this amendment would strike, in conflict with section 5.04 as it now stands? It seems an attempt is being made to provide an escape valve. However, section 5.04 says that the governor shall fill the vacancy in the office of chief judge, and no such escape valve is provided there.

I wonder why you feel it is necessary to make a provision in 5.14 which is not found in 5.04, dealing with the same subject matter?

DELEGATE M. SMITH: Because the courts can well proceed to operate in the absence of a chief judge on the accepted principle that in his absence the associate senior judge in the circuit shall proceed to act. As a matter of fact, that is written into this very provision.

THE CHAIRMAN: Delegate White.

DELEGATE WHITE: Mr. Chairman, I wish to speak in support of this amendment.

This gives us a golden opportunity to do one thing which we set out to do; that is to shorten this constitution. We may strike about 39 words by deleting this superfluous language, and I urge you to vote in favor of the amendment.

THE CHAIRMAN: The Chair recognizes Delegate Henderson to speak in opposition.

DELEGATE HENDERSON: I have been a little disturbed by the statement which I believe was attributed to Delegate Grant with reference to some early case, the suggestion that a writ of mandamus would serve to compel the governor to make a choice between three different candidates that are proposed to him.

Now, just how a court could require the governor to make that choice, or what or how they could enforce such a thing is beyond me.

The general rule in mandamus — I am not familiar with this case that they speak of — but the general rule is that mandamus will only lie to require the performance of a ministerial duty. Here the mandamus would require a choice between three possibly equal alternatives, which calls for judgment, and I do not see how the court could compel the governor to exercise that judgment. I think if the basis of this is that it is unnecessary to provide an alternative, that that rests on a very weak base.

THE CHAIRMAN: Is there any further discussion?

Delegate Hardwicke.

DELEGATE HARDWICKE: I wonder if Delegate Henderson would yield for a question.

THE CHAIRMAN: Delegate Henderson, do you yield for a question?

DELEGATE HENDERSON: Certainly.

THE CHAIRMAN: Delegate Hardwicke.

DELEGATE HARDWICKE: I think Delegate Henderson, there is an important point to be clarified at this juncture.

The other day we passed a provision which would permit someone to mandamus the legislature to enact legislation of a given type, which was discretionary in nature and not ministerial, and I think that the Convention went ahead with that particular item.

Is that what we are doing here? Is that similar to the proposition before us with regard to the governor?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I do not recall at the moment just what that provision was, but I should doubt whether anything which calls for the action or the exercise of judgment could be compelled, because I do not see which of the three alternatives the governor could be compelled to do. That is why I think the choice has to be put in other hands.

I might say that in the case of reapportionment, even if the court had tried to compel the legislature to reapportion, it was only when the Supreme Court said that that duty could be performed in the alternative by the court itself that they really had an effective remedy.

THE CHAIRMAN: Delegate Hardwicke, the Chair's recollection of the matter that you just mentioned is somewhat at variance with the statement you just made. I think the question arose on one of the recommendations of the Committee on General Provisions. The statement was indeed made — and I think by the Chairman of the Committee — that the legislature could be mandamused to require it to pass legislation. That statement was controverted by other delegates. I do not know that there was anything to indicate the Convention took a position on it one way or the other.

Delegate Hardwicke.

DELEGATE HARDWICKE: Mr. Chairman, my fellow delegates just reminded me