

not to be operative unless sustained by the vote of a majority, is free from all objection on the score of unconstitutionality, inasmuch as if adopted by the majority it becomes the act of the people themselves, who made the existing constitution, and can change it at will, being sovereign. To say that the Constitution of a popular government cannot be changed at pleasure by the people themselves because the Constitution so proposed to be changed provides against its own alteration except at a specified time and in a specified way, is equivalent to saying that the Constitution is sovereign and not the people. And your respondents are advised that no clique or handful of citizens, upon the allegation of their interest as taxpayers and the peculiar sensibilities of their consciences and strength of their patriotism, can lawfully call on the judicial power to restrain the majority of the people from exercising the prerogative of self-government. Were it otherwise, the citizens so presuming, or the court acting on their prayer, would really be paramount and not the people; and it being, in all cases of the sort, necessary that the judiciary so acting should derive its authority from the Constitution sought to be changed, it would necessarily have the power and opportunity thus to perpetuate its own authority, a power inconsistent not only with public right and freedom, but with the independence of the judiciary itself and the confidence which all good men desire so elevated and honorable a depository of the public interests to enjoy. In this view your respondents are advised that it is a cardinal maxim of the judiciary to keep itself aloof from all participation or attempt to participate in the political department of the government, and regarding the present effort on the part of the complainants as a plain attempt to violate this principle, and to convert the tribunals of justice into instruments of party, your respondents, for these and for the other sufficient reasons alleged, respectfully pray that the said bill may be dismissed, and that they may have their costs, &c.

S. T. WALLIS,  
ORVILLE HORWITZ,  
Solicitors for Respondents.

An affidavit, sworn to before Justice Hayward by the