

I am certain that in any poll of the lawyers with respect to a judge on the bench, there will be a large number who will vote against it.

I do not like the idea of having what amounts to a 70 per cent judge. I am concerned with the fact that in this constitution, we have said that this is something different from the polls of citizenry. The lawyers know something more. Admittedly they do, but not so much more that they shall have, not only two votes on this continuance in office of a judge, but they shall have one vote, which we have enshrined, to use that word again, but fixed in this constitution, something we have not yet done. We have no experience about how this will work with the lawyers.

THE CHAIRMAN: Delegate Bamberger, your time has expired.

DELEGATE BAMBERGER: I urge you to vote for reconsideration of Amendment No. 43, and to vote to adopt Amendment No. 43. If this is a practical idea, it can be done by the bar, or it can be done by the legislature. However, if you have doubts about the idea, we ought not to state it in the constitution.

THE CHAIRMAN: Does any delegate desire to speak in opposition? Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, ladies and gentlemen of the Convention. This matter was not only thoroughly debated in connection with the amendment now sought to be reconsidered, but also in connection with other amendments proposed to this section, 5.21, of the committee recommendation. Delegate Bamberger has advanced a few new ideas in connection with this matter, but substantially the resistance to the committee recommendations is about the same as those arguments we heard in support of other amendments.

I would therefore oppose the motion to reconsider.

THE CHAIRMAN: Does any other delegate desire to speak in favor of the motion to reconsider? Delegate Byrnes.

DELEGATE BYRNES: Mr. Chairman, could I direct a question to Chairman Mudd at this point.

THE CHAIRMAN: Delegate Mudd, do you yield to a question?

DELEGATE MUDD: Yes, Mr. Chairman.

THE CHAIRMAN: Delegate Byrnes.

DELEGATE BYRNES: Delegate Mudd, would you mind reviewing once again for us the experience in the country with this particular aspect of the selection plan?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Your question was reviewing in the small counties?

THE CHAIRMAN: No, the experience throughout the country with respect to a similar rule.

DELEGATE MUDD: I do not know that I have reviewed that in presenting the plan, although it has been developed in the debate here. It is a matter that was considered at some length in our Committee, and the motivation there, as I recall, Delegate Byrnes, was that the lawyers do have an obligation as officers of the court in this field, and the electorate has no choice under our proposal except to vote for or against a sitting judge; and they are entitled to some guidance, and it becomes an obligation of the profession. Then the profession is performing a useful function.

THE CHAIRMAN: Delegate Byrnes.

DELEGATE BYRNES: If I might, Mr. Chairman. I agree with that, Delegate Mudd, but I was curious whether or not the specific plan is in operation in any other jurisdiction of the country, and if so, what the experience has been.

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: I have just checked with our staff adviser, and he informs me that in Missouri they have this plan, but it is not in the Constitution. I am not familiar with the proposal or plan if it is in effect in any other jurisdiction having the Niles plan or the Missouri merit plan for the selection of judges.

THE CHAIRMAN: Delegate Byrnes.

DELEGATE BYRNES: In your Committee deliberations, did you question anyone from Missouri on the operation of this particular aspect of the selection plan?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Yes, I am sure we did in our phone conference; and you have a copy of it. I have forgotten the exact questions or the responses. They did say generally that it was comparatively helpful, as I recollect.

THE CHAIRMAN: Does any other delegate desire to speak in favor of the motion to reconsider? Delegate Key.