by his influence and by his work; and with that army—and it is not confined to the placeholders alone—are their sisters, cousins and aunts, down to the last degree; they all form a compact mass upon whom he can call to do service. Why, some years ago—about five or six, I think—there was a

primary election in Hamilton county in which there was absolutely no question at issue. The republican party was largely dominant in the county. There were no local issues in the county, no contests, but the boss sent word to his people to go and vote, so the people could see how strong he was. It was one of the most ill-advised things that could have happened, because it awakened the people. There was a total of about twenty-three thousand votes polled for his ticket and only ten or so against, and we had about eighty-five thousand voters in the county.

There is the power of the boss, in that army of placeholders. How would you destroy that power? The complexity of a system of politics under which we have been running makes it easy for the boss to attend to that business to the exclusion of all others, and we all let the men interested in it work it. Having that army, he has influence over legislators and executive officers, so as to secure positions for his appointees. Having this, he has the power at the polls to elect others to fill their places, and so it goes on working in vicious circles. How to destroy it? Destroy the complexity in politics, reduce the number of officers that are to be elected, take the short ballot. We have done it in part by reducing the number of elections. Go farther, and reduce the number of officers to be elected. So instead of having a ballot that long, [indicating] we may have a ballot with about two or three names on it. Then extend your merit system with reference to civil service. It now applies to some cities, and I hope it will to all of them, and to the counties and the state; and when that is done, when you have a system of laws that provides for election of officers who will make their appointments from a list that is furnished to them by the civil service commission of persons who have passed their examination, and so are presumably qualified, then you will break off and cut away the platform upon which the boss stands, and you will cut the sinews which have been wielded against you for so many years. And if you can do it that way is it not better to do it than to overthrow the foundation of your government by introducing a social democracy?

These are my principal reasons for opposing the initiative, both in legislative and constitutional matters. As to the referendum, it is not to my mind so serious a matter. That is simply a veto power upon measures that have been passed by the general assembly. These measures may be well advised or ill advised. The only objection aside from its making political questions more complex than at present—the objection that occurs to me to the referendum, is that we send legislators to the statehouse from different districts of the state, and if we veto their acts, we destroy the balance of power set up in the constitution. I am speaking now of the pure referendum, not the impure referendum suggested by this proposal, by which you can cut any words out of the proposed statute and make it mean something very different from that which the general assembly intended it should mean.

There are other objections which have been spoken of by the senator and ex-senator, as well as members of the Convention. I shall not dwell upon them. I simply refer to the tendency to increase the evasion by the legislators of their duties, the tendency to evade duty

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by saying "We will put that up to the people" — the tendency to lower the general average of the character of the members who form the general assembly, because it is an unquestioned fact that the more you fetter the power of an agent the lower will be the character of the agent who serves you. Responsibility increases the average character of individuals.

There is another matter which has been alluded to by gentlemen who have preceded me, to which I want to call attention, and that is the positive danger and evil of initiative legislation. What I mean is that legislation that is presented by the pure initiative is almost certain to be improper in structure, and I want no better text to preach upon on that subject than this very proposal we have before us. We have been told by the president of this Convention, speaking from the floor, that this proposal has received the very greatest care, that it had undergone the scrutiny not merely of an ordinary committee of twenty-one, but a committee of sixty, and all the subcommittees that there might be in that body of sixty. We know that in its original form it was introduced on the very first day that proposals were introduced, and that it was referred to a committee, that it was reported by that committee on the 29th of February, and the report shows that it was recommended for passage, not for printing. It appeared, however, that two members of the committee who signed that report signed it for printing only, and the remaining signatures were not enough to make it a majority of the committee. Therefore, the proposal was recommitted to the committee, and then it was reported again from that committee with the amendments which have been referred to, striking out the "not more than" with reference to the per cent, and adding the provision as to the determination of percentages by the vote for governor.

If you will look over the proposal as it stands today, I think I can safely say not one of you — unless he found himself pledged beyond control by this agreement made to frame legislation outside of this hall, and force it upon the entire Convention; unless you were bound by that — I think not one of you would agree to support this proposal as it stands today.

Opposed as I am to the proposal as a whole, I do not feel myself called upon to offer amendments for its perfection and approval, but there are certain things in it which will have to be corrected and will be corrected undoubtedly by the committee on Phraseology. I happen to know that the chairman of that committee has spotted one, and others have been mentioned on the floor, and I ask in all seriousness if in a proposal that comes to this house with all the guaranty of proper framing that you have had for this, after it has been passed upon by a committee of sixty, and I don't know how many subcommittees, you find errors so glaring that you could not let it go through without further amendment, what do you think will be the chance of any ordinary initiative legislation without reference to a deliberative body to put it in proper shape?

The member from Mahoning [Mr. ANDERSON] has called attention to one of these errors that wipes out all of article II and leaves the substitute only for the first section. I am not going over the matter to which Mr. Anderson called your attention, but will confine my attention to others. I am not going into errors of sub-

stance. That is not my function. I am calling attention to some errors of form.

Look at line 35: "The proposed law or proposed amendment to the constitution shall be either approved or rejected without change or amendment by the general assembly." Again, in line 37: "If any such law proposed by a petition shall be approved by the general assembly, it shall be subject to the referendum as herein provided." Again, in line 39: "If any such amendment in the constitution proposed by petition shall be approved by the general assembly it shall be submitted to the voters." How does the general assembly approve a measure? By joint resolution. Yet this as to statute!

It is true in line 44 there is another clause which would probably be read in connection with this, and show that when the word "approved" was used they did not mean "approved" but they meant to be "passed" as a law, because it says there "the general assembly may decline or refuse to 'pass' any such proposed law."

Now go down to line 55: Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the voters." Is the word "permit" the word to be used?

Now go to line 58: "Any proposed law or amendment to the constitution submitted to the voters as provided in section 1-A and section 1-AA, shall go into effect when approved by a majority of those voting upon the same, and shall be published in the same manner as acts of the general assembly." That is to say, it is approved or disapproved on the night of the election. How long after that will it be before we know whether it is approved or not? What is to be the state of the law meantime? Suppose there is a contest? If the vote is close, can not a contest be permitted? The contests last for some time. In the meantime where is the law, and what becomes of the person who during that interval has not known what law to obey? I submit to you it is perfectly clear it should not read in that form. Should we not say "not when the thing is approved," referring to the result of election, but "when made known in the proper way it has been approved."

Again, the next few lines: "If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law," etc. There again there is a chance for a contest. Where will its difficulties cease?

Now turn over to lines 72 and 74: "No law passed by the general assembly shall go into effect until ninety days after the final adjournment of the session of the general assembly which passed the same, except as herein provided." For fifty years the general assembly of the state met at the time fixed by the constitutional provision, and sat for four or five months, and then took a recess until the following January. The final adjournment was not at the end of the first session, but at the end of the adjourned session. Here this law, passed at the first session, if the general assembly should for any reason go back and hold an adjourned session, would not take effect until after the adjourned session is over; and here would be a loss. The suspension is not merely for ninety days, or until the election following after it,

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but until the general assembly had practically lived out its life.

Of course the use of the word "the" in line 80 for "their" may have been a printer's blunder, and the committee may not be chargeable with it, but I can not acquit them on that ground for the use of the word "any" in line 81 or the use of the word "any" in line 84.

First, they provide in line 70, for the submission to the voters of the state for their approval or rejection of any law or any item, section, or part of any law passed by the general assembly. That has been discussed. It was asked on the floor whether that is not the rule as now applies to the governor of the state of Ohio. I could say to the gentleman who asked the question that it is not the law. The governor can veto any item or any section, but he can not veto any part, he can not cut out a word. This gives that power to the people; and if they have the veto at all, I can not say that the people should not have it in all its aspects, although I think any popular veto is unwise.

But when you get down to the other places where the word "any" occurs the sense is changed. Line 80 says "Shall submit to the voters of the state for the approval or rejection such law, or any item, section or part of any such law." What do they mean! Of course, what they mean is, "such law or such item, or section or part thereof;" but they have not corrected it, and have not corrected it in the line below. Here is a proposal that comes before you with unusual precaution taken for its careful preparation!

Look at the careless grammatical error in line 102, where they say "Each city"—which is all right enough—"village, county, township, school districts or other political subdivisions."

Turn over to line 125: One-half of the total number of counties of the state shall each be required to furnish the signatures of voters equal in number to one-half of the designated percentage of the voters of such county, upon all initiative or referendum petitions provided for in any of the sections of this article." Is any requisition to be made upon any county? Have not the gentlemen obviously said something they did not mean to say, and left unsaid the things they did mean to say? What they unquestionably meant to say was that the signatures to be obtained and the requisite percentage should be required from one-half of the counties, but they do not say that.

Turn to lines 131 and 135: "The person or persons who prepare the argument or explanation, or both, against any law submitted to the voters by referendum petition may be named in such petition and the arguments or explanations, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same." That is, you can name the arguments in the petition, but you can not name the persons who were to frame those arguments. What they intended to do was unquestionably to say, correlatively, that the framers of the petition might make the argument against the law on the referendum matter, and the framers of the petition for the initiative might make the argument for, and the objectors to the petition might make the argument against the measure; but what they have said is the argument and explanation should be stated in the petition itself.

Attention has already been called to the mistake in lines 153 to 155 in the clause for the enactment of the law, but let me call your attention to this in lines 148 to 152: "The secretary of state shall cause to be placed upon the official ballots the title of any such law or proposed law or proposed amendment to the constitution to be submitted, and shall cause the ballots to be so printed as to permit an affirmative or negative vote upon each law or proposed law or proposed amendment to the constitution." This does not say anything at all with reference to a part of the law, and all the secretary can do is to prepare the ballot to submit the law as an entirety.

Now, if you can find as many errors as that in a proposal framed as carefully as this was and with as much study as this had, what chances do you think there would be to have a proper law framed simply by a pure initiative? I have not gone into particular demerits of the measure, or tried to discuss those at all. I have simply taken up surface errors that would have to be corrected in the committee on Phraseology. But as to these proposed initiative laws, we do not have any committee on phraseology. We have to fix them up properly in the first instance.

Now there is one thing upon the matter of substance. I said I was not disposed to offer any amendment to help this measure out, but there is one thing I do feel called upon to notice, or at least, if it is not in order at the present time, to suggest, and later I will offer an amendment as to it, and that is with reference to the purification of those petitions.

Gentlemen, if we are to protect the people of Ohio so as to call for a pure application of this doctrine, free from contaminating influences, then we should see to it that the petition upon which all things start is in itself pure. A suggestion has been made that this petition should be voluntarily gotten up and signers should not be solicited, that the petition should be placed in some public office to which the people should repair and affix their signatures. Of that I approve.

Now, I want to suggest this to the consideration of the committee which reported this proposal, before they finally refuse to let this Convention dot an "i" or cross a "t" in the proposal. This petition will have names on it and residences, but absolutely nothing to indicate that the persons who signed the petition have the qualification, of an elector. I submit that the petition ought to at least state the age of the person signing it, so that we can be sure the petition is not made up of irresponsible boys. Further than that, the proposal requires that each part of such petition shall have attached to it the affidavit of the person soliciting the signatures to the same, stating that each of the signatures attached to such part was made in his presence, but I want him further to say that he did not pay the persons signing for their signatures, so that we shall not be subject to the risk of having those monsters which are commonly called on this floor "the influences" reaching out and sending their agents to get signatures to the petition, so as to introduce a question before the people of this state. Require the petition at least to be the voluntary act, and the unpaid-for act of the petitioners. That can only be known to the person who does the soliciting, and his affidavit should be required that nothing of value was given and no promise was made by any person to obtain such sig-

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natures. If you have that in your constitution, you will at least have the protection of the statute against perjury for the purity of your petition.

One more thought on the same line. Line 116 says: "The petition and signatures upon such petition, so verified, shall be presumed to be in all respects sufficient, unless not later than fifteen days before election it shall be otherwise proven"—I do not know how many Scotchmen were on this committee, but when they wrote that word "proven" they wrote Scotch, not English—and in such event ten days shall be allowed for the filing of additional signatures to such petitions." You see it suggests that it should be "proven," but how "proved?" Let us talk English.

Mr. DWYER: A Scotch verdict.

Mr. WORTHINGTON: That is right. No means are provided for it. It is simply left in the air hanging there, these additional signatures are permitted. Now, if I were given a hand on this I would amend by striking out the words "It shall be otherwise proven" and inserting in their place, "counter affidavits shall be filed with the secretary of state, controverting the truthfulness of any affidavit in support of such petition as to any of the names purporting to be signed thereto, or the qualification to vote of any such signer, in which case the signatures so attached shall be disregarded." That is, one affidavit against the other, and then they can go on and get the additional signatures.

Mr. DOTY: Would not that result in making it impossible to finally get any petition signed?

Mr. WORTHINGTON: I think not.

Mr. DOTY: But fifteen days is a short time.

Mr. WORTHINGTON: I only say fifteen days because you have it. I only want the means of producing controverting affidavits. I am not particular as to the time. I want a purging.

Mr. DOTY: That purging may come about by the

introduction of just as spurious affidavits as the first.

Mr. WORTHINGTON: Not necessarily, and then it is always a matter of getting further signatures. Reading further: "And in such event ten days shall be allowed for the filing of additional signatures to such petition."

As it stands here it does not require any verification for the additional signatures at all. You can file additional signatures of Tom, Dick and Harry, and there is no affidavit required. So I would add there "similarly verified, and similarly subject to attack."

Now, I have taken up more time than I expected to take when I took the rostrum. I wish to thank you for the patience with which you have heard me, and for the attention which you have given me. I see in this proposal as it stands dangers from the very source that makes our legislators now untrustworthy representatives; that is to say, if you leave the power of the boss uncurbed as it is now, it will be just as easy for "the influences" that control the boss, by purchase, to control afterwards the filing of initiative petitions and the election under those petitions. You have got to control the power of the boss himself, and if you can do that you have solved the difficulty against which you are now laboring. I do not know whether it is in order, but if it is, I will offer this amendment.

The PRESIDENT: The amendment is not in order now.

The delegate from Hamilton [Mr. PECK] was here recognized and yielded for a motion to recess.

Mr. DOTY: I move to recess until tomorrow morning at eleven o'clock.

Several delegates suggested amending to ten o'clock.

Mr. DOTY: I would just as lief have it ten.

The PRESIDENT: The question is on recessing until tomorrow morning at ten o'clock.

The motion was carried.