

Do you know of any other State that does go as far as the proposal offered here in this amendment?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: Yes. I think the other states which I think we have cited. I think our language carries with it more weight of interpretation with the federal and state courts, but I would think that civil rights mentioned in Hawaii's Constitution have been interpreted by the courts to include public accommodations, the right to purchase and own property, the right to travel freely from state to state, and the whole group of personal rights which this section of the constitution is intended to cover.

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: But none do include discrimination by the State or a state action clause. Is this correct?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: Although the words "the state" are not used, it is a state constitution, and it is the prohibition in each of these sections of these various state constitutions that go to the state.

Mr. Smith of our research staff has suggested that I convey this information to you, Delegate Hostetter, that these are the new state constitutions which have been elected and in each case, they have included the act of discrimination language. But in the old New York Constitution for years there has been this language: "No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation or institution or by the state or any agency or subdivision of the state."

Now, we believe that, as the courts have interpreted it, state action includes all of the language there in the words "by the state".

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: Which constitution of the state of New York was this?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: This was the old New York Constitution—well, the present New York Constitution, because the new constitution failed of passage.

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: And the date of that was what, if you know?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: It is 1938.

THE CHAIRMAN: Delegate Scanlan.

DELEGATE SCANLAN: Delegate Mitchell, is it not fair to say that the problem of where state action ends and the private sector begins, that you were discussing with Delegate Hostetter, would remain under your language as well as the equal protection language?

In other words, whatever language is used, whether the protection is only one that speaks in terms of the equal protection clause or whether it speaks in terms of the more specific language that you recommend, the courts are still going to have the problem of marking out where state action ends and where the truly private sector begins.

So in that sense, your amendment does not change that problem one way or another, does it?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: That is correct.

THE CHAIRMAN: Are there any further questions of the minority spokesman?

Delegate Morgan.

DELEGATE MORGAN: Mr. Chairman, this colloquy this afternoon has prompted me to ask Delegate Mitchell a question. Is this supposed to be a limitation on the General Assembly to legislate in this field, or is it supposed to say what the General Assembly cannot do?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: No. I think this is in the way of a mandate to the General Assembly, to act in this area, and I do not think this is any limitation on what the General Assembly can and should do in response to the needs of the State.

THE CHAIRMAN: Delegate Morgan.

DELEGATE MORGAN: And if the General Assembly would find it essential at some time in the future to legislate in what you might call the private sector of the economy, there is nothing in this language which would prevent them from doing so?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: No, I do not believe so, because I believe there is some