

I think in the long run we have to trust the General Assembly to carry out its duties. So long as the General Assembly is the repository of the legislative power, they should be permitted to exercise that power and when they do not, then we turn them out at the next election. The only conspicuous exception should be when they use the legislative power to trespass upon the fundamental rights in our Anglo-Saxon tradition of free speech, free exercise of religion, non-establishment of religion, habeas corpus and the rest. These are protections against the misuse of legislative power. The majority proposal is another example of affirmatively making the legislature do something. I suggest if this is carried too far we really undercut the basic assumptions of representative government, that the representatives of the people are entitled to govern. I think in this instance the Convention would be again making a mistake and I think we have made a few in the past in the words of I guess it was Hamlet in the previous two examples: "Error will creep into the affairs of state and be recorded as a precedent," and I know you will cite against me the precedent of the conservation clause and the consumer protection clause, both of which I was irrevocably and remain irrevocably opposed to.

Dean Pound admonished the New Jersey Convention when he was giving them a little pep talk and they heeded his lesson. He said the important thing to remember, perhaps more important in drafting a constitution, was not what you put in but what you leave out. And he drew attention to the fact that of all the poets of antiquity Homer was the greatest because he knew what to leave out. I do hope this Convention in this instance at least does remember what to leave out. I think this is a clause or proposal that can be left out completely and perhaps arrest the trend of putting too many unenforceable ultimatums and pious statements of legislative policy in what should be a charter of government. As I said before, I will not make any further argument except in the uncontrolled time, but I will be glad to answer any questions if I can.

THE CHAIRMAN: Are there any questions of the minority spokesman?

Delegate Pascal.

DELEGATE PASCAL: Delegate Scanlan, you referred in your remarks to the Florida Constitution which was just rewritten; is that right?

DELEGATE SCANLAN: No, it was a statute.

THE CHAIRMAN: Delegate Pascal.

DELEGATE PASCAL: The statute came from what? The constitutional amendment? I thought they were in the process of reorganizing their Constitution, isn't that correct?

DELEGATE SCANLAN: They are in the process of reorganization, but I do not believe it has passed. Whatever they did, they did by statute under which I assumed was the plenary power that the Maryland state legislature has. All state legislatures to my mind have plenary power except as restricted by the Constitution of the United States or their own state constitution.

DELEGATE PASCAL: Correct me if I am wrong. It was my source of information that in Florida, the legislature is rewriting the constitution and they made the recommendation to themselves, so to speak, to write in the conflict of interest law. Is that not correct?

DELEGATE SCANLAN: I do not believe that is correct. I believe the statute they passed they passed under their existing power. It is true as I understand that they are rewriting their constitution, but whatever they did by way of reform in the conflict of interest field they did under existing legislative power. There is only one state to my knowledge that has a provision which is supposed to be like the one proposed, California. Many states have restriction on dual officeholding, and of course we have a restriction or two on that type of limited conflict of interest area. Apparently only one state has a grant to act in this field. That is California. I asked the staff to produce this particular clause, but when we went to the California Constitution we could not find it so I do not know exactly what it says. They are the only state that has anything like that. I would gather from what Mr. Margolis said that that would not apply in California. The California legislation has plenary power.

THE CHAIRMAN: The Chair can clarify the status in Florida a little bit. A proposed new constitution was drafted by a commission, submitted to the legislature, which has not acted upon it.

Delegate Raley.

DELEGATE RALEY: Delegate Scanlan, I am very interested in what you have said that these things are meaningless, that conflict of interest does not amount to anything, but we have been talking all after-