

THE CHAIRMAN: Delegate Grant.

DELEGATE GRANT: Yes, I would consider it so. I believe your question to me would be how is the chief justice ordered. I would say that inasmuch as the responsibility is directed by the constitution he would be exercising a duty directed by the constitution rather than a duty directed by his branch of government.

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: Mr. President and delegates:

I must simply emphasize again that this democracy was built on the separation of the three co-equal branches of government, with checks and balances, to make sure that there would not be too much concentration of power in any one branch, and I submit again that not only would this provision be contrary to the very founding principles of this government and this country, but would be to result in the spectacle of judges selecting and appointing themselves and being self-perpetuating; and I think that is contrary to our provisions.

THE CHAIRMAN: Are you ready for the question?

The question arises on the adoption of Amendment 26. A vote Aye is a vote in favor of the amendment; a vote No, a vote against.

Delegate Gill.

DELEGATE GILL: Mr. Chairman, I would like to refer you to Article IV in the present Constitution, section 5, where it says, "the governor shall appoint a person duly qualified to fill said office, who shall hold the same until the election and qualification of his successor"; and to the model constitution which says "the governor shall appoint", and, of course, going back to the very beginning of the debate on the militia, to our discussion of whether to make it "shall" or "may". In our debates on suffrage and elections, and also local government, we voted on "shall" and "may" again, and as pointed out by Delegate White, in this same article, section 5.04, we provide that "the governor shall". Throughout the rest of these recommendations, we provide that "the Superior Court shall", the "governor shall", "the District Court shall".

If they are all going to act because the Constitution says they shall, why do we think that the governor shall not appoint a judge on such an important occasion? I

just cannot see why "shall" all of a sudden loses its meaning because it is in this particular article.

THE CHAIRMAN: Are you ready for the question? The question arises on the adoption of Amendment No. 26. A vote Aye is a vote in favor of the amendment; a vote No is a vote against. Cast your votes.

Have all delegates voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 54 votes in the affirmative and 73 in the negative, the motion is lost, and the amendment is rejected.

The chief page will distribute amendment CG. While the amendment is being distributed, the Chair would like to acknowledge the presence in the gallery of the Honorable J. W. Diggs, Chief Judge of the Circuit Court of the Seventh Circuit of the State of Maryland.

THE CHAIRMAN: Delegate Borom.

DELEGATE BOROM: Mr. Chairman, a point of personal privilege. I would like to announce the presence of my wife in the gallery, and one-half of my family, my son, who is upstairs, along with former state delegate Alexander Stark and his wife; a good friend of mine, Mrs. Alice Miller, and my former boss, Berle Louis, who is formerly of the University of Maryland.

THE CHAIRMAN: Delighted to have you with us this evening.

*(Applause.)*

This will be Amendment No. 27.

The Clerk will read the amendment.

READING CLERK: Amendment No. 27 to Committee Recommendation JB-1, by Delegate Chabot: On page 4 section 5.14 Nomination and Appointment in line 43 after the word "vacancy," add this sentence: "If a list sufficient to meet the requirements of this section has been timely received by the governor, but, the number of persons on such a list has been reduced by the ineligibility of one or more nominees before the vacancy has been filled the governor may return the list to the nominating commission, which shall present him with another sufficient list within 30 days thereafter."

THE CHAIRMAN: Amendment No. 27 is moved by Delegate Chabot. Is there a second?