

fined to the constitutional amendment procedures that this Convention will adopt. I see what you are suggesting because it is always done by bill.

DELEGATE HARGROVE: Done by bill, as I understand it, which has to be passed by the legislature?

DELEGATE BYRNES: Our answer is no, because whether or not it is on the same piece of paper as a regular bill it is still in essence a constitutional amendment which, I think, would be governed by the constitutional amending procedure adopted by this Convention.

THE CHAIRMAN: Delegate Grant.

DELEGATE GRANT: In response to a question by Delegate Miller, you stated or confirmed her remark that a number of states had this by legislation rather than constitutional provision. Am I correct in understanding that this would be done by legislative rather than constitutional process and authorized by the legislature?

DELEGATE BYRNES: I think I should have said further in answer to Delegate Miller, I think my understanding is that the states that have it pursuant to constitutional authority. I do not think there are any states that simply have constructed in the statutory code of their states initiative or referendum. I think these are very fundamental reserve powers which must be continued in the constitution authorizing the legislature to enact the details of such a proposal.

DELEGATE GRANT: If the constitution were to say something to the general effect that the General Assembly could prescribe by law a method for initiative, would this be sufficient authority to the General Assembly to then proceed to do so if they so desired?

DELEGATE BYRNES: My only concern is with the way you phrased it; it seems almost too short. I think, expanding on that a bit, you could authorize the legislature to enact it. I would like to point out that there was a delegate idea proposal, submitted by Delegate Gallagher, not that he necessarily endorsed it but he wanted to put it before us, which phrased initiative in this way: he made the suggestion, that initiative be considered part of the legislative process. I do not think there would be much more implementation other than the mere saying the legislative power is vested in the people, I mean, vested in the legislature, consisting of two houses

and then with one clause state the initiative procedure.

I think perhaps you may be right. One clause may be enough if it is commonly understood indirect and direct, but simply initiative means—

THE CHAIRMAN: Delegate Sherbow.

DELEGATE SHERBOW: This question of Delegate Byrnes. On page 6, beginning on line 10, you speak of submitting the law by title and then say it is one that was prepared by the legal department of the state subject to review by the courts.

Does this mean you are asking the courts to review something which has not yet even been approved by the people?

DELEGATE BYRNES: Before I answer, I would first of all thank you for pointing that out, because this is something I failed to mention, one of the additional safeguards we have is this proscription that the language be submitted to the Department of Law for review.

In answer to the question we think our intention is clear that by "subject to review by the court," we mean at any point in the proceeding, so that if someone wanted to challenge the course which is leading to the ballot, at any point, someone could go to the court and say this is in violation, for example, of subsection (d), which describes reapportionment and such other things as are proscribed by (d).

DELEGATE SHERBOW: Are you not asking the courts to pass, for example, on the question of the constitutionality of the law even before it is approved by the people at the ballot?

DELEGATE BYRNES: I would think any such question would be open to review.

DELEGATE SHERBOW: You would expect them to have a justifiable issue with advocates and proponents before the court on its way to the Court of Appeals before the people even voted on that particular law.

DELEGATE BYRNES: I would think the answer would be that it would be some sort of injunctive proceeding, someone would seek to enjoin placement on the ballot of the issue and this would raise the question whatever the objection might be.

DELEGATE SHERBOW: My question goes further. Is this not a mandatory requirement that it be subject to review by the courts before it is even voted on by