

not either necessary or desirable. The purpose of this amendment would make the taking of this poll discretionary in the hands of the Court of Appeals.

It is my understanding that this is the rule in Missouri; the plan which we have adopted here patterns as you all know the Missouri Plan. It seems to me that the Committee's recommendations have gone further than the Missouri plan in this particular regard. It seems to me that all of the benefits which the Committee Report seeks to obtain will be forthcoming if the poll is made permissive, yet the fears and apprehensions of some of the people in the smaller counties will be absolved.

I would urge you therefore to vote for the amendment.

THE CHAIRMAN: The Chair recognizes Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, as I indicated before, the greatest concern in our Committee regarding this proposal as a means of informing those voters who are interested as to the views of the lawyer regarding an incumbent was the idea that was suggested in the commission draft, article 5, as permissive.

Our Committee changed the word "may" to "shall" and now it is proposed that the word "shall" be eliminated and "may" substituted.

I feel that the threat of this poll under whatever rules might be adopted to be used or not used as the case might occur is perhaps the biggest argument against the use of the poll. Therefore I would suggest that this amendment be defeated.

THE CHAIRMAN: Is there any further discussion? Delegate Bothe.

DELEGATE BOTHE: May I ask a question to Delegate Mudd?

THE CHAIRMAN: Do you yield to a question?

DELEGATE MUDD: Yes.

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: Is there any question about the Court of Appeals or rules committee to order such polls being made at their discretion should there be no constitutional provision?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: I do not think the Court of Appeals would have that power.

THE CHAIRMAN: Is there any further discussion? Delegate Adkins.

DELEGATE ADKINS: I would say just one very brief word. This is at best an experiment. It may very well turn out to be a profitable experiment. If so I have no doubt that the Court of Appeals would continue it. If on the other hand it turns out to be as it could be, a disastrous experiment, there should be an escape from it; making it permissive allows us that escape.

It is inconceivable that the rules committee in the Court of Appeals on the basis of the constitution would not initially propose for the poll. If the poll should turn out to be disastrous or should it turn out to be a real impediment, I think the Court would then be in a position to repeal it.

I would urge that this flexibility might be justified.

THE CHAIRMAN: Is there any further discussion?

*(There was no response.)*

Are you ready for the question?

*(Call for the question.)*

Delegate Macdonald.

DELEGATE MACDONALD: Mr. Chairman, I would call the attention of the Committee that writing for the regulations of the taking of this poll is exclusively within the jurisdiction of the Court of Appeals.

In other words, it is exclusively the job of the judges. I would also ask the Committee of the Whole to take into account the fact that according to the evidence which has been introduced before the Committee on the Judicial Branch, it has been the judges who have been most opposed to this poll.

In answer to the objection from the people in the smaller counties, the lawyers in those counties simply refrain from voting. If this poll is applied on a selective basis, I submit the public confidence in the poll will be shattered. We should have a uniform poll taken in all cases.

THE CHAIRMAN: Is there any further discussion?

*(There was no response.)*

Are you ready for the question?

*(Call for the question.)*

The question arises on the adoption of Amendment No. 45 to Committee Recom-