

I would pose the question to Delegate Hardwicke based on his earlier statements, that we are not dealing with something that can be interpreted by courts. This question was raised in the Committee, as to what would be the effect in any instance where the constitution spoke in a mandatory sense. I am referring now to one illustration, the draft constitution recommendation in section 5:12 which is not under discussion, and therefore do not think would bother anyone: "The State shall be divided by law into circuits of the Supreme Court and into circuits of the appellate courts."

If the legislature failed to do this, what recourse would you think there would be?

THE CHAIRMAN: Delegate Hardwicke.

DELEGATE HARDWICKE: I think that you are raising a very important question, and I think that we are going to have more of this problem as we go along in this Convention and this Committee of the Whole, Delegate Wheatley.

I must confess that I have had a change of philosophy myself since coming to this Convention. At the outset I felt that it would be appropriate for the Constitution to mandate almost anything and any type of legislation to the legislature, and that it would be appropriate to include it in the constitution. However, upon consideration of a number of very specific items, it occurs to me that there is a type of legislation which involves such a wide area of discretion in the legislative body that it is almost impossible to mandate the enactment of such legislation to the legislature.

In other words, it occurs to me that when you are talking about conservation, enhancement, improvement, protection of natural resources, that there is a tremendous latitude of discretion to the legislature to determine how best to protect, and the extent to protect, and those are things which I cannot see a court substituting its judgment.

For that reason, Delegate Wheatley, I think that this kind of legislation and the matter before us involves such a broad latitude of legislative discretion that I do not think it is appropriate to mandate the legislature. However, I do not think that we have the same considerations in redistricting judicial districts and that kind of thing, because there, although there is a certain amount of legislative discretion also, you still have certain principles which are more inviolate in nature. You have your one-man/one-vote principle, which the

Supreme Court has said is the prime consideration. In judicial districts, for example, I can see much firmer areas of demarkation, much less judicial, or much more judicial area than legislative discretion. So in answer to the question, this is an awfully long-winded answer, I think that we can mandate where there is a minimum of legislative discretion but should not mandate where there is a great deal of legislative discretion.

THE CHAIRMAN: Delegate Wheatley.

DELEGATE WHEATLEY: If I might ask one further question, to follow this up—

THE CHAIRMAN: Do you yield for a question?

DELEGATE HARDWICKE: Yes.

DELEGATE WHEATLEY: If I am wrong, correct me. You are saying there are areas where the court may mandate if the legislature fails to act, providing there is a specific degree of clarity in detail?

DELEGATE HARDWICKE: Well, Delegate Wheatley, your proviso is not quite the one that I would put down. I would say that the court can act for the legislature in the absence of the legislature acting for itself, if there are objective principles which can be arrived at which the court can by its judgment implement.

DELEGATE WHEATLEY: One further question.

THE CHAIRMAN: Delegate Wheatley.

DELEGATE WHEATLEY: To frame the hypothetical again then, if the provision said that the General Assembly shall pass such laws as shall be necessary to insure clean air for the residents of the State of Maryland, as determined by health authorities, you would feel this would be the type that could be mandated by a court?

THE CHAIRMAN: Delegate Hardwicke?

DELEGATE HARDWICKE: No, Delegate Wheatley, because I think that clean air and these concepts are far too fluid to admit of any judicial standards.

DELEGATE WHEATLEY: Thank you, Mr. Chairman.

THE CHAIRMAN: The Chair recognizes Delegate Boyer to speak in opposition to the amendment.

DELEGATE BOYER: Mr. Chairman, I would have to speak in opposition to the amendment.