

mendation JB-1 which is to change the word "shall" in line 44 to the word "may."

A vote Aye is a vote in favor of Amendment No. 45. A vote No is a vote against.

For what purpose does Delegate Rybczynski rise?

DELEGATE RYBCZYNSKI: I should like to ask a question and the answer will determine my vote.

THE CHAIRMAN: To whom is it addressed?

DELEGATE RYBCZYNSKI: To Delegate Case.

THE CHAIRMAN: Do you yield?

DELEGATE CASE: Yes, sir.

THE CHAIRMAN: Delegate Rybczynski.

DELEGATE RYBCZYNSKI: Is it possible that the vote can be taken for one judge and not for another judge? This is what has worried me. Is it possible?

THE CHAIRMAN: Delegate Case.

DELEGATE CASE: I am not sure I quite understand. If you would give me an example, —

THE CHAIRMAN: I think his question is if the provision should be made permissive would the Court of Appeals be able to adopt a rule that it would provide a poll in the case of Judge A but not in the case of Judge B.

DELEGATE RYBCZYNSKI: It is a pretty close question. I would think they would not do it, but I think it is possible they might.

THE CHAIRMAN: Delegate Sybert.

DELEGATE SYBERT: Mr. Chairman, I suggest that the answer to Delegate Rybczynski's question is no. I do not think the Court of Appeals for a reason that I will mention could by rule provide for a vote or secret ballot in some cases and not in others.

Why do I say that? Because the rest of the section provides as follows: If the word "shall" were changed to "may", the Court of Appeals might prescribe by rule for the taking of such a poll. If the Court of Appeals provides that it shall take such a poll by rule, it must be taken in every case. Otherwise, there would not be equal protection of the law. If it provided by rule that the polls should not be taken, none would be taken.

THE CHAIRMAN: Delegate Case.

DELEGATE CASE: I rise to adopt Delegate Sybert's opinion.

THE CHAIRMAN: Delegate James?

DELEGATE JAMES: I would like to address a question to some knowledgeable person. I pick Delegate Case.

THE CHAIRMAN: Do you yield to Delegate James?

DELEGATE CASE: I knew I should have left when I was ahead.

THE CHAIRMAN: Delegate James.

DELEGATE JAMES: Could rules be adopted such as in cases of population of 20,000 or less there would be no poll but in populations of 100,000 or more, there would be a poll? It seems to me a complex population figure could be drawn.

THE CHAIRMAN: You mean could it be possible to set such a standard under the rule set out in section 5.21 or as amended? To which is your question directed?

DELEGATE JAMES: Under the proposed amendment.

THE CHAIRMAN: Delegate Case?

DELEGATE CASE: Yes, I think that could be done.

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 Recommendation JB-1, to change the word "shall" to the word "may" in line 44.

A vote Aye is a vote in favor of Amendment No. 45. A vote No is a vote against. Cast your votes.

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

*(There was no response.)*

The Clerk will record the vote.

There being 56 votes in the affirmative and 67 in the negative, the motion is lost. The amendment is rejected.

The amendment has now been printed and distributed to you. It is Amendment No. 45.