

Proceedings of the
CONSTITUTIONAL CONVENTION
OF HAWAII
of 1978

Volume II

Proceedings of the
CONSTITUTIONAL
CONVENTION OF HAWAII
of 1978

— Volume II —

COMMITTEE OF THE WHOLE DEBATES

Published under the supervision of the
CHIEF CLERK OF THE CONVENTION

State of Hawaii

Honolulu, Hawaii
1980

Editor's Notes

Volume II of the 1978 Proceedings consists primarily of the debates of the Committee of the Whole, arranged by subject according to committee proposal.

The bracketed article numbers in many of the section headings at the beginning of a debate indicate the former article numbers in effect prior to ratification in November 1978, and were inserted as these were the numbers used throughout the debates. The article numbers that appear just in front are the numbers now in use.

Editing throughout was kept to a minimum. The occasional footnotes that appear within the text of a debate were added only in those instances when a delegate used a quotation in his speech and either did not cite a source or the source cited was so incomplete as to be confusing or misleading. The word kanalua, meaning to doubt or hesitate, was used occasionally when a delegate wished to postpone voting until the end of a roll call.

The addition of an appendix documenting the delegate amendments to committee proposals was felt necessary because so much in the debates pertains to these amendments, and nowhere in either volume are they included.

Contents

<u>Officers and Delegates</u>	xi
<u>Standing Committees</u>	xv
CODE OF ETHICS - Committee Proposal No. 1	
Article XIV	
Allen Barr, Chairman	
August 14, 1978	
Evening Session	1
STATE BOUNDARIES, CAPITAL, FLAG AND	
MOTTO - Committee Proposal No. 2	
Article XV	
Les Ihara, Chairman	
August 16, 1978	
Afternoon Session	39
THE EXECUTIVE - Committee Proposal No. 3	
Articles V and XVIII	
Wallace Weatherwax, Chairman	
August 17, 1978	
Afternoon Session	48
PREAMBLE, GENERAL AND MISCELLANEOUS PROVISIONS, REVISION AND AMENDMENT - Committee Proposal No. 4	
Articles XVI and XVII	
Les Ihara, Chairman	
August 18, 1978	
Evening Session	93
PUBLIC HEALTH AND WELFARE; LABOR AND	
INDUSTRY - Committee Proposal No. 5	
Articles IX and XIII	
Larry Uyehara, Chairman	
August 21, 1978	
Evening Session	123
August 22, 1978	
Evening Session	142
EDUCATION - Committee Proposal No. 6	
Article X	
H. Jean Goodenow, Chairman	
August 23, 1978	
Evening Session	170
August 24, 1978	
Morning Session	211
Evening Session	217
LOCAL GOVERNMENT - Committee Proposal No. 7	
Articles VIII and XVIII	
Floyd Pulham, Chairman	
August 25, 1978	
Afternoon Session	246

THE LEGISLATURE, REAPPORTIONMENT - Committee	
Proposal No. 8	
Articles III, IV and XVIII	
Bruce McCall, Chairman	
August 28, 1978	
Afternoon Session	276
August 29, 1978	
Afternoon Session	302
THE EXECUTIVE - Executive and Administrative Offices and Departments	
Committee Proposal No. 9	
Article V, Section 6	
James Shinno, Chairman	
August 30, 1978	
Afternoon Session	342
THE JUDICIARY - Committee Proposal No. 10	
Article VI	
Naomi Campbell, Chairman	
August 30, 1978	
Afternoon Session	344
August 31, 1978	
Afternoon Session	375
HAWAIIAN AFFAIRS - Committee Proposal No. 11	
Article XII	
Hartwell Blake, Chairman	
September 2, 1978	
Afternoon Session	410
HAWAIIAN AFFAIRS - Committee Proposal No. 12	
Articles X, XII, XV and XVI	
Hartwell Blake, Chairman	
September 2, 1978	
Afternoon Session	425
Evening Session	453
HAWAIIAN AFFAIRS - Committee Proposal No. 13	
Articles XI, XII, XVI and XVIII	
Hartwell Blake, Chairman	
September 2, 1978	
Evening Session	456
TAXATION AND FINANCE - Committee Proposal No. 14	
Article VII	
John Ishikawa, Chairman	
September 6, 1978	
Morning Session	463
Afternoon Session	502
Evening Session	539
September 7, 1978	
Afternoon Session	570
BILL OF RIGHTS - Committee Proposal No. 15	
Article I	
Kekoa Kaapu, Chairman	
September 8, 1978	
Afternoon Session	606
September 9, 1978	
Morning Session	623
Afternoon Session	650

SUFFRAGE AND ELECTIONS - Committee Proposal No. 16	
Article II	
Kekoa Kaapu, Chairman	
September 11, 1978	
Morning Session	698
Afternoon Session	733
Evening Session	784
September 12, 1978	
Morning Session	820
CONSERVATION, CONTROL AND DEVELOPMENT OF	
RESOURCES - Committee Proposal No. 17	
Article XI	
Tom Okamura, Chairman	
September 14, 1978	
Morning Session	855
STYLE - Committee Proposal No. 18	
Carol Fukunaga, Chairman	
September 12, 1978	
Afternoon Session	911
Appendix	913
Index	941

Officers and Delegates

CONVENTION OFFICERS

President	William W. Paty, Jr.
Vice-President	Bruce C. McCall
Vice-President	Allen W. Barr
Vice-President	Paul E. DiBianco
Vice-President	Donald D. H. Ching
Vice-President	Larry S. Uyehara
Vice-President	H. Jean Goodenow
Vice-President	Les S. Ihara, Jr.
Vice-President	James M. Shinno
Secretary	M. Haunani Ching
Assistant Secretary	Craig G. Nakamura

ELECTED STAFF

Chief Clerk	George M. Amimoto
Assistant Clerk	Colin T. Miyabara

ADMINISTRATOR OF THE CONVENTION

Administrator	Thomas M. W. Lee
---------------------	------------------

DELEGATES TO THE CONVENTION

District 1	Floyd W. Pulham Gil Silva
District 2A	Helene H. Hale Lawrence H. Kono
District 2B	Bruce C. McCall Philip I. Yoshimura
District 3	Lester T. Fushikoshi Marcelliano K. Villaverde
District 4	Yvonne Y. Izu Leon K. Sterling, Jr.
District 5A	Mark J. Andrews Allen W. Barr
District 5B	Masami Hironaka John E. Tam
District 6A	David W. Blean Riki Hokama
District 6B	Joseph M. Souki Anthony P. Takitani

District 7A	Steve O'Toole David D. Stegmaier
District 7B	Tom Okamura Wallace W. Weatherwax
District 8A	Thomas H. Hamilton Craig G. Nakamura
District 8B	Rai Saint Chu Barbara Marumoto
District 9A	Karen H. Iwamoto Bruce I. Yamashita
District 9B	Les S. Ihara, Jr. Dean T. Tamayori
District 10A	M. Haunani Ching Walter H. Ikeda
District 10B	Dennis K. S. Chun John J. Stone
District 11A	H. Jean Goodenow Paul L. Lacy
District 11B	Georgia E. Miller James T. Shon
District 12A	Mary Ann Barnard Michael M. F. Liu
District 12B	Milton Y. Hirata Kekoa D. Kaapu
District 13A	Bruce E. Barnes H. William Burgess
District 13B	Teruo Ihara Anne H. Takemoto
District 13C	Carol A. Fukunaga Masako H. Ledward
District 14A	John M. Ishikawa C. Randall Peterson
District 14B	Calvin C. Ching Alan W. Kimball
District 15A	Anthony K. Chang Peter C. Lewis
District 15B	Warner Sutton Robert S. Taira
District 16A	Laura M. Ching Dennis Ihara
District 16B	Franklin I. Hayashida Akira Sakima
District 17A	Naomi S. Campbell Larry S. Uyehara

District 17B	Marion Lee John D. Waihee III
District 18A	Kay K. Kaito Alice T. Takehara
District 18B	Emilio S. Alcon Richard I. Fujimoto
District 19A	Donald D. H. Ching Elayne M. Funakoshi
District 19B	Clarice Y. Hashimoto Donna Odanaka
District 20A	Gerald T. Hagino Ginger K. Wurdeman
District 20B	Melvin Y. Nishimoto Wayne T. Takahashi
District 21A	Adelaide (Frenchy) De Soto Patricia P. Nozaki
District 21B	Michael L. Crozier Calvin W. Ontai
District 22A	Famika Anae William W. Paty, Jr.
District 22B	Akira Hino Rachel K. Lee
District 23	Jacqueline T. Chong Charlene R. Hoe
District 24A	Kayo R. Chung Dona L. Hanaike
District 24B	Paul E. DiBianco Richard Y. Sasaki
District 25A	Walter K. Cabral Masu K. Dyer
District 25B	Robert F. Ellis Leslee G. Hornick
District 26	Donald W. Eastvold, Jr. John R. Penebacker
District 27A	Lehua Fernandes Salling Jeremy Harris
District 27B	Frank de Costa Yoshio Kojima
District 27C	Hartwell K. Blake James M. Shinno

Standing Committees

BILL OF RIGHTS, SUFFRAGE AND ELECTIONS

Wallace W. Weatherwax, Chairperson
Akira Hino, Vice-Chairperson
David D. Stegmaier, Vice-Chairperson

Barnard, Mary Ann
Barnes, Bruce E.
Campbell, Naomi S.
Ching, M. Haunani
Chong, Jacqueline T.
de Costa, Frank
Dyer, Masu K.
Eastvold, Donald W., Jr.
Funakoshi, Elayne M.
Goodenow, H. Jean
Hale, Helene H.
Hanaïke, Dona L.
Hayashida, Franklin I.
Hironaka, Masami

Ihara, Les S., Jr.
Ikeda, Walter H.
Kojima, Yoshio
Kono, Lawrence H.
Liu, Michael M. F.
Odanaka, Donna
Penebacker, John R.
Peterson, C. Randall
Taira, Robert S.
Takehara, Alice T.
Takemoto, Anne H.
Villaverde, Marcelliano K.
Waihee, John D. III

LEGISLATURE

Melvin Y. Nishimoto, Chairperson
Jacqueline T. Chong, Vice-Chairperson
Riki Hokama, Vice-Chairperson

Andrews, Mark J.
Barr, Allen W.
Blean, David W.
Cabral, Walter K.
Ching, Donald D. H.
Ching, Laura M.
de Costa, Frank
Goodenow, H. Jean
Hanaïke, Dona L.
Hirata, Milton Y.
Kaapu, Kekoa D.
Kaito, Kay K.
Kimball, Alan W.
Kojima, Yoshio

Lee, Rachel K.
Liu, Michael M. F.
Miller, Georgia E.
Okamura, Tom
O'Toole, Steve
Pulham, Floyd W.
Shon, James T.
Stegmaier, David D.
Stone, John J.
Takemoto, Anne H.
Takitani, Anthony P.
Villaverde, Marcelliano K.
Yamashita, Bruce I.

EXECUTIVE

Carol A. Fukunaga, Chairperson
Joseph M. Souki, Vice-Chairperson
Dean T. Tamayori, Vice-Chairperson

Andrews, Mark J.
Barnes, Bruce E.

Ching, Donald D. H.
Chu, Rai Saint

Chun, Dennis K. S.
 Crozier, Michael L.
 DiBianco, Paul E.
 Eastvold, Donald W., Jr.
 Funakoshi, Elayne M.
 Fushikoshi, Lester T.
 Hagino, Gerald T.
 Hamilton, Thomas H.
 Hino, Akira
 Ihara, Dennis
 Ihara, Les S., Jr.
 Ishikawa, John M.

Izu, Yvonne Y.
 Ledward, Masako H.
 Marumoto, Barbara
 Nakamura, Craig G.
 O'Toole, Steve
 Sakima, Akira
 Takitani, Anthony P.
 Waihee, John D. III
 Weatherwax, Wallace W.
 Wurdeman, Ginger K.
 Yoshimura, Philip I.

JUDICIARY

Walter H. Ikeda, Chairperson
 Calvin C. Ching, Vice-Chairperson
 Anthony P. Takitani, Vice-Chairperson

Burgess, H. William
 Campbell, Naomi S.
 Chang, Anthony K.
 Ching, Donald D. H.
 Ching, Laura M.
 Chu, Rai Saint
 DiBianco, Paul E.
 Dyer, Masu K.
 Fernandes Salling, Lehua
 Fujimoto, Richard I.
 Ihara, Dennis
 Ihara, Teruo
 Iwamoto, Karen H.
 Lee, Marion

Lewis, Peter C.
 Liu, Michael M. F.
 McCall, Bruce C.
 Nakamura, Craig G.
 Nishimoto, Melvin Y.
 Ontai, Calvin W.
 Sakima, Akira
 Stegmaier, David D.
 Stone, John J.
 Sutton, Warner
 Tam, John E.
 Tamayori, Dean T.
 Weatherwax, Wallace W.
 Yamashita, Bruce I.

TAXATION AND FINANCE

Peter C. Lewis, Chairperson
 Marion Lee, Vice-Chairperson
 Wayne T. Takahashi, Vice-Chairperson

Andrews, Mark J.
 Barr, Allen W.
 Blake, Hartwell K.
 Burgess, H. William
 Ching, M. Haunani*
 DiBianco, Paul E.
 Ellis, Robert F.
 Fernandes Salling, Lehua
 Hayashida, Franklin I.
 Hirata, Milton Y.
 Ikeda, Walter H.
 Ishikawa, John M.
 Iwamoto, Karen H.

Izu, Yvonne Y.
 Kaapu, Kekoa D.
 Kono, Lawrence H.
 Lacy, Paul L.
 Marumoto, Barbara
 McCall, Bruce C.
 Nozaki, Patricia P.
 Peterson, C. Randall
 Sakima, Akira
 Shinno, James M.
 Taira, Robert S.
 Tam, John E.
 Waihee, John D. III
 Yoshimura, Philip I.

*New member, added 7/11/78.

LOCAL GOVERNMENT

Akira Sakima, Chairperson
 Emilio S. Alcon, Vice-Chairperson
 Hartwell K. Blake, Vice-Chairperson

Barnard, Mary Ann	Lee, Marion
Cabral, Walter K.	Lewis, Peter C.
Ching, Donald D. H.	Marumoto, Barbara
Ching, M. Haunani	McCall, Bruce C.
Ellis, Robert F.	Miller, Georgia E.
Hagino, Gerald T.	Shon, James T.
Hale, Helene H.	Souki, Joseph M.
Hino, Akira	Stone, John J.
Hokama, Riki	Takitani, Anthony P.
Hornick, Leslee G.	Tam, John E.
Iwamoto, Karen H.	Tamayori, Dean T.
Izu, Yvonne Y.	Villaverde, Marcelliano K.
Kimball, Alan W.	Wurdeman, Ginger K.
Kojima, Yoshio	Yamashita, Bruce I.

PUBLIC HEALTH AND WELFARE; LABOR AND INDUSTRY

Lester T. Fushikoshi, Chairperson
 Richard I. Fujimoto, Vice-Chairperson
 Gil Silva, Vice-Chairperson

Alcon, Emilio S.	Ishikawa, John M.
Barnard, Mary Ann	Kono, Lawrence H.
Cabral, Walter K.	Lee, Marion
Ching, Calvin C.	Penebacker, John R.
Chung, Kayo R.	Peterson, C. Randall
de Costa, Frank	Sasaki, Richard Y.
Ellis, Robert F.	Souki, Joseph M.
Fukunaga, Carol A.	Stone, John J.
Hashimoto, Clarice Y.	Sutton, Warner
Hokama, Riki	Takahashi, Wayne T.
Ihara, Dennis	Takehara, Alice T.
	Uyehara, Larry S.*

*New member, added 7/17/78.

EDUCATION

Teruo Ihara, Chairperson
 Yoshio Kojima, Vice-Chairperson
 Alice T. Takehara, Vice-Chairperson

Alcon, Emilio S.	Hironaka, Masami
Anae, Famika	Kaito, Kay K.
Chong, Jacqueline T.	Lacy, Paul L.
Chung, Kayo R.	Ledward, Masako H.
Dyer, Masu K.	Lee, Rachel K.
Eastvold, Donald W., Jr.	Nozaki, Patricia P.
Fujimoto, Richard I.	Okamura, Tom
Fushikoshi, Lester T.	Ontai, Calvin W.
Goodenow, H. Jean	Pulham, Floyd W.
Hamilton, Thomas H.	Sasaki, Richard Y.
Hashimoto, Clarice Y.	Uyehara, Larry S.
Hirata, Milton Y.	Wurdeman, Ginger K.

ENVIRONMENT, AGRICULTURE, CONSERVATION AND LAND

Anthony K. Chang, Chairperson
 Gerald T. Hagino, Vice-Chairperson
 Clarice Y. Hashimoto, Vice-Chairperson

Barnes, Bruce E.	Lacy, Paul L.
Ching, Calvin C.	Lewis, Peter C.
Ching, Laura M.	McCall, Bruce C.
Chun, Dennis K. S.	Nakamura, Craig G.
Crozier, Michael L.	Nozaki, Patricia P.
de Costa, Frank	O'Toole, Steve
De Soto, Adelaide	Sasaki, Richard Y.
Fukunaga, Carol A.	Shinno, James M.
Funakoshi, Elayne M.	Shon, James T.
Harris, Jeremy	Takahashi, Wayne T.
Hoe, Charlene R.	Takitani, Anthony P.
Hornick, Leslee G.	Waihee, John D. III
Ihara, Les S., Jr.	Yoshimura, Philip I.

HAWAIIAN AFFAIRS

Adelaide De Soto, Chairperson
 John R. Penebacker, Vice-Chairperson
 Leon K. Sterling, Jr., Vice-Chairperson

Alcon, Emilio S.	Hayashida, Franklin I.
Barr, Allen W.	Hoe, Charlene R.
Blake, Hartwell K.	Hokama, Riki
Blean, David W.	Hornick, Leslee G.
Chang, Anthony K.	Ihara, Dennis
Chong, Jacqueline T.	Ihara, Teruo
Chung, Kayo R.	Nozaki, Patricia P.
Crozier, Michael L.	Ontai, Calvin W.
Fernandes Salling, Lehua	Shinno, James M.
Hagino, Gerald T.	Silva, Gil
Harris, Jeremy	Sutton, Warner

ETHICS

Tom Okamura, Chairperson
 Famika Anae, Vice-Chairperson
 Laura M. Ching, Vice-Chairperson

Blean, David W.	Kojima, Yoshio
Burgess, H. William	Lee, Rachel K.
Cabral, Walter K.	Miller, Georgia E.
Campbell, Naomi S.	Nakamura, Craig G.
Chu, Rai Saint	Nishimoto, Melvin Y.
Chun, Dennis K. S.	Shon, James T.
De Soto, Adelaide	Silva, Gil
Fukunaga, Carol A.	Souki, Joseph M.
Harris, Jeremy	Sterling, Leon K., Jr.
Hashimoto, Clarice Y.	Taira, Robert S.
Hirata, Milton Y.	Uyehara, Larry S.
Hironaka, Masami	Yoshimura, Philip I.
Kaito, Kay K.	

REVISION, AMENDMENT AND OTHER PROVISIONS

Yvonne Y. Izu, Chairperson
 Milton Y. Hirata, Vice-Chairperson
 Kay K. Kaito, Vice-Chairperson

Anae, Famika
 Andrews, Mark J.
 Barr, Allen W.
 Chung, Kayo R.
 De Soto, Adelaide
 Fernandes Salling, Lehua
 Fujimoto, Richard I.
 Fushikoshi, Lester T.
 Hamilton, Thomas H.
 Hanaike, Dona L.

Hayashida, Franklin I.
 Hornick, Leslee G.
 Ihara, Dennis*
 Ikeda, Walter H.
 Kaapu, Kekoa D.
 Kono, Lawrence H.
 Marumoto, Barbara
 Ontai, Calvin W.
 Uyehara, Larry S.
 Villaverde, Marcelliano K.

*New member, added 7/11/78.

STYLE

Thomas H. Hamilton, Chairperson
 Donna Odanaka, Vice-Chairperson
 John J. Stone, Vice-Chairperson

Barnes, Bruce E.
 Burgess, H. William
 Ching, Calvin C.
 Ching, Laura M.
 Eastvold, Donald W., Jr.
 Ellis, Robert F.
 Hale, Helene H.
 Ihara, Teruo
 Kimball, Alan W.
 Ledward, Masako H.

Nozaki, Patricia P.
 Penebacker, John R.
 Pulham, Floyd W.
 Takahashi, Wayne T.
 Takehara, Alice T.
 Takemoto, Anne H.
 Tamayori, Dean T.
 Weatherwax, Wallace W.
 Yoshimura, Philip I.

SUBMISSION AND INFORMATION

Karen H. Iwamoto, Chairperson
 Mary Ann Barnard, Vice-Chairperson
 Kayo R. Chung, Vice-Chairperson

Blake, Hartwell K.
 Chu, Rai Saint
 Hagino, Gerald T.
 Harris, Jeremy
 Hino, Akira
 Hironaka, Masami
 Hoe, Charlene R.
 Ihara, Les S., Jr.
 Kaapu, Kekoa D.

Kimball, Alan W.
 Miller, Georgia E.
 Odanaka, Donna
 Peterson, C. Randall
 Silva, Gil
 Stegmaier, David D.
 Sterling, Leon K., Jr.
 Taira, Robert S.
 Waihee, John D. III

ADMINISTRATIVE STANDING COMMITTEES

BUDGET, ACCOUNTS AND PRINTING

Masako H. Ledward, Chairperson
 Michael L. Crozier, Vice-Chairperson
 Franklin I. Hayashida, Vice-Chairperson

Anae, Famika
 Blean, David W.
 Campbell, Naomi S.
 Dyer, Masu K.
 Hale, Helene H.
 Hanaïke, Dona L.
 Ishikawa, John M.
 Lacy, Paul L.
 Lee, Rachel K.

Okamura, Tom
 O'Toole, Steve
 Sasaki, Richard Y.
 Sterling, Leon K., Jr.
 Sutton, Warner
 Tam, John E.
 Uyehara, Larry S.
 Yamashita, Bruce I.

RULES

Anne H. Takemoto, Chairperson
 Richard Y. Sasaki, Vice-Chairperson
 Marcelliano K. Villaverde, Vice-Chairperson

Campbell, Naomi S.
 Chang, Anthony K.
 Ching, M. Haunani
 Chun, Dennis K. S.
 DiBianco, Paul E.
 Funakoshi, Elayne M.
 Goodenow, H. Jean
 Hironaka, Masami
 Hoe, Charlene R.
 Hokama, Riki

Lee, Rachel K.
 Liu, Michael M. F.
 Nishimoto, Melvin Y.
 Odanaka, Donna
 Penebacker, John R.
 Pulham, Floyd W.
 Shinno, James M.
 Taira, Robert S.
 Wurdeman, Ginger K.
 Yamashita, Bruce I.

Debates in Committee of the Whole on CODE OF ETHICS

Committee Proposal No. 1

(Article XIV)

Chairman: DELEGATE ALLEN BARR

Monday, August 14, 1978 • Evening Session

The Committee of the Whole was called to order at 7:20 p.m.

Delegate Allen Barr presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. We have resolved into this Committee of the Whole to consider Committee Proposal No. 1. If there are no objections, we will take the proposal by paragraphs. Delegate Okamura.

DELEGATE OKAMURA: I move for adoption of Committee Proposal No. 1.

DELEGATE TAIRA: I second the motion.

CHAIRMAN: It has been moved and seconded to adopt Committee Proposal No. 1. Are we ready for the question? Delegate Chun.

DELEGATE CHUN: Point of information. You say we're going to go by paragraphs and you just said that it has been moved to adopt Committee Proposal No. 1. Are we going by paragraphs or are we going by the whole thing?

CHAIRMAN: I am presuming that you are going to want to discuss it, Delegate Chun, and to facilitate discussion I am suggesting that we do it by paragraphs. If you object to that, I am open to a motion to do it another way. Do you have an objection?

DELEGATE CHUN: I'd like to discuss it by paragraphs.

CHAIRMAN: You would.

DELEGATE CHUN: Yes, but what you said was that you were going to take Committee Proposal No. 1, which is the entire amendment from what I can see.

CHAIRMAN: That's correct. What is your problem?

DELEGATE CHUN: I just want to be assured that you're going by paragraphs.

CHAIRMAN: Yes, that's what I just said. If there are no objections, we will take the proposal by paragraphs.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: I rise on a point of parliamentary inquiry. Mr. Chairman, I realize the rules of the Convention state that the Committee of the Whole will not recess. How do you intend to handle this in case we need a slight break in the action?

CHAIRMAN: I intended to handle it when it came up.

DELEGATE DONALD CHING: Mr. Chairman, I thought maybe you ought to apprise us as to how you're going to handle it so that in case it's a delicate situation, no one is going to cop out.

CHAIRMAN: The Chair, if there is a call for a recess, will be willing to recess for a short period of time. However, that is based on the practice of the 1968 convention and on the need sometimes for a recess, and it is technically not in the rules of the Committee of the Whole and therefore long recesses will be judged out of order.

DELEGATE DONALD CHING: Thank you.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I rise to speak in favor of the motion. The committee spent many hours deliberating on this proposal and it is one in which careful thought and consideration was given, and I feel it is a proposal that we can all be very proud of. At this time, I would like to thank my fellow members for their unselfish effort and patience. I would also like to thank Carol Lee and Jim Funaki of the attorney's office, but most important I would like to thank my staff, especially my committee clerk, Bill Brownell.

Mr. Chairman, in public opinion polls conducted earlier this year, the purpose of ethics in government was rated the No. 1 concern among the electorate. The proposal of the Committee on Ethics is a response to this public concern and to concern among the delegates themselves. If adopted, this proposal will lead to real and lasting improvement in the system of ethics regulation in our state and county government. Constitutional revisions contained in this proposal will help restore public confidence in our government. That in itself is reason for us to adopt this proposal. Public confidence in government is a crucial ingredient in any democratic system. The strength and breadth of these constitutional guidelines on ethics will promote such confidence. I would also like to emphasize, however, that this proposal is not put forth just to appease the public. It is not just window dressing or *shibai*. It will actually lead to a higher level of ethical conduct among government officials and employees. I believe that a knowledge of the history of ethics reform and a careful viewing of this proposal can only lead to that conclusion.

I have heard it said that 20 years ago we didn't need ethics codes and that nowadays we are creating them to placate the public. The real truth is that 20 years ago unethical behavior in government was more accepted and more widespread. I remember as a youngster in Hilo, the county workers would pave the driveways and repair the homes of people who were friends of the mayor. Everybody knew it and, although most personally objected, it was nevertheless condoned. Things like that aren't accepted so easily anymore. The standards are now higher. The initial hostility to ethics codes when they were first introduced to Hawaii in 1967 has gradually given way to acceptance. Compliance with ethics code standards among legislators and employees has become more automatic and more expected. There is less of the attitude that, well, this may be questionable but everybody else does it, so it's okay for me too. There are more inquiries to ethics commissions from government employees who are double-checking on their own conduct or that of their co-workers.

The existence of a watchdog ethics commission has also made a difference. On the state level, the ethics commission has put out over 1,350 formal and informal opinions since 1968, some of which have had agency-wide effects on the conduct of government business. Though there is still progress needed, I think it is plain that progress has already been made and that ethics reform has made a difference. I think it is also plain that further progress will be made through a constitutional revision contained in the committee proposal before us.

Let me explain some of the reforms that will flow directly from the ethics committee proposal. First of all, this proposed constitutional language sets out minimum standards that all codes of ethics in the State must live up to. All codes of ethics must deal with such areas as the use of position, acceptance of gifts, conflicts of interest involved with government contract, financial disclosure, and so forth. What is the effect of this? One effect is that we will get away from situations where we have high-ranking state officials making financial disclosure while high-ranking Honolulu city and county officials do not. In other words, we will make state and county ethics codes more consistent. At the same time, we will prevent either state or county government from repealing or diminishing an ethics code area such as financial disclosure. If the mood changes in any of

the legislative bodies over the years and becomes more hostile toward ethics regulation, the laws cannot be gutted or weakened without constitutional challenge from ethics commissions or other parties. Legislative bodies must live up to the constitutional intent that is inherent in the listing of minimum component areas for ethics codes--components that are listed in paragraph 3 of the committee proposal.

The second basic change that would come about through this proposed constitutional revision is that we will help to insure that codes of ethics are administered by impartial ethics commissions constituted through an independent selection process. Ethics codes do not have any real meaning unless they are effectively administered. By mandating ethics commissions, by putting restrictions on the political involvement of ethics commissioners and by mandating that such commissioners be selected in an impartial way, this proposal will help to guarantee the existence of a watchdog agency in our government that will uphold the codes of conduct and disclosure requirements that are part of ethics regulations.

The third basic change to come about through this proposal is that the applicability of ethics codes will be extended. Future constitutional conventions will now be mandated to enact their own ethics codes. Candidates for political office will now come under the financial disclosure section of the ethics code. Lobbyist registration and restriction will become a part of ethics codes.

Mr. Chairman, the Committee on Ethics believes that a number of very positive, important changes will flow from this proposed revision of the constitutional section on ethics. The committee further believes that these changes are being effected in a prudent, generalized manner well befitting the constitutional revision. The proposed constitutional language provides important guidelines for Hawaii's codes of ethics. It does not try to usurp the legislative bodies' responsibility to work out the specifics necessary to meet such guidelines. A proper balance is struck between the need for further constitutional guidelines in the area of ethics codes, the need for brevity, nonspecificity and flexibility in constitutional language.

In adopting this proposal, we will be protecting the progress that has been made up to now in ethics reform in Hawaii and will be extending it into new areas. Many changes that flow directly from this proposal constitute a definitive notice to all involved in government in Hawaii that this Constitutional Convention considered ethics an important area of concern and, as the policy statement and proposal indicate, that we seek to maintain the highest standards of ethical conduct in our government.

Hawaii has consistently been a leader in progressive ethics reform. Only a handful of states have constitutional provisions on ethics. By making these constitutional revisions, we'll be demonstrating once again our leadership in this area. Mr. Chairman, on behalf of the members of the ethics committee, I recommend the adoption of Committee Proposal No. 1.

CHAIRMAN: Thank you, Delegate Okamura. Delegate Shon.

DELEGATE SHON: Mr. Chairman, I rise to speak in favor of Committee Proposal No. 1 for two very basic reasons. The first is a recognition that public service is a rare opportunity. It is not just another job, not just another way of making money. It also is a satisfaction, and a challenge to use one's energies and talents to benefit the whole community. Mr. Chairman, this precious privilege is not an everyday thing. Our society encourages individual goals, individual achievement, individual success and wealth, but not many people actually are given a chance to make a contribution beyond personal or family interests, and I believe this proposal rightly recognizes the nobility, the privilege and the challenge of public service.

Second, because we are dealing with a privilege and not just an occupation, it is proper to require standards and sacrifices above and beyond what we ask of the private citizen. It is not enough for a public servant merely to be law-abiding; I think we must also act in setting an example. We must live up to the highest standards of conduct. I believe this proposal is an important step in that process. Admittedly, there are some things I would have liked included, but on balance I think the committee's recommendations are a positive and significant improvement in the policy and administration of ethics in the State of Hawaii. I think the chairman should be commended and I urge you all to vote for it.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: As a member of the Committee on Ethics, I urge adoption of the report and commend Delegate Okamura for his completeness. As an 'ohana member seeking truth and justice, I pose the question--what would have happened if this measure had not been delayed as to its constitutional intent? Would those delegates elected to this Convention have been allowed to file and seek election to other offices? In our deliberations and discussions, we considered abuses and indiscretions of other political bodies. I pray that each of us reaffirm his or her personal commitment to do the best we can here in Convention and that our house be cleaned before we point our finger at anyone else. Thank you.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Ellis.

DELEGATE ELLIS: Mr. Chairman, I move that we lay this motion on the table until such time as we resolve our own internal problems.

DELEGATE DiBIANCO: I second it, Mr. Chairman.

CHAIRMAN: The Chair must inform you that a motion to table is not in order in the Committee of the Whole. It is a privileged motion, which is not in order here.

DELEGATE ELLIS: May I defer? May I ask that this motion be deferred at this stage?

CHAIRMAN: The motion to defer is also a privileged motion. We would have to rise and report no action and have the Convention itself....

DELEGATE ELLIS: In view of the urgency of the situation--I move that we rise and report to the Convention as a whole on the urgency of the situation. I must get my point before the delegation.

CHAIRMAN: It's been moved and seconded that we rise and report. Are we ready for the question? All those in favor of rising and reporting please say aye. Opposed, say no. The noes have it. The motion is lost, we will not rise and report. Is there any further discussion on the first paragraph? If there is no further--yes, Delegate Chun.

DELEGATE CHUN: I'd like to amend the first paragraph by adding a sentence to it. I have it written here. It isn't in proper amendment form if I am to follow Delegate Taira's example.

CHAIRMAN: Delegate Chun, the Chair must inform you that, according to our rules, we must have it submitted in writing. Do you have it in writing?

DELEGATE CHUN: I have it in writing.

CHAIRMAN: Make your motion and bring it to the clerk.

DELEGATE CHUN: I'd like to amend the first paragraph of Section 5 to add this sentence: "Each elected or appointed official shall act in total good faith and undivided loyalty for the benefit of all the citizens of the State."

DELEGATE DiBIANCO: I second the motion.

CHAIRMAN: Would you please bring the motion to the Chair. Delegate Chun, I see you don't have the information I need. You wanted to add this to the end of the paragraph?

DELEGATE CHUN: Yes, I did. I wasn't sure exactly how this process was to work.

CHAIRMAN: All right. It has been moved and seconded that we add to the first paragraph the following sentence: "Each elected or appointed official shall act in total good faith and undivided loyalty for the benefit of all the citizens of the State." May the Chair recommend, for easier flow in future Committees of the Whole, that those delegates

who plan to make an amendment please prepare it in advance and present it to the clerk who will make copies for all the delegates. The Chair will make an exception here simply because this is our first session of the Committee of the Whole. Delegate Hale.

DELEGATE HALE: Could we ask Delegate Chun to give us some rationale behind this?

CHAIRMAN: We're getting to that. Delegate Chun.

DELEGATE CHUN: The fundamental belief in our society is the responsibility of each public official to be of public service. Now the feeling has come about that the officials of this State are not public servants but that they serve themselves and those with sufficient ties to warrant service. The ordinary man on the street does not feel that under the present system he has a public servant. There is not a single delegate here who can honestly say that many citizens in his area are not disillusioned by the political situation. In effect, we have lost the trust of the electorate. The ethics committee has expanded the wording of the present constitutional provision, but an increase in words does not necessarily mean that the ethics provision will be strengthened. We put a Band-Aid on this cancer we call distrust for public officials but it pervades our entire State. We put a Band-Aid on, hoping that the situation would improve. I think that we're fooling ourselves, which may be what we are attempting to do, and not only ourselves, we are also misleading the public into thinking that we've done something. The situation demands more than a Band-Aid. What this amendment seeks is to place in our highest document the expectations which we the people place on the elected and appointed officials of our State, that public officials owe their loyalty to all citizens of the State, not just a chosen few, and that each official should act with total good faith in carrying out that duty.

The committee proposal sets out the expectation that each official be guided by his personal integrity, which makes the matter of ethics evolve about a mystical guideline, depending on the situation. The amendment makes it clear where we want their loyalties to lie. It has been said that officials are already guided by such ideals and that there is no need to place this in the Constitution. After all, the way to deal with an official who has failed in his duties is to vote him out of office. Such is the present situation preserved wherein the public feels alienated from its elected representatives.

It has also been said that there is no way that the Constitution or statutory codes of ethics can be enforced in requiring such good faith and loyalty. Are we to admit that there is nothing we can do for this type of cancer and that we should allow the patient to slip away, hoping not to attract attention to the death? This line of logic also says that the present code of ethics is not enforceable. Why then do we have it, if in the final analysis we must always depend upon the personal integrity of each official. I prefer to believe that ethics is an area where laws can be enforced. There should be something in the Constitution, a guiding line, which tells every official, elected or appointed, where you want his duties to lie, where his loyalties are to go. Thank you.

CHAIRMAN: Thank you, Delegate Chun. Are we ready for the question? Delegate Okamura.

DELEGATE OKAMURA: I rise to speak against the amendment. The ethics code already requires loyalty of public officials in their codes. I don't think that this is necessary.

CHAIRMAN: Are we ready for the question? The question before us is to amend the first paragraph of Section 5 by adding the following sentence: "Each elected or appointed official shall act in total good faith and undivided loyalty for the benefit of all the citizens of the State." All those in favor of the amendment, please indicate so by raising your hand. All those opposed please raise your hand. The motion is lost. Is there any further discussion on the first paragraph? We will turn now to the second paragraph. Is there any discussion on the second paragraph? Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I have an amendment to offer to paragraph 2 of Committee Proposal No. 1. I believe the delegates all have copies of the proposed amendment, if the clerk for the record will read this amendment for us, please?

CHAIRMAN: Will the clerk please read the amendment.

CLERK: Yes, Mr. Chairman. "The second and third sentences of the second paragraph of Section 5, Article XIV of the State Constitution, in Committee Proposal No. 1, are amended to read as follows: 'The members of ethics commissions shall be prohibited from taking an active part in political management or in political campaigns. Ethics commissioners shall be selected in a manner which assures their independence and impartiality.' "

DELEGATE TAIRA: Mr. Chairman, I move for adoption of the amendment.

DELEGATE WAIHEE: I second the motion.

CHAIRMAN: It has been moved and seconded to adopt the amendment just read.
Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, in rising to speak for the proposed amendment, I'd like to yield to our very capable and talented chairman of the ethics committee, Delegate Tom Okamura.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: Thank you. Mr. Chairman, I would like to speak in favor of the amendment. As a bit of very pertinent background information, I would like to point out that the language of this amendment is of the type the introducers first wanted, and the broader language that is now in the proposal was actually put in by mistake. The language in the proposal was taken from the judiciary's ethics guidelines, which have no binding statutory power, let alone constitutional power. The language of the amendment put forth by Delegate Taira is language that is taken from the federal Hatch Act which applies to federal employees and which has been held to be constitutional by the United States supreme court. The intent of this sentence of the amendment, I think, restricts active participation in campaigns by ethics commissioners on the grounds that this may influence them and violate the impartiality in their duties. I do not think that the intent of the sentence in the proposal should be to prohibit all political expressions by ethics commissioners. The supreme court has ruled that the act of making a political contribution is an act within the realm of fundamental First Amendment rights. With the original proposal language, we are prohibiting all political contributions by ethics commissioners. I think that we should stick to our specific intent and not go needlessly into overly broad language whose constitutionality is very questionable.

CHAIRMAN: Thank you, Delegate Okamura. Since this is an amendment by substitution, the Chair needs to ask if there are any further amendments on the existing second paragraph. Delegate Wurdeman.

DELEGATE WURDEMAN: I wonder if, by considering Delegate Taira's proposal, we may be setting a precedent since Delegate Okamura stated that it applied to all federal employees at the federal level, and I wonder if this should hold true at the state level, be it appointed boards, commissions or councils.

CHAIRMAN: Delegate Wurdeman, your question seems to relate to the substitute amendment. We need first to consider the existing amendments since this is an amendment by substitution, so I'm asking if there is any further amendment to the existing second paragraph. If not, then, Delegate Wurdeman, to whom are you addressing your point of information?

DELEGATE WURDEMAN: I assume, to Delegate Taira.

CHAIRMAN: Delegate Taira, do you wish to respond?

DELEGATE TAIRA: Mr. Chairman, again I yield to our great chairman, Delegate Okamura.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I cannot say for sure that this will be setting a precedent, but in my opinion I don't believe so. What we're doing here is trying to make the ethics commissioners as impartial in politics as possible and we're just limiting it to the ethics commissioners.

DELEGATE WURDEMAN: May I follow up on that line?

CHAIRMAN: Delegate Wurdeman.

DELEGATE WURDEMAN: Part of the rationale, Delegate Okamura, was that you were referring to the federal law and what they took into consideration and I wonder if that would hold true now.

DELEGATE OKAMURA: Mr. Chairman, is the delegate referring to the constitutionality aspect of this?

DELEGATE WURDEMAN: I'm referring to the rationale that you used.

CHAIRMAN: Delegate Okamura, the rationale has already been placed on the floor. That was a statement by Delegate Wurdeman. Delegate Hale.

DELEGATE HALE: I'd just like to ask a question. I understood Delegate Okamura to say that this amendment strengthens the provisions presently, but I notice that it leaves out the term "run for or hold any office." Is that covered in your amendment, Delegate Taira?

CHAIRMAN: Does the delegate wish to answer the question?

DELEGATE TAIRA: Mr. Chairman, may I yield again to the chairman of the ethics committee? I'm trying to expedite procedures, so if you'd direct all your questions to the expert, our chairman, please?

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: I believe that this will be covered within this amendment. It specifically refers to "active part in political management or in political campaigns." I feel that if someone's going to run for office themselves, they would not be able to do that because of this. They would not be able to campaign.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Would you have any objection--just to make it clear--that we put that in the amendment--"run for or hold any office"? Because to me this, the original proposal, is a little stronger than the amendment in that area, and I'm just wondering if you would have any objections to saying, from "...shall be prohibited from running for or holding office and from taking an active part..." Could we add that to make it stronger?

DELEGATE OKAMURA: I have no objections.

DELEGATE HALE: I don't have this amendment, but I think if we could combine the language of the two we'd really have a strong amendment.

CHAIRMAN: Delegate Hale, under our rules I will need to have you give the amendment to me in writing.

DELEGATE WAIHEE: Mr. Chairman.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak in favor of the amendment being proposed by Delegate Taira. I speak in favor of this amendment because I feel that it goes as far as we can constitutionally under the United States Constitution. The main difference between the present language in the ethics code and the proposed amendment is that the present language prohibits someone from making a political contribution and, as I understand the legal opinion on that, that may be unconstitutional. So that's really the essence of what is being removed by this proposed amendment.

This amendment would prohibit any member from taking an active part in political management or a political campaign and it is my belief that running for office would

definitely be taking an active part in the political campaign, so the only real difference between the two would be--well, the main difference would be that the language proposed by Delegate Taira has already passed constitutional muster whereas the language originally proposed by the ethics committee has some severe constitutional questions.

CHAIRMAN: Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, it seems to me that what you're doing is watering down what was originally a strong proposal and to call it by any other name is not being candid. There is a difference--

CHAIRMAN: Delegate Campbell, are you speaking against the motion?

DELEGATE CAMPBELL: I am speaking against the motion and I am speaking in favor of retention of the existing language because, as far as I'm concerned, running for office and participating in a political campaign are quite different and I urge everyone to retain the existing language and not water it down, because that's precisely what we will be doing if we change it.

DELEGATE HARRIS: Mr. Chairman.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: Point of clarification. Is it the opinion of the staff attorneys that the present language is unconstitutional?

CHAIRMAN: We have no opinion of the staff attorneys on the floor.

DELEGATE HARRIS: May I request one?

CHAIRMAN: The staff attorneys are not here. If there is no objection, the Chair declares a short recess.

At 7:48 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 7:57 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. It is the understanding of the Chair from our convention attorneys that the language in the amendment is taken essentially from the Hatch Act and has been tested in the supreme court. The language in Proposal No. 1 is stronger but has not been tested in any court. Delegate Hale.

DELEGATE HALE: May I suggest as a compromise that the Committee of the Whole report reflect the concern of the delegates that this does mean running for and holding office as well as taking part in a political organization, and maybe that will solve it.

DELEGATE TAIRA: Mr. Chairman.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, as the sponsor of this amendment, I would have no objection to having in the report to the Convention from this Committee of the Whole the concern expressed here, so that there is no misunderstanding that the term "taking an active part in...political campaigns" includes running for office.

DELEGATE CAMPBELL: Mr. Chairman.

CHAIRMAN: Delegate Campbell.

DELEGATE CAMPBELL: I do not think putting it in the committee report is the same as using it explicitly in the language of the code. I think there's a vast difference and this does not say run for office. It says "active part in political management or in political campaigns." That's different from running for office.

DELEGATE BLEAN: Mr. Chairman.

CHAIRMAN: Delegate Blean.

DELEGATE BLEAN: It's my understanding that the only conflict here is the statement "... directly or indirectly make any political contribution." Other than that, I feel that the language we drafted in the ethics committee is much stronger and depending on the vote on this amendment--I know I'm not allowed to introduce it now--I would then like to introduce an amendment keeping the original language in the ethics report except deleting the phrase "or directly or indirectly make any political contribution." I feel this is the compromise that we are seeking and will be a workable solution to the problem. Thank you.

CHAIRMAN: Thank you, Delegate Blean. Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I rise to speak in favor of the motion. I have with me the guidelines set up by the supreme court regarding the Hatch Act, and within the guidelines it states the things that are prohibited under the Hatch Act, and it includes No. 6, being a candidate for or campaigning for an elective public office. So it is covered. Thank you.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: If it's appropriate, I would like to amend the amendment.

CHAIRMAN: Do you have it in writing?

DELEGATE HARRIS: It's the deletion of a word. I would like to delete the word "active."

DELEGATE HALE: I second it.

CHAIRMAN: It has been moved and seconded to strike from the amendment the word "active" in the second line of the first sentence.

DELEGATE HARRIS: Excuse me, Mr. Chairman, that should include the article-- "an active."

CHAIRMAN: The words "an active." Correction on the amendment. Are we ready for the question?

DELEGATE SOUKI: Mr. Chairman.

CHAIRMAN: Delegate Souki.

DELEGATE SOUKI: What is the rationale for this amendment, Mr. Chairman?

CHAIRMAN: Delegate Harris, do you wish to speak to the amendment?

DELEGATE HARRIS: Yes, I believe the original amendment as passed around is much less stringent than the one agreed upon by the ethics committee. I believe the word "active" is a very nebulous term. It's difficult for me to determine what would be an active part and what would be a passive part in someone's political campaign. I think by removing that adjective it's much more clear the intent of this amendment.

DELEGATE OKAMURA: Mr. Chairman.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: I rise to speak against the amendment. I feel that if we take out those two words, in effect what we will be doing is prohibiting political contributions and again we get back to the constitutionality of the amendment.

CHAIRMAN: Are we ready for the question? The question is to amend the amendment by striking the words "an active" from the first of those two sentences. All those in favor say aye. All those opposed, no. The noes have it, the amendment is lost. The question now is the amendment offered by Delegate Taira. Delegate Chu.

DELEGATE CHU: Mr. Chairman, I'd like to offer another amendment to Committee Proposal No. 1, and that would be to add the words "all public employees."

CHAIRMAN: Delegate Chu, are you amending the amendment that we are discussing?

DELEGATE CHU: That's correct. I would like to add the words "all public employees" to the beginning of the amendment, so it will read: "All public employees and the members of ethics commissions shall be prohibited from taking an active part in political management or in political campaigns."

DELEGATE BLEAN: I second.

CHAIRMAN: It has been moved and seconded to insert the words "all public employees and" at the beginning of the two sentences. Delegate Chu, do you wish to speak to your amendment?

DELEGATE CHU: Yes, Mr. Chairman. I think that the inclusion and prohibition of all public employees from participating in political campaigns will remove any doubt on the part of the public that a person is being hired to actively support someone's reelection campaign. I think that the public has often had questions on whether or not public monies were being paid to employees on the basis of their public service to the community, or are they being paid a salary to perhaps be the part-time advocate for a particular officer for reelection campaigns or for their other political purposes. If they're paid strictly to do the work that they were hired to do, there should be no question, but if they go out and campaign and hold signs for their boss, I think it really puts their employment in question. Therefore, I think it's very important that all public employees be prohibited from campaigning, particularly for their bosses.

CHAIRMAN: Thank you, Delegate Chu. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak against the amendment. This amendment on the face of it clearly is unconstitutional, as far as I'm concerned. It appears that we again strike out and penalize the public employees--the verbiage and the content of the proposed amendment clearly to me prohibits our trash collectors from participating or running for office, it prohibits all the people who are employed by the state or city government. They are prohibited from participating in this process of election, or running for office. With all due respect to my sister colleague across the hall, I think that this amendment, more than anything else I've heard, is clearly prejudiced against the public employee and for that reason I speak against the amendment.

CHAIRMAN: Thank you, Delegate De Soto. Delegate Hale.

DELEGATE HALE: I have a question. I still have to go back to Delegate Taira because he put his name on this amendment and I understand, Delegate Taira, that this amendment is taken from the federal Hatch Act and that's why we want to substitute it, and does the federal Hatch Act also apply to all federal employees?

CHAIRMAN: Delegate Hale, the motion before the floor is Delegate Chu's motion, all public employees, not Delegate Taira's motion.

DELEGATE HALE: I realize that, but could somebody answer the question--if this was taken from the Hatch Act then, and the Hatch Act is a statute that applies to all federal employees. Is that right, or am I wrong? I'm trying to clear up in my own mind whether I should be for or against Delegate Chu's amendment.

DELEGATE OKAMURA: Mr. Chairman.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: May I respond to that question? The federal Hatch Act does apply to all federal employees. However, I would like to speak against the amendment because once again we're talking about infringing upon people's rights and there is currently a movement--the federal Hatch Act, applying to all federal employees, is

currently under attack and there are other resolutions passed very recently in the House of Representatives in Congress doing away with the Hatch Act. It's a common feeling that within a few years the Hatch Act provision will no longer apply to all federal employees.

CHAIRMAN: Are we ready for the question? Delegate Chu.

DELEGATE CHU: If I may speak briefly again. Since there has been so much discussion about the Hatch Act, I feel that it is only appropriate if this particular amendment is adopted that all employees be prohibited from taking an active part in political campaigns as well.

CHAIRMAN: Thank you, Delegate Chu. Delegate Wurdeman.

DELEGATE WURDEMAN: Point of information. If the Hatch Act is where this particular amendment was taken from, Delegate Okamura, I wonder if we may be singling out the ethics commissioners by really being discriminating, in a sense, if you're not applying this at this time to all boards, appointed or elected, commissions and councils.

CHAIRMAN: Delegate Wurdeman, was that a point of information or an argument?

DELEGATE WURDEMAN: Yes, it was.

DELEGATE PETERSON: Mr. Chairman.

CHAIRMAN: Delegate Peterson.

DELEGATE PETERSON: Will the maker of the motion answer a question for me? I would just like to raise the question if it is her interpretation that public education employees would be included in the definition of public employees?

CHAIRMAN: The Chair can answer that for you. Yes, we are public employees. Are we ready for the question? The question before the body is to amend the first sentence of the amendment to insert the words: "All public employees and..." All those in favor say aye. Opposed? The amendment is lost. The question before us is the original amendment offered by Delegate Taira. Are we ready for the question?

DELEGATE KIMBALL: Mr. Chairman.

CHAIRMAN: Delegate Kimball.

DELEGATE KIMBALL: I have a question for Chairman Okamura, with respect to the definition of political--if it's intended to include a nonpartisan situation.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: Yes, it will. Any type of campaign.

DELEGATE SOUKI: Mr. Chairman.

CHAIRMAN: Delegate Souki.

DELEGATE SOUKI: Point of order. Being relatively schooled in the Hatch Act, usually the Hatch Act provides for an exception for nonpartisan campaigns and I wish Delegate Okamura would check on that.

CHAIRMAN: Thank you, Delegate Souki. Delegate DiBianco.

DELEGATE DiBIANCO: I just wanted to speak against the amendment for this reason. I think I'd be remiss as an attorney if I did not point out to the Convention that, if you are assuming that the language of this amendment about political campaigns includes people running for office, I really do suggest that you put that language into the amendment because you cannot simply do what Delegate Hale was trying to do and put it into the record and then assume that that clarifies matters.

The law regarding analysis of statutes is such that legislative history is not always

looked to in order to determine and interpret the meaning of a statute, so that if somebody, if an ethics commissioner, decides to run for office two years from now and this is part of our law, there's going to be a lot of litigation generated by this particular section if we have not made it clear that we did intend for ethics commissioners not to be allowed to run, and it won't be enough just to say, well go look at the legislative history, look at the debates, we all said at the time that we intended it to include people who were running, or we intended it not to include people who were running. If you want that kind of information to get in the statute, you'd better put it in specifically, otherwise you're going to have litigation regarding this matter.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Hale.

DELEGATE HALE: I have a question. This relates actually to both proposals, but I'm just wondering what it means by ethics commissioners "shall be selected in a manner which assures their independence and impartiality." Can you tell me, Delegate Okamura?

CHAIRMAN: Where are you reading from, Delegate Hale?

DELEGATE HALE: It's the last sentence of both. I mean if we pass the amendment, that's in there and it's also in the original, but I really don't know what I'm voting on in either one of them. Could you tell me what that means?

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: Yes, the language is in reference to trying to make the selection process as independent as possible from political influence, such as the case of the State Ethics Commission. On the city level, the mayor directly appoints and so this would prohibit such things.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Could you tell us how it's done in the State, that insures its independence and impartiality?

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: The judicial council makes recommendations of individuals and I think they send a list of three to the governor and the governor appoints. I'm sorry, two individuals.

DELEGATE HALE: Who appoints the judicial council? How do they get appointed?

DELEGATE OKAMURA: The supreme court. The chief justice.

DELEGATE HALE: And who appoints the--

DELEGATE CHANG: Mr. Chairman.

CHAIRMAN: Delegate Chang.

DELEGATE CHANG: I mean no offense but, unless the precedent be established, I believe questions should be addressed to the Chair.

CHAIRMAN: Your point is well taken. Delegate Crozier.

DELEGATE CROZIER: I'd like to make an amendment to this amendment. I'd like, after the words "political management or in political campaigns," I'd like to drop that period and put in a comma, "run for or hold any political office," period.

DELEGATE HALE: I second the motion.

CHAIRMAN: It has been moved and seconded to strike the period after the word "campaigns" and to insert a comma and "run for or hold any political office." Delegate Crozier, do you wish to speak on your amendment?

DELEGATE CROZIER: I guess I'd like to. All this would do is clear the air on what we're discussing right here and make it understood what is meant by this political campaigns and political management.

DELEGATE BLEAN: Mr. Chairman.

CHAIRMAN: Delegate Blean.

DELEGATE BLEAN: I agree with Delegate Crozier's amendment, but all we're really doing is working our way back again to the original wording of the ethics commission--excuse me, ethics committee. We worked long and hard on this wording, we listened to expert testimony, we had excellent staff, excellent leadership by the chairman and I think all we have to do is delete that phrase, which has been declared unconstitutional, referring to political contributions and stick with the wording we have. Thank you.

CHAIRMAN: Thank you, Delegate Blean.

DELEGATE HARRIS: Mr. Chairman.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: I wish to speak in favor of the amendment. I believe the clear intent of the ethics committee was to include that--

DELEGATE OKAMURA: Point of order, Mr. Chairman. I believe Robert's Rules of Order states that no one can make allusion in the assembly to what has occurred during the deliberations of the committee, unless it is by report of the committee or by general consent.

CHAIRMAN: Your point is well taken. Delegate Harris, do not deposit claims for the committee, please.

DELEGATE HARRIS: My apologies. It was my understanding as a member of the committee, my intent in voting for the amendment was to include the concept of running for or holding political office, and I would like to see that intent included in the final amendment.

CHAIRMAN: Are we ready for the question?

DELEGATE OKAMURA: Mr. Chairman.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: I rise to speak against the motion because again I think it's just extra words. The intent is clear and, because the Hatch Act has been found constitutional, we can simply follow the activities prohibited or the guidelines of the Hatch Act, which will prohibit participation in running for political office.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I rise to speak for the amendment because I feel that it does clear the air. I respect our lawyer fellow delegate who questioned whether just putting it in the committee report would be adequate and, since it is in the original committee report, I really can't see what the objection is to adding it if it clarifies. Therefore, I would like to vote for it.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: Like Delegate Harris, I signed the original report and I'm speaking in favor--I mean against the amendment, going back to the original language.

CHAIRMAN: Are we ready for the question? Delegate Campbell.

DELEGATE CAMPBELL: Just one final word, Mr. Chairman. If the maker of the motion has indicated he has no objections to the committee report reflecting the intent that running for office was included, I see no objection to leaving the language in as explicitly as it is.

CHAIRMAN: The maker of the amendment did so indicate. Are we ready for the question? The question is whether to amend the amendment by dropping the period after the word "campaign" and inserting a comma and "run for or hold any political office." All those in favor of the amendment, please indicate so by raising your hand. Thank you. All those opposed, please indicate so by raising your hand. The motion is lost. The question before us is the amendment offered by Delegate Taira. Is there any further discussion? Delegate Hale.

DELEGATE HALE: Because that amendment is lost, I shall vote against this amendment hoping that we can go back to the original language. I think that may solve all of the problems.

DELEGATE LIU: Mr. Chairman.

CHAIRMAN: Delegate Liu.

DELEGATE LIU: I speak against the motion because I feel that the present language in the proposal presented by the Committee on Ethics is good and strong. If the supreme court, federal supreme court should rule that the section on contributions is unconstitutional, I feel that would be the only section which would be decided infirm, and it would not affect detrimentally the other sections of the code, in which case we would have what we want and the question would be decided clearly, and we can allow the deliberations of the committee on the subject of campaign contributions to go through this body without, I think, endangering the whole section or the whole area we are concerned about now.

CHAIRMAN: Thank you. Delegate Harris.

DELEGATE HARRIS: I'd also like to speak against the motion. This very amendment was offered in committee and at that time I voted with the majority against it and to go with the wording that we have before us, Committee Proposal No. 1. I intend this evening also to vote against it and I urge the other delegates to join me. Thank you.

CHAIRMAN: Are we ready for the question? Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I'd like to speak in favor of this proposed amendment to paragraph 2. As a member of the ethics committee, I was the one who encouraged the members to keep the language of the original proposal we have here because I felt at that time that even though a part of this proposal might be ruled unconstitutional by some court, the rest of the sections would prevail. But upon further consideration I feel very strongly that any correction we can make during the proceedings of the Committee of the Whole ought to be made and that we be very positive and try to keep everything on a constitutional basis. I would just like to explain the position I had before compared to what I'm trying to do here, as we move on having the second paragraph of Committee Proposal No. 1 amended. Thank you.

CHAIRMAN: Thank you, Delegate Taira. Are we ready for the question?

DELEGATE TAM: Mr. Chairman.

CHAIRMAN: Delegate Tam.

DELEGATE TAM: Mr. Chairman, I would like to rise on a point of inquiry to the convention counsel and I address the question to Mr. Funaki, with your permission, as to whether or not the provision, the amendment would violate due process in any way, in that we are seeking to prohibit any member of an ethics commission from running for or holding any political office but not specifying it in the Constitution. In other words, we're leaving it to be reflected in the report of the Committee of the Whole but not making it explicit in the language of the Constitution itself.

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: May we have a recess?

CHAIRMAN: We'll have a short recess subject to the call of the Chair.

At 8:24 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 8:29 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The question has been raised whether the phrase "political campaign" includes being a candidate. The Chair is informed by the attorneys that in a Hatch Act case that phrase was interpreted by the court to include a political candidate. Delegate Tam.

DELEGATE TAM: Could you just clarify it for the records? The question was whether it constituted in fact due notice to any member reading this particular phrase that a political campaign includes running for or holding a political office.

CHAIRMAN: The intent of that interpretation was indicated as yes. Are we ready for the question? The question is the amendment to Committee Proposal No. 1, to have the second and third sentences of the second paragraph of Section 5, Article XIV of the State Constitution, amended to read as follows: "The members of ethics commissions shall be prohibited from taking an active part in political management or in political campaigns. Ethics commissioners shall be selected in a manner which assures their independence and impartiality." All those in favor of the amendment, please indicate so by raising your hand. Thank you. All those who oppose, please indicate so by raising your hand. The amendment is carried. That amendment substituted the last two sentences of paragraph 2. Are there any further amendments to paragraph 2? Is there any discussion on paragraph 3? Delegate Pulham.

DELEGATE PULHAM: Mr. Chairman, I move that we amend paragraph 3 by deletion of all sentences included in lines 8 through 22 on Committee Proposal No. 1. In other words, delete the entire third paragraph.

DELEGATE HALE: I second.

CHAIRMAN: It has been moved and seconded to delete the entire third paragraph of the proposal. Are we ready for the question? Delegate DiBianco. Excuse me, Delegate DiBianco. Delegate Pulham, do you wish to speak to your amendment? I'm sorry, Delegate DiBianco, the Chair was in error.

DELEGATE PULHAM: Yes, I think it's probably necessary. I'm very sincere in what I'm doing. I realize the ethics committee put in a lot of work on this report. This is a product of their labors and they might not appreciate my deleting that entire paragraph but I think there are a couple of points worth mentioning. First of all, the third paragraph simply sets about legislating the method whereby the ethics code will have this, will not have that, will have something else, and specifying what the various ethics codes at all levels--including those you're amending now to my county code of ethics--are going to have in them. It has been the position of the committee that we not be wordy, that we only include what is necessary. I wonder then why we set forth in this particular paragraph--or why we don't set forth--everything. We say "provisions," etc., etc., but not "limited to"-- Why didn't we complete the list? So then, is what we forgot to put on our list okay, or do we then leave it to someone else to put it in theirs? If we're going to do this, why didn't we delineate the method of selecting the board? That's not listed here. Nor did we list, unless my eyes deceive me, any penalties for those who would violate all these things we list in here.

So it would seem that the first portion of this is a very good beginning. I think we mandate a code of ethics, that it shall have certain standards that are above and beyond, but then when we get into paragraph 3 and delineate half of what this would be and then say "but not be limited to," I think we've defeated the purpose of the whole ethics proposal,

and I would sincerely request that we keep our Constitution clean, keep it neat, and keep it brief and concise by eliminating this paragraph of the proposal. It's not my purpose to say that the ethics committee did not do their job, I think they really did, but I think in this case they overdid. Thank you.

CHAIRMAN: Thank you, Delegate Pulham. Delegate DiBianco.

DELEGATE DiBIANCO: Thank you, Mr. Chairman. I had a question for Chairman Okamura. I just don't understand the use of the phrase "each code of ethics shall include... provisions on...the use of position." I don't understand what that phrase means and I'd like to be enlightened.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: Use of position refers to possible conflicts--when you hold an office and you use that office for further gain or financial gains.

DELEGATE DiBIANCO: I'm sorry, that just generates another question. Does that include private employees as well as public employees, or what?

DELEGATE OKAMURA: This is referring to public.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: Oh, I'm sorry. This is referring to public employees.

CHAIRMAN: Public employees only?

DELEGATE OKAMURA: Yes.

DELEGATE CABRAL: Mr. Chairman.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: I rise to speak in favor of the amendment to delete paragraph 3. I think too often we speak with a forked tongue. In one instance we're submitting a listing of rationale and justification for attempting to avoid specificity, and then again, if you look at paragraph 3, it in fact is too specific. There the point being, since this particular code or paragraph is not offering guidelines toward the subject matter of nepotism, I feel that in this instance it too should have been included and could have been construed possibly to that reference to not being limited to. Therefore, I feel that this particular paragraph is in contradiction to the justifying rationale that was provided by the committee chairman and serves no useful purpose, and I too speak against its inclusion in this code of ethics.

I think the committee has done a good job in providing the basis for an excellent report, and inasmuch as previous makers of constitutional draftings have received tremendous kudos and accolades praising their work in putting forth a very terse but meaningful kind of constitutional language, I feel that this particular paragraph would only muddy it all up.

CHAIRMAN: Thank you, Delegate Cabral. Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I speak against the motion. The reason all of these provisions were put in--and these are general provisions, we're not getting really specific with them--the reason we put them in is because we do not feel these provisions will ever change. They are necessary provisions in ethics codes and the main reason, besides that it's being put in, is to make the county codes more consistent with the state code, which is much more stringent. There is no other way we can make the counties comply, and they have not as yet.

CHAIRMAN: Thank you, Delegate Okamura. Delegate Harris.

DELEGATE HARRIS: I also rise to speak against the amendment. I believe that the sweeping contention that our Constitution cannot be specific is a fallacious one. I

believe the Constitution can and should be a specific one if called for. As a member of the ethics committee, I felt that specificity was needed in this section and I strongly support Committee Proposal No. 1, paragraph 3.

CHAIRMAN: Thank you, Delegate Harris. Delegate Chun.

DELEGATE CHUN: I speak for the amendment. The paragraph sets out minimum standards, which is a very nebulous term. It purports to set forth minimum standards as to what the code will contain. I don't interpret them as being standard. I see them just saying you shall cover this area, but they don't say how the area is to be covered. Take a look at the first sentence, that there shall be a provision on gifts. What would happen if the provision said that no public employee shall receive gifts over \$50,000. I think we're looking here at something that doesn't do anything new and I think that, as has been pointed out already, we're muddying the water. It doesn't do anything new, it adds confusion to the Constitution and I am personally against putting in more words just to make the electorate feel that we here have actually done more than we have.

CHAIRMAN: Thank you, Delegate Chun. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak against the amendment. All during organizational periods of this particular Convention, we have heard morality from one end of the globe to the other and only as it pertains to public employees or HGEA members. I'd like to point out that all of these things nobody should have problems with. I mean, what's the big deal about filing financial disclosure information. It's so that the public can see where you get your bread from. And based on that, determine whether you're in bed with private business or HGEA. So I speak against the amendment.

CHAIRMAN: Are we ready for the question?

DELEGATE PULHAM: Mr. Chairman.

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: I believe as the maker of the amendment I have the prerogative to speak last on this.

CHAIRMAN: Delegate Pulham, the Chair would like to inform you that, as a matter of right, you have that right only if you claim it when you first speak, so the Chair cannot guarantee that nobody will speak after you at this time.

DELEGATE PULHAM: Thank you. I really felt that if everyone had spoken, I would like to sum it up and go with my original contention that the intent is admirable, but the shotgun pattern here before us covers everything and still manages to leave a lot of holes. I wonder, when they stick in the middle that all candidates for elective office are included in this particular section, and then down on line 13--where do we get that authority to intrude into the lives of people who are not yet public servants, to include them in this ethics code, and I should hope you would think about that seriously. Now I realize that I am a candidate for public office and my finances are also a matter of public record, so I would hope that you don't think I'm talking about myself, but those of you who are running or have run for office know already what you have to put up with as far as filing with the Campaign Spending Commission all the other reports. Now we're adding, for the ordinary, everyday citizen who doesn't have a huge campaign organization, another requirement--that he or she file a public disclosure here. In other words, we're asking these people to go out and publicize in the newspapers their financial disclosure even if they run in a primary election, in any election. Do we have that right? Do we have this right? These people are not elected, haven't been elected, two-thirds will not get elected, and yet they could very easily be taken advantage of. That's included here. I would ask all of you to think about that very seriously. We're not selling out our ethics code or ethics revision if we delete this paragraph 3, but I think you will be doing a public service if you delete paragraph 3. Thank you.

CHAIRMAN: Thank you, Delegate Pulham. Are we ready for the question? Delegate Shon.

DELEGATE SHON: Yes, I would like to speak against the amendment, particularly because I feel that anyone who offers himself for public office, for the right to serve,

should be willing to make that sacrifice, to make those disclosures. It does not take an elaborate campaign organization to disclose your own financial interests, and secondly I should think that any kind of disclosure after the election really won't do any good, that the important kind of disclosure that we need, and this section includes, is so that voters can see who they're voting for. After the votes are cast it's already too late. The whole theory behind this is not to eliminate people, because of their conflicts of interest, from running for office but to expose whatever financial interests they have so the voters can make the choice, and I think it's appropriate that we do this because of the privilege of serving in public office and because the candidates are seeking that privilege. For that reason, I urge you all to vote against the amendment.

CHAIRMAN: Thank you, Delegate Shon.

DELEGATE TAM: Mr. Chairman.

CHAIRMAN: Delegate Tam.

DELEGATE TAM: Mr. Chairman, I rise to speak against the amendment precisely because--number 1, it would take out what was stated as one of the intents of this proposal, which is to force all candidates for elective office to disclose. Number 2, it would also take out of this particular proposal required lobbyist registration and restriction. And the third and final reason I speak against this amendment is that in delineating the various factors to consider here in disclosure, it gives the ordinary person in reading the Constitution a good idea of what it is that he must disclose and lets him know in what ways he could be violating the law. For those reasons, Mr. Chairman, I would speak against the last amendment.

CHAIRMAN: Thank you, Delegate Tam. Delegate DiBianco.

DELEGATE DiBIANCO: Thank you, Mr. Chairman. I rise to speak in favor of the amendment not because I have any objection to the listing of certain factors which should be taken into account in ethics provisions, but because I think that, contrary to what previous delegates said, it does not give people notice of what is required, because I think several of the phrases are too ambiguous and subject to conflicting interpretation. I don't mean that to be an insult to the ethics committee or anybody on it. It's just that I sit here, I read it over, I still don't really know what "the use of position" means. I appreciate the explanation of the words, but the phrase itself is so vague I don't think we can guarantee that courts won't read it otherwise. I'm not quite sure what the intent of the last phrase of the third paragraph is, disclosure of the "names of persons represented before government agencies." Whose persons? The persons representing candidates or--you know, the whole thing seems to have ambiguity to it and I think we should pass this particular proposal without that language or even consider sending it back to committee for rewording of the language. I think the idea of listing various factors is admirable but I think this particular sentence has to be cleaned up and until then, I have to support the amendment.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Hale.

DELEGATE HALE: I just have one question. What is "post-employment" in the last two words on the line. What does that mean--post-employment?

CHAIRMAN: In what line are you looking, Delegate Hale?

DELEGATE HALE: Line 10, the last word, "post-employment."

CHAIRMAN: That would mean after employment, the Chair assumes.

DELEGATE HALE: After whose employment?

CHAIRMAN: After employment with the government, based on the earlier comments. Is that correct, Delegate Okamura? Delegate Okamura.

DELEGATE OKAMURA: That's right, post-employment. The restrictions on post-employment are clarified in the State Ethics Code. Let me read it to you. 1. You may

not disclose or use confidential information gained during state employment for your personal gain or the benefit of others. 2. You may not within 12 months of termination of employment assist a person for compensation "on matters in which [you] participated as an employee." 3. You may not within 12 months of termination of employment assist the person for compensation "on matters involving official action by the...agency or subdivision thereof with which [you] had actually served."

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Post-employment means, then, post-public service employment.

DELEGATE OKAMURA: That is correct.

DELEGATE HALE: I would like to move then to amend the amendment by making that clear and deleting "post-employment" and putting "post-public service employment" so we know what we're talking about, not post-employment in any private concern.

DELEGATE SOUKI: Mr. Chairman, point of order, please.

CHAIRMAN: Delegate Souki, what is your point of order?

DELEGATE SOUKI: Mr. Chairman, the amendment is out of order because I think the present amendment is to delete the whole paragraph.

CHAIRMAN: Your point is well taken. We have an amendment to delete the entire paragraph. Thank you, Delegate Souki. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I'd like to speak against the amendment for the following reasons. First of all, it seems strange that we can all talk about ethics in broad general categories and goodness and mercy flow from the words we use. We start this proposal stating that public officers and employees must exhibit the highest standards of ethical conduct--to use this kind of language, yet balk at setting minimum standards to what that ethical conduct might be. It seems to me that what paragraph 3 attempts to do is to give some guidance as to what we would minimally require in any ethics code that would set out the standards of conduct for our elected and appointed officials. For myself, I have no quarrel with doing this because I think it adds meat to our vague generality. It brings home the idea of what kind of areas we ought to look into when we establish ethical codes.

Now as far as the specific meaning of each of these words or each of these areas of concern, I think the ethics code rightly leaves that to the body developing specific codes involved. Each county as well as the State of Hawaii has the opportunity to define these exactly, what standards would be involved with the use of position or the use of confidential information, what standards with financial disclosure, the specific kinds of things it would require for its public employees and its elected officials, and I think that's rightly so. That type of specificity should be left to the governing body, so what we have here is merely the minimum standards, the areas of concern that we feel, if nothing else, should be looked into by the governing boards and the legislature. For those reasons, I would speak against the amendment.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Hokama.

DELEGATE HOKAMA: I'd like to ask the chairman of the ethics committee a question, if he wants to yield.

CHAIRMAN: Delegate Okamura, will you answer a question?

DELEGATE OKAMURA: Yes.

CHAIRMAN: Delegate Hokama.

DELEGATE HOKAMA: Delegate Okamura, in the language "all candidates for elective office," my question is, should these people seeking office fail to win their bid for election, will it still be a matter of public property on the disclosure form?

DELEGATE OKAMURA: This would have to be worked out by the legislative bodies of the State and counties. We don't want to be specific in the Constitution.

DELEGATE HOKAMA: Thank you.

CHAIRMAN: Are we ready for the question? Delegate Cabral.

DELEGATE CABRAL: I rise to speak in favor of the amendment for the second time by saying that I agree with all the above which Delegate Waihee had made reference to, except that it's a shame that that particular paragraph did not include guidelines on nepotism.

CHAIRMAN: Are we ready for the question? The question before the committee is to amend the third paragraph of Committee Proposal No. 1 by striking it in its entirety. All those in favor of the amendment, please indicate so by raising your hands. Thank you. All those opposed, please indicate so by raising your hands. The amendment is lost.

DELEGATE BLAKE: Mr. Chairman.

CHAIRMAN: Delegate Blake.

DELEGATE BLAKE: As Delegate Waihee mentioned, there are two things that bother me. One is confidential information and the other is use of position, and I don't think we should leave it to the different counties and other groups to decide what these mean. I believe in simplicity of language and I think we should spell it out. Now I'm confused also. They say "use of position"--how are you going to use the position? Who is going to decide what we're talking about position? I'm also concerned about the two words "confidential information." What confidential information? I mean this is a very very broad area and I think these two things should be cleared up, and I'd like to refer this back to the chairman of the ethics committee, Delegate Okamura, if he could please answer these questions for me.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, the committee did not want to get into the specific definitions of these proposals. We wanted to leave this up to the legislative bodies, as I indicated. These provisions that are called for in this proposal are all included in the existing State Ethics Code. Nothing has been changed through these provisions and what we're doing is asking that the counties also comply in adjusting these subject matters.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: We were given Standing Committee Report No. 26 to study. Many of the points being raised now were covered. I'm speaking as a member of the committee and I think Committee Report No. 26 is very complete. As I said at the beginning of this discussion, we addressed ourselves to this report to satisfy many of the questions now existing in the minds of the delegates. Thank you.

CHAIRMAN: Thank you, Delegate Sterling. Your point is well taken and the Chair may take this opportunity to remind the delegates that the reason we have each proposal lie on the desk for 4 days is to give you a chance to inquire whether there is some legal opinion that you would like from the convention attorneys or whether there is some meaning that you would like to get from some of the words in the proposal. The Chair would urge fellow delegates to try to use the 4 days that way so that we don't take too much time during our sessions on this sort of matter.

DELEGATE PULHAM: Mr. Chairman.

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: I believe we are still on the discussion of paragraph 3, are we not?

CHAIRMAN: Yes, that's correct.

DELEGATE PULHAM: I would move at this time then for the adoption of Amendment No. 4 that you have on your desk, which amends paragraph 3 by deletion of the words "all candidates for elective office" in line 13. I will not speak first but I will speak last on this, if that is the proper procedure.

DELEGATE HALE: I second the motion.

CHAIRMAN: It has been moved and seconded to amend the third paragraph by deleting the words "all candidates for elective office." Delegate Pulham will reserve the right to speak last. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, before we move on to a new issue, may we have a short recess for personal convenience?

CHAIRMAN: We'll have a short recess subject to the call of the Chair.

At 9:00 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:08 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The question before the committee is to amend the third paragraph of Committee Proposal No. 1 by deleting the words "all candidates for elective office" in line 13. Delegate Shon.

DELEGATE SHON: Will the mover of the amendment respond to a question?

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: Yes, I don't see why not.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: I wonder if we could have Delegate Pulham's explanation as to why the people of any particular district, of any particular county, of the State do not have a right to know the financial interests of those who would want to serve them in public office.

CHAIRMAN: Delegate Shon, Delegate Pulham has indicated that he does not wish to speak first on his amendment and reserves the right to speak last.

DELEGATE HAMILTON: Mr. Chairman.

CHAIRMAN: Delegate Hamilton.

DELEGATE HAMILTON: Mr. Chairman, I don't particularly like this provision but I don't know what the alternative is. It's a little like a woman whose husband snores. By the time she finds out it's too late.

CHAIRMAN: Delegate Hamilton, you are revealing your age.

DELEGATE HAMILTON: Also the extent of my experience, I suppose. Seriously, if this is considered important in a candidacy, then I see no alternative to revealing it before the fact.

CHAIRMAN: Is there anyone else who wishes to speak on this matter?

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: I think that to remove this--this section--and not expect all prospective candidates to reveal their financial positions is an imposition on the general voting community. I think that they have a right to know exactly where you're at and

how you get your money and for all the reasons that my colleague Delegate Shon said, I speak against the amendment.

DELEGATE HARRIS: Mr. Chairman.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: I also speak against the proposal to amend. I believe that the intent of financial disclosure is to highlight potential conflict of interest. It seems to me obvious that the time to do that is before the election, not after.

CHAIRMAN: Thank you, Delegate Harris. Is there anyone else who wishes to speak on this matter?

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: I rise to a point of inquiry. Perhaps the Chair may try to solicit some kind of remarks for or against from our prospective political candidates.

CHAIRMAN: The Chair is willing to entertain any speakers on the matter. Delegate Chang.

DELEGATE CHANG: If you're soliciting my remarks, Mr. Chairman, all I can do is parrot the committee report. I fully concur with the intent of the report. After 10 years of doubt and struggle, candidates for elective offices will be asked to make their finances a matter of public record. I believe that the openness and honesty in which elections are conducted will be in hand and the public's electoral decision-making would be aided and that's my feeling.

CHAIRMAN: Thank you, Delegate Chang.

DELEGATE ANAE: Mr. Chairman.

CHAIRMAN: Delegate Anae.

DELEGATE ANAE: As a candidate who has filed, and as vice-chairman of the ethics committee, I'm in full accordance with the provisions of the ethics code and I am against the amendment.

CHAIRMAN: Thank you, Delegate Anae. Is there anyone else who wishes to speak on this matter?

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: I think it is very important that we retain it. Coming from Kona--you know Kona has hidden sources of wealth--I think that those people who are agriculturally inclined should be made to disclose this wealth. As they say, you know, we don't walk on the grass in Kona, we smoke it. But seriously, the way things are happening in our State, where the emphasis is on money, no matter how you get it, I think it is very very important that we retain this phrase in our measure. Thank you.

CHAIRMAN: Delegate Sterling, the Chair, being from Maui, cannot imagine what the delegate from Kona is referring to. Is there anyone else who wishes to speak on this matter? If not, the Chair recognizes Delegate Pulham to speak last.

DELEGATE PULHAM: Thank you, Mr. Chairman. I would thank the delegate from Kona. I think his argument is probably a better one for the particular amendment than I can make. He makes the point very well. That wealth which they do not want us to see, or wealth of those who have power, you are not going to see anyway. So what this does is, it seeks to penalize the little individual when the fellow with the money is going

to take care of himself. But let me ask you this, are we then saying that he who has money is not fit for that reason alone to run for public office? Are we interested in the finances of the individual, or are we interested in where he gets them?

So we are not addressing this question, we are simply putting another burden on the small individual who wants to run for public office who can ill afford at this time to keep up with the Campaign Spending Commission, let alone whatever this ethics commission is going to lay on him, and heaven help him should he fail to file his public disclosure by the proper time. What I'm saying is that I realize the importance of where funds come from, but the fact that whether a person does or does not have money is not the way to judge whether he is a fit person to serve in public office. Thank you.

CHAIRMAN: Thank you, Delegate Pulham. The question before the house is whether to amend the third paragraph of the proposal by deleting the words "all candidates for elective office" in line 13. All in favor of the amendment, please indicate by raising your hands. Thank you. All opposed, please indicate so by raising your hands. Thank you. The motion is lost.

DELEGATE CABRAL: Mr. Chairman.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: I wish to make an amendment to the third paragraph by insertion of the following: after the word "position" at line 10, insertion of the words "inclusive of nepotism."

DELEGATE HALE: I second.

DELEGATE CABRAL: I'll speak to my motion last.

CHAIRMAN: Delegate Cabral, do I have it correct that you wish to insert, after the word "position" at line 10, the words "inclusive of nepotism." All right, it has been moved and seconded to amend the third paragraph at line 10 by inserting the words "inclusive of nepotism" after the word "position." Delegate Cabral reserves the right to speak last on his amendment. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, it's important that I rise to speak against the proposal to amend by including "inclusive of nepotism." What this attempts to do is to provide a constitutional prohibition on family hiring in temporary bodies such as the legislature and constitutional conventions. Permanent state and city employees are merit-selected through the civil service procedure. In the constitutional convention and the legislature, where jobs are temporary and the hiring is usually done last minute, a premium is put on finding people with whom you have an immediate trust and rapport. That is why some family members are hired, as they were in this Con Con. In Hawaii especially, where family relationships and ties are sometimes quite extensive, where cultural traditions promote the strength of family ties, it is, in my humble opinion, unrealistic to put a strict constitutional ban on all family hiring. You see, as far as my humble opinion goes, family hiring is not unethical per se. It only becomes unethical when it leads to the hiring of incompetent staff and hence the misuse of public funds.

The real issue is the question of maintaining competence. The hiring of a competent staff should be the responsibility of the individual legislator or, in our case, delegate. It should be that person's responsibility and decision. Nepotism, or the limit of nepotism, for the members of our community who have family ties that go across many ethnic groups and families, is considered 'ohana, a family. And in our culture especially, in Hawaiian culture, the embodiment or the preservation of these cultural ties is important. Therefore, it is my humble duty as a Hawaiian to speak against this amendment. Mahalo.

CHAIRMAN: Mahalo, Delegate De Soto. Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I rise to speak against the amendment. The committee spent many hours on this matter and by an overwhelming vote decided to leave it out of the code. I would recommend against inserting language in the Constitution which mandates the state, county and convention ethics codes to specifically

include bans on nepotism in hiring for the following reasons. One, nepotism is not really considered a big problem in state and county governments right now. In testimony before the ethics committee, Lieutenant Governor Nelson Doi said that he felt this way about the issue.

Number 2, under the ethics committee proposal, ethics codes must include use of position provisions, and use of position for unwarranted privilege can cover blatant cases of nepotism. This will especially be the case because the committee report indicates that this is the committee's feeling.

Number 3, under the chair's recommended committee proposal, ethics codes must include financial disclosure requirements, and cases of in-family hiring would show up on the financial disclosure statement. Then such information would become public knowledge and the public could be the judge. In other words, what we're saying is that we should not discriminate against individuals. If a particular delegate or legislator would like to hire a family member, he should have that right.

Number 4, any anti-nepotism language should be done statutorily by the state and county governments themselves. Whereas the other minimum component areas already have legislative and legal history, family hiring is a less well-defined restriction. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Okamura. Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, there are a number of items included in this ethics code which are already covered by statutory fiat. I have previously stated my position on this floor with respect to nepotism and I included a proposal against it. I think first of all we're all agreed that nepotism is not illegal per se, and that has not been the issue. I take issue with the chairman of the ethics committee when he says it is not a problem to be concerned about now. I think the fact that it does exist, and that it exists in perhaps a significant place or two, is enough basis to take action.

Secondly, I need to say that the concept of 'ohana is perhaps as close to my heart as it is to many of yours. My husband has often said that although our bodies were born elsewhere, our spirits were indeed born in these Islands. Nevertheless, I strongly feel that there is an inescapable, unethical aura that exists in using one's position as a delegate to further enrich one's family by hiring dependents, and I think a point of departure which this Convention may take is the 1967 Congress which set the tone against hiring relatives by enacting Public Law 90-206. This law governs not only federal employees but also congressmen and it was upheld in the court in 1972. I believe the report should have included such a provision but it did not and therefore I do support the motion, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Campbell. Is there anyone else who wishes to speak on this matter?

DELEGATE CHU: Mr. Chairman, I would like to speak on the matter.

CHAIRMAN: Delegate Chu.

DELEGATE CHU: I do not wish to reiterate what was brought up in the committee decision-making meeting and what has already been brought up when we were adopting the convention code of ethics, but I would like to reiterate my concern with this appearance of impropriety that may be brought into the public eye when a public employee or a public official hires members of his immediate family. I think it comes to a question of that particular public official's discretion as to his hiring, and it comes to a question of the competence of his staff, whether or not that particular staff member was hired because of his family connection or because of his true qualifications. And those are important factors to consider. I certainly appreciate the concept of the family in Hawaii and I think that that's what makes Hawaii a very unique place, the feeling of aloha to all people and particularly to members of your family, to whom you feel a great deal of love and warmth. However, I think that there comes a time when in public office there can be an abuse of aloha and I think that should be avoided at all costs.

CHAIRMAN: Thank you, Delegate Chu. Is there anyone else who wishes to speak on this matter?

DELEGATE SILVA: Mr. Chairman.

CHAIRMAN: Delegate Silva.

DELEGATE SILVA: I speak against the amendment because of feelings also like Delegate Adelaide (Frenchy) De Soto--basically because I feel, as a Con Con delegate who had hired, so to speak, family that I didn't know were family because they were hanai. My uncle was hanai to another family and found to be relatives. But I don't think anybody would be working for me as a delegate, even for a short span of time, unless I felt that they were capable of doing the job, and I think the main point is whether they can do the job or not do the job. And it leads to nepotism if--what is going to happen is you're going to be looking for somebody and your friend says, I've got a daughter, why don't you hire her? It's not your family but it leads to the same thing, if you're talking about that. But I think the main issue is, as long as they're capable of doing the job for you as an elected official or in public employment who would like to take the responsibility and make sure that you're doing your job, then I don't think nepotism should be given a big play. I think the big play should be whether they're doing their job or not doing their job.

CHAIRMAN: Thank you, Delegate Silva. Is there anyone else who wishes to speak on this matter?

DELEGATE VILLAVERDE: Mr. Chairman.

CHAIRMAN: Delegate Villaverde.

DELEGATE VILLAVERDE: I'd like to speak against this particular amendment, particularly and in extension to those who have spoken against the amendment and those who have spoken about the 'ohana concept, and I'd like to go back to King Kalakaua. When King Kalakaua had problems with the land and people who wanted to claim the land, King Kalakaua would call his high priest to repeat the genealogy of his ancestors, and with the concept of roots that was made so popular, that we should dig into our ancestral backgrounds and find out who our ancestors, who our relatives are, I feel that this would bring to light this problem, the problem of determining who your relatives are, in temporary organizations such as ours is. To compromise with such an amendment is to place the burden on this particular decision-maker, to make the determination as to whether you are hiring a relative or not, because our ancestral background does go back. The case of the Hawaiians is a good example and as we project into the future--10 years has been proposed before the next constitutional convention--between those years there'll be a tremendous influx of intermarriages, which could cause another great problem in addition to the genealogical concept of family, to be compromised probably as you serve your term in public office, to be brought to life that you are in conflict with this provision on nepotism. I feel that it would be a dangerous precedent to place the burden on such dedicated public officials and probably the hidden member of the 'ohana or hidden member unknowingly in the family genealogy. So again, I'd like to encourage my fellow delegates here to vote against this amendment.

CHAIRMAN: Thank you, Delegate Villaverde. Delegate Liu.

DELEGATE LIU: Mr. Chairman, I speak in favor of the motion because, unlike the opponents of the motion, I read the section we're talking about as merely saying that the code of ethics shall include provisions. It does not say that those provisions need ban nepotism, and I think the ethics commission, in dealing with that subject, should take into consideration the views expressed by opponents of this motion, and as such I would think that to place this subject in the Constitution is something for the ethics commission to consider, as well as candidates or elected officials, and would be something well done, for at least it would place in the forefront that this should be at least a consideration if one is considering hiring a relative. It need not be a ban, the way it would be stated, if included in the present provisions.

CHAIRMAN: Thank you, Delegate Liu.

DELEGATE MILLER: Mr. Chairman.

CHAIRMAN: Delegate Miller.

DELEGATE MILLER: I speak in favor of the amendment. Many corporations in Hawaii and companies ban two members of the same family employed in the organization, and it would seem to me that that would be a very suitable prohibition for this organization as well.

CHAIRMAN: Thank you, Delegate Miller. Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, just as the merit system requires that all persons in public service, in the civil service, are hired on merit, the corollary to that is that no person be hired on any basis other than merit, and I think that if a person were to be denied employment in the public service, in the civil service system, where the criterion is merit, for another purpose, that would certainly not be upheld. Delegate Liu raises a very good point. If the amendment is to be interpreted as implying that the counties can set their own standards as to whether nepotism shall be allowed or not allowed, that would be violative of the spirit of this particular proposal in that the idea was to achieve uniformity. I think as an individual who is involved in this question, that to discriminate in favor of someone on the basis of ancestry is just as bad as to discriminate against someone solely on that basis also. For that reason, I speak against this amendment.

CHAIRMAN: Thank you, Delegate Kaapu. Delegate Dyer.

DELEGATE DYER: I rise to speak against the amendment. I believe that, if this body decided it was all right for us to practice nepotism after many hours of deliberation, why are we making this imposition on others or future elected officials? I feel this matter should be decided according to one's own convictions.

CHAIRMAN: Thank you, Delegate Dyer.

DELEGATE CHUNG: Mr. Chairman.

CHAIRMAN: Delegate Chung.

DELEGATE CHUNG: I speak against the amendment. I really don't have hard and fast arguments, pro and con, but I think, as I listen to the various talks, we're trying to play God, we're trying to pontificate something when we say this is right or this is not right. We're dealing with people. I see nothing wrong with it if a member of the family is capable and particularly if you have a job where the utmost loyalty is demanded. Some of the best businesses that operate in Hawaii are operated on a family basis because they can trust each other. The families are the bartender, the cashier, the cook, and nothing is stolen. This is only one example of how important it is. But at any rate, my feeling, Mr. Chairman, is we've talked about this long enough. I honestly believe that this is not a very serious problem, it hasn't been wantonly abused as we have heard testimonies, and therefore I feel that there is no need for that amendment as proposed. Thank you.

CHAIRMAN: Thank you, Delegate Chung. Is there anyone else who wishes to speak on this matter? The Chair recognizes Delegate Cabral, to speak last.

DELEGATE CABRAL: I would agree, Delegate Dyer, that it becomes a matter of principle and perhaps one's own conviction, and I would say that an individual's conscience should be his guideline in this respect. I don't think that we should be put in the position, as Delegate Chung has said, to weigh that decision, but I find that I can't accept our persuasiveness that to try to establish standards of ethical conduct requires such pureness, but by the same token, we apply dual standards and I just can't understand that kind of rationale. Are we going to change the standards, require different principles for different kinds of situations, as we would like?

I agree, we should not weigh the decision of whether to include nepotism as part of the guideline for legislators to act on. I say, let's put the question to the people who live in the State of Hawaii and let them decide that issue. Take it off your conscience, let them decide. That's all I have to say. Mr. Chairman, I would move for a roll-call vote on this amendment.

CHAIRMAN: Do we have 10 people in support of the roll call? Please rise. Will

the clerk please count. There are 10, we will have a roll call. Will the clerk please call the roll, calling the Chair last.

DELEGATE CHANG: Point of inquiry, Mr. Chairman.

CHAIRMAN: Delegate Chang, what is your point of inquiry?

DELEGATE CHANG: Mr. Chairman, I'd like to call your attention to a provision at the top of page 447, Section 51, Robert's Rules of Order, Newly Revised, which pertains to the conduct of business in the Committee of the Whole. Would you care to interpret that provision for me?

CHAIRMAN: Yes, your point is well taken, Delegate Chang. A roll-call vote or vote by ballot cannot be ordered in the Committee of the Whole. So, Delegate Cabral, we cannot have a roll-call vote. We will have the roll-call vote at the pleasure of 10 people in the regular assembly but not in the Committee of the Whole.

DELEGATE CABRAL: Point of order, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE CABRAL: I believe our convention rules state otherwise. It also is stated that the Rules of the Convention apply and that Robert's Rules would be applicable only if it is not inconsistent with the--

CHAIRMAN: Delegate Cabral, would you identify where in the rules, please?

DELEGATE CABRAL: I make reference to Rule 32.

CHAIRMAN: The Chair declares a short recess, subject to the call of the Chair.

At 9:40 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:47 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The question of the Chair was whether a roll-call vote is in order. Rule 24 says that the rules of the Convention shall be observed in the Committee of the Whole so far as they may be applicable except that the Committee of the Whole cannot have certain privileged motions. In Rule 32 our convention rules say: "The vote upon any question shall be taken by the ayes and noes and entered on the journal, on motion made and seconded before the question is put and upon the request of at least ten delegates."

The Chair cannot determine whether in fact the roll-call vote is a privileged motion and out of order; therefore, the Chair will rule that we will have a roll-call vote this evening and refer the matter to our parliamentarian for future Committees of the Whole.

DELEGATE CHANG: Thank you, Mr. Chairman.

CHAIRMAN: Thank you. The question before the committee is whether we should amend the third paragraph of Committee Proposal No. 1 at line 10 to insert "inclusive of nepotism" after the word "position." Will the clerk please call the roll.

The motion failed to carry by a vote of 23 ayes, 72 noes and 7 excused; with Delegates Blean, Cabral, Campbell, Chu, DiBianco, Ellis, Funakoshi, Goodenow, Hale, Harris, Lacy, Rachel Lee, Liu, Marumoto, Miller, Odanaka, O'Toole, Peterson, Pulham, Shon, Weatherwax, Wurdeman and Chairman Barr voting aye; Delegates Alcon, Anae, Andrews, Barnard, Barnes, Blake, Chang, Calvin Ching, Donald Ching, Laura Ching, Haunani Ching, Chong, Chung, Crozier, de Costa, De Soto, Dyer, Fujimoto, Fukunaga, Fushikoshi, Hagino, Hamilton, Hanaike, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hoe, Hokama, Hornick, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaapu, Kaito, Kimball, Kojima, Kono, Ledward, Marion Lee, Lewis, McCall, Nakamura, Nishimoto, Nozaki, Okamura, Paty, Penebacker, Sakima, Sasaki, Shinno, Silva, Souki, Stegmaier, Sterling, Stone, Taira, Takahashi, Takehara, Takemoto, Takitani, Tamayori, Uyehara,

Villaverde, Waihee, Yamashita and Yoshimura voting no; and Delegates Burgess, Chun, Eastvold, Fernandes Salling, Ontai, Sutton and Tam being excused.

CHAIRMAN: The vote is 23 ayes, 72 nays and 7 excused. The motion is lost. Is there any further discussion on paragraph 3 of proposal 1?

DELEGATE ELLIS: Mr. Chairman.

CHAIRMAN: Delegate Ellis.

DELEGATE ELLIS: Just a point of information.

CHAIRMAN: State your point.

DELEGATE ELLIS: On what basis were the people excused from voting? What was the premise? Just for my information.

CHAIRMAN: Several are absent and several abstained.

DELEGATE ELLIS: But that's not excused. I need a definition for myself. If I abstain from voting, am I then marked down as excused?

CHAIRMAN: According to the convention rules, a kanalua counts as an affirmative vote.

DELEGATE ELLIS: I don't believe you've answered my question. You've listed that number as being excused. Are they voting then on the affirmative side? I'm really raising this question.

CHAIRMAN: Delegate Ellis, I read it that way because that was the fact. The appropriate way, if you would like, is 30 ayes, 72 nays, the motion is lost. Is there any further discussion on paragraph 3?

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: May I ask a question first? May I assume that--

CHAIRMAN: Are you rising to a point of information?

DELEGATE HALE: Yes.

CHAIRMAN: State your point.

DELEGATE HALE: If there is no further discussion on paragraph 3, we're ready to vote on the whole report.

CHAIRMAN: No, the Chair has possession of a paragraph 4, to be admitted as an amendment.

DELEGATE HALE: Thank you. I would like to speak before we get ready to vote.

CHAIRMAN: You will have an opportunity to do that.

DELEGATE CROZIER: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman, I'd just like to stand for personal privilege. I got confused as to what you said to Delegate Ellis. You say if somebody is not here, he gets counted as an affirmative? Is that what you're saying?

CHAIRMAN: Stand by, Delegate Crozier. If there are no objections, a short recess is declared.

At 9:57 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:02 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Crozier, your point is well taken. In Rule 32, the second paragraph, the rule states: A delegate may pass the first time his or her name is called by the clerk on any vote, but if he or she remains silent on the next call of his or her name, his or her vote shall be recorded as voting with the affirmative.

So, the point is those who were kanalua, and there were a couple of them, were already counted in the ayes, and that's where we got the 23 ayes. Those who voted no were counted as no, we had 72 noes. Six of our delegates are absent and they were included in the 7 excused. One delegate, because of conflict of interest, asked, and was granted by the Chair, permission to be excused, so the vote was announced correctly in the first place. There were 23 ayes, 72 noes, 7 excused, and the motion is still lost.

DELEGATE ELLIS: Mr. Chairman.

CHAIRMAN: Delegate Ellis.

DELEGATE ELLIS: I'm sitting in front of the conflict of interest, the declared one, and I didn't hear you excuse or permit him to maintain his conflict. When did that happen?

CHAIRMAN: The Chair granted by nod his request. Delegate Ellis, there is no particular need for the Chair to announce something when it is understood by the clerk and by the delegates. We announce the result.

DELEGATE ELLIS: I'm not questioning the result, I'm questioning your ruling on the conflict. I neither saw the nod nor heard anything.

CHAIRMAN: Delegate Ellis, the matter is settled. The question before the body is paragraph 3. Is there any further discussion on paragraph 3 to proposal 1?

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, I rise on a point of parliamentary inquiry. When is the proper time to ask for a ruling from the Chair to be excused from voting.

CHAIRMAN: A delegate once in attendance should not leave the floor without begging leave to be excused. There are several absent delegates, some were never here, some were. Those who were never here, I presume--the Chair presumes their vice-president will report them absent. Those that were here neglected to ask to be excused. They should do it before leaving the floor.

DELEGATE DONALD CHING: Mr. Chairman, my question was posed as to those that wanted to be excused from voting because of a possible conflict of interest, and I understand that the Chair has to rule as to whether there is a possible conflict.

CHAIRMAN: Your point is well taken, Delegate Ching. The delegate should have asked prior to the start of the roll call. The Chair granted the delegate a special privilege. The question before the committee is paragraph 3 of Committee Proposal No. 1. Is there any further discussion on that paragraph?

DELEGATE CHU: Mr. Chairman.

CHAIRMAN: Delegate Chu.

DELEGATE CHU: I would like to offer an amendment to paragraph 3, to insert the following words after the word "gifts" in the second line, and the words that I wish

to insert are "participation in partisan political campaigns," so the first two lines would read, "Each code of ethics shall include, but not be limited to, provisions on gifts, participation in partisan political campaigns, confidential information, the use of position," etc.

DELEGATE HALE: I second the motion.

CHAIRMAN: It has been moved and seconded to amend paragraph 3 of proposal 1 at line 9 to insert after "gifts," the words "participation in partisan political campaigns." Delegate Waihee.

DELEGATE WAIHEE: I rise to a point of order.

CHAIRMAN: State your point.

DELEGATE WAIHEE: I believe that the motion would be out of order, relating to a matter that the Committee of the Whole has already acted on or disposed of.

DELEGATE TAIRA: Mr. Chairman, may we have a short recess?

CHAIRMAN: Yes, Delegate Taira. If there are no objections, the Chair will call a short recess subject to the call of the Chair.

At 10:08 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:11 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The motion to amend the third paragraph of proposal 1 at line 9 will be ruled by the Chair as being in order since the first time the matter was brought up, it was an exclusive prohibition on participation in partisan political campaigns. This time it provides that an ethics code shall include provisions on it, not necessarily excluding it. However, the Chair would like to indulge in a privilege by reminding the delegates how important it is to the Committee of the Whole to have these amendments prepared in advance, in writing, so that it is clear and unequivocal at all times what we are dealing with. Delegate Waihee.

DELEGATE WAIHEE: Thank you very much, Mr. Chairman.

CHAIRMAN: The question before the floor is to amend paragraph 3 of proposal 1 at line 9 to insert after the word "gifts," "participation in partisan political campaigns." Delegate Chu, do you wish to speak to your amendment?

DELEGATE CHU: Yes, Mr. Chairman, I would like to speak to my amendment at this time. I think it would be important for the legislature to provide guidelines of what is allowable and what is not allowable, the level of employment that is allowable, the relationship between the employee and a political campaign, and I think that this is important in relation also to the provisions relating to the use of position. This is simply an expansion of that particular phrase.

CHAIRMAN: Thank you, Delegate Chu. Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman. I'd like to ask the Chair a question, or Delegate Chu, whoever. I'm concerned about the statement "participation in partisan political campaigns." The way I read this paragraph, that deals with candidates and people who get elected to office. How can they get elected to office if they cannot participate, am I correct?

CHAIRMAN: Delegate Crozier, the effect of the amendment is to require that the ethics commission, in developing a code of ethics, shall include positions relating to that matter. We must presume that the ethics commission would be aware of the problem that you raise.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: Yes, I rise to speak in favor of the amendment for another reason, which is that I think some rules or guidelines for codes of ethics should be established regarding public employees' participation in their own campaigns, because I know during recent campaigns I've seen public employees, during hours that I know they should have been working in their respective state or county departments, out on the roadway holding signs and out in the neighborhood distributing pamphlets. I'm not saying there's anything wrong because maybe they were taking vacation time or comp time or had worked out some kind of arrangement with their employers, but I think we've got to have some kind of regulation or at least provide that the ethics commission establish some kind of regulation, because it raises a lot of questions when the public sector sees its employees who are supposed to be working in various state departments during daytime hours, during the week, out campaigning for their own elections. And I think that all we would be doing by including this phrase within the ethics code is advising the ethics commission that they should address the problem, not that they should prohibit public employees from participating in their own campaigns or anyone else's.

CHAIRMAN: Thank you, Delegate DiBianco. Are we ready for the question?

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Is an amendment to the proposed amendment in order?

CHAIRMAN: Yes, Delegate De Soto.

DELEGATE DE SOTO: I would like to move that after "campaigns," we insert the words "except their own."

DELEGATE HALE: I second the motion.

CHAIRMAN: It has been moved and seconded to amend the amendment by inserting after the word "campaigns," the words "except their own." Is there any discussion on the amendment to the amendment? Delegate Chu.

DELEGATE CHU: I appreciate Delegate De Soto's attempt to amplify on the particular amendment that I proposed. However, I feel a little bit uncomfortable about adding the extra words because, pursuant to Delegate Crozier's question, I thought that perhaps the legislature may provide requirements governing public employees who attempt to seek elective office, in that the legislature may provide, or may require, a resignation or may provide discretionary power on the part of department heads or employers to allow for a leave of absence without pay, perhaps. Or perhaps even with pay. That would be up to the legislature, and I think that the intent would be clear that a public employee would not be prohibited from seeking elective office, but that the legislature would be empowered to include in the code of ethics--the legislature and the county councils--would be empowered to make provisions for this kind of political participation.

CHAIRMAN: Thank you, Delegate Chu. Is there anyone else who would like to speak to the amendment to the amendment?

DELEGATE KIMBALL: Mr. Chairman.

CHAIRMAN: Delegate Kimball.

DELEGATE KIMBALL: I'd like to speak against the amendment to the amendment. In my view I think, with respect to the amendment, "except their own," to the amendment, that an individual public employee's own individual campaign would be the greatest area of potential abuse.

CHAIRMAN: Thank you, Delegate Kimball. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I'd like to speak in favor of, and quite humbly in favor of, this amendment to the amendment to the proposal. I think that the current trend to penalize anyone because they are publicly employed is unfair. I think that for myself, when I ran as a public employee, I did it at 5 in the morning and was at work

at 7:45 as required, and abided by all the constraints and provisions therein that allowed me to participate as a candidate to this Constitutional Convention.

I really feel at this point in time that most things with respect to ethics not only penalize a public servant--because that's what I look at myself as, a servant to the people--penalize them by first accusing them of being in bed with somebody. I think that all of these things that come about to curtail citizen participation, public employee participation, just because he or she is a public employee and no longer has the right to participate in what we call democratic processes, of which election campaigning is one--I seem to feel that there is some move to stop public employees from campaigning for their bosses, but I'm not prepared to address myself to that--I think that to prohibit me or the rest of the government workers, state or county, to prohibit me from participating in the political process is an unfair and dangerous precedent, and that's why I speak in favor of my motion. Mahalo.

CHAIRMAN: Thank you, Delegate De Soto.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I simply want to express the feeling of those who have spoken against the amendment, which is that I thought it was clear nobody is trying to prohibit public employees from participating in political campaigns including their own, but as employees of the public they do seem to possess a unique position in our society, and I think all we were asking here is that the commission, the ethics commission, be allowed to regulate the manner in which they do participate and maybe set some guidelines regarding the hours in which they participate and the extent to which they participate. I just want to close by saying that if all the public employees were as honest and ethical as Delegate De Soto, we would not need ethics codes.

CHAIRMAN: Thank you, Delegate DiBianco. Is there anyone else who wishes to speak on the amendment to the amendment?

DELEGATE BLAKE: Mr. Chairman.

CHAIRMAN: Delegate Blake.

DELEGATE BLAKE: Will you read the first amendment, please?

CHAIRMAN: The first amendment was to amend paragraph 3 of Committee Proposal No. 1 at line 9 to insert after "gifts" the words "participation in partisan political campaigns." The second amendment was to insert after "campaigns," the words "except their own." The first couple lines would then read, assuming both amendments are added, "Each code of ethics shall include, but not be limited to, provisions on gifts, participation in partisan political campaigns, except their own, confidential information," etc.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: I rise to speak against the amendment. Looking at the amendment to the amendment, it's more words. I'm looking at the sentence presented before: "Each code of ethics shall include, but not be limited to"-- Are we presuming here that any future ethics commission will not have any--we don't trust them--will not be given any latitude? When they put the comma after "but not be limited to," that is very important. We're giving them the latitude, we're not presuming that they know all the answers. Thank you.

CHAIRMAN: Delegate Souki.

DELEGATE SOUKI: Mr. Chairman.

DELEGATE SOUKI: Just to echo Delegate Sterling's remarks, I think that we should provide the tone and we shouldn't dictate to the respective government jurisdictions as

to the exact language of what we want. And speaking against the amendment to the amendment, I would speak against it simply on the basis that the code here provides enough latitude so that local jurisdictions can provide the exact language that they desire. That's all, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Souki. Is there anyone else? Are we ready for the question?

DELEGATE CHU: Mr. Chairman.

CHAIRMAN: Delegate Chu.

DELEGATE CHU: I'm sorry, I don't mean to belabor this point, but I did have doubts as to whether or not I should be speaking on behalf of the amendment to the amendment. However, in an attempt to further explain my amendment, I will speak against the amendment to the amendment.

Okay, I hope that the delegates will forget the fact that I did formerly propose an amendment to the second paragraph. At that time I felt that it was improper to exclude, or to put ethics commission members in the specific category of not allowing them to partake in any political activity, and not deal with public employees as a whole. My intent in introducing the amendment was simply to allow the ethics code to make provisions for or against, however they would see fit. My intent is not to limit the political activity of public employees or public officials.

Now the Hatch Act apparently was passed because they realized the importance of public employees' participation in partisan political campaigns and as Chairman Okamura indicated, these provisions in the third paragraph are merely a minimum standard, and I think it is important that the ethics code deal with this particular provision.

CHAIRMAN: Thank you, Delegate Chu. Are we ready for the question? The question is whether to amend the amendment by inserting after the word "campaigns," the words "except their own." All those in favor of the amendment to the amendment, please raise your hands. Thank you. All those opposed please raise your hands. The amendment to the amendment is lost. The question before the body is whether to amend paragraph 3 of Committee Proposal No. 1 at line 9, to insert after "gifts" the phrase "participation in partisan political campaigns."

DELEGATE STONE: Mr. Chairman.

CHAIRMAN: Delegate Stone.

DELEGATE STONE: Is it in order to speak on the amendment now?

CHAIRMAN: Yes, indeed.

DELEGATE STONE: I rise to speak against the amendment because there is enough provision in civil service rules and regulations to prohibit such things. Also, periodically as election season comes around, the federal Hatch Act authorities do give each of the grant-in-aid agencies extra bulletins to put on their bulletin boards showing what is restricted activity. So I see no need for the amendment.

CHAIRMAN: Thank you, Delegate Stone. Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I rise also to speak against the amendment. I feel that the subject matter could be covered under the provisions for use of position. It would be at the desire of the legislative bodies. Thank you.

CHAIRMAN: Thank you, Delegate Okamura.

DELEGATE McCALL: Mr. Chairman.

CHAIRMAN: Delegate McCall.

DELEGATE McCALL: I think this is a great usage of time since it's absolutely

against the law for any public employee to campaign or work on a political campaign during working hours.

CHAIRMAN: Thank you, Delegate McCall. Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman, I'd like to speak against the motion. I think I know what the delegate is trying to say--that is, if you can limit the participation in a partisan political campaign, then in a way you're trying to eliminate a political machine. But by the same token, if you turn the thing around, if the political machine is in there already and somebody wants to campaign for the opposition, that political machine can apply pressure on that individual, so this may work against freedom of speech.

CHAIRMAN: Thank you, Delegate Crozier. Are we ready for the question?

DELEGATE KIMBALL: Mr. Chairman.

CHAIRMAN: Delegate Kimball.

DELEGATE KIMBALL: I'd like to speak in favor of the amendment. As a public employee who is subjected to the Hatch Act and who had to battle statutes, departmental regulations and agency rules of conduct to participate in this campaign, I feel that such a guideline for our state and county ethics commissions is appropriate. As a public employee on the federal level, and having accepted that employment, I'm willing to live by those rules and as we have limited the commissioners of the ethics commission from partisan politics, we should so set up guidelines for public employees. Thank you.

CHAIRMAN: Thank you, Delegate Kimball. The question before the body is whether to amend paragraph 3 of proposal 1 at line 9 to insert after the word "gifts," the words "participation in partisan political campaigns." All in favor of the amendment, please signify so by raising your hands. Thank you. All opposed, please signify so by raising your hands. Thank you. The motion is lost. Is there any further discussion on paragraph 3? At this time the Chair will recognize Delegate Campbell who introduced an amendment as paragraph 4. Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I move to amend Standing Committee Report No. 26 regarding Article XIV, Section 5, by adding a fourth paragraph, which would read as follows: "Judges and justices shall be required to make public financial disclosure."

DELEGATE HALE: I second the motion.

CHAIRMAN: It has been moved and seconded to add a new paragraph to Section 5, Article XIV of the State Constitution, Committee Proposal No. 1 to read: "Judges and justices shall be required to make public financial disclosure." Delegate Campbell.

DELEGATE CAMPBELL: May I speak in favor of the motion, Mr. Chairman. I think first it needs to be said that the ethics committee voted in favor of public financial disclosure of judges. However, because it was requested by the chief justice, the matter was referred to the judiciary committee. I believe, however, that it belongs in this section--first, because legally and conceptually it should be there. Counsel for the ethics commission stated that the 1968 convention--this is reflected in the ethics committee report--construed the code of ethics section as not exempting the judiciary, and LRB counsel also recommended that the provision be placed here.

Lastly, I would like to say that there is no rational basis for excluding judges and justices from this requirement when they are empowered to make decisions on a daily basis which so significantly affect our lives and particularly when it was admitted by Dan Case, who was speaking for the chief justice, that there is no such existing requirement for judges at the present time. Therefore, I submit there is a need for such a provision and it should be included here, along with the provision for public disclosure for all other public officials. To transfer the matter to judiciary committee is, I submit, to place it beyond the pale, to send it to Siberia. I therefore urge this Convention to vote in favor of the motion.

CHAIRMAN: Thank you, Delegate Campbell. Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I would like to speak against this amendment.

The ethics committee discussed this whole matter of excluding judges at length and we voted against it. Further, at the Constitutional Convention of 1968, this matter of excluding judges was discussed and they rejected the same kind of amendment. Let me read an excerpt from the 1968 standing committee report. "Since the judiciary has its own canons of ethics, the matter of exempting the judicial branch from this provision was discussed at length. It was the decision of your Committee that the judiciary should not be given specific exemption in the Constitution. However, this does not preclude the legislature from recognizing the sufficiency of the judicial canons of ethics." Judges do have their own self-policing canons of ethics and that is why they are exempted by the legislature from the state ethics statute which applies to all other state officials and employees.

I see nothing wrong with this statutory exemption because the judiciary is acting responsibly in the area of ethics. I do not think, however, that we should give the judiciary an irrevocable constitutional exemption from the statutory ethics code. There is no reason to put them in such an exalted position. The current system has not violated the independence of the judiciary in the area of ethics, so I see no reason to change the current system in the name of "upholding the independence of the judiciary." If the judicial canons of ethics became weakened, the legislature should have the potential power to make ethics statutes that apply to the judiciary. All of these statutes, like all the other statutes that the legislature makes that apply to the judiciary, are automatically subject to separation-of-powers consideration. They can always be challenged in higher courts if they do violate the independence of the judiciary. Thus they are safeguards for the independence of the judiciary and the current system has worked well. Judges are appointed officials of the state government and there is no reason to give them constitutional exemption from ethics codes. Also, the chief justice is in concurrence with the committee's position. Thank you.

CHAIRMAN: Thank you, Delegate Okamura. Delegate Hamilton.

DELEGATE HAMILTON: Mr. Chairman, I think Montesquieu must be whirling in his grave, because we have put the implementation of this ethics code in the hands of legislative bodies, and I think the doctrine of separation of powers applies here and the legislature cannot create a code for the judiciary.

CHAIRMAN: Thank you, Delegate Hamilton. Delegate Harris.

DELEGATE HARRIS: Point of inquiry. Could the chairman of the judiciary committee tell us if that committee is considering, or has considered, this issue?

CHAIRMAN: Delegate Ikeda, do you wish to answer the question?

DELEGATE IKEDA: Yes, I would, Mr. Chairman. The Committee on the Judiciary is commencing its decision-making actually within the next day and among the issues that will be taken up will be the matter of judicial discipline, judicial removal and disability retirement, and it is my belief that within the scope of this topic, the subject matter of judicial financial disclosure for members of the judiciary will be taken up.

CHAIRMAN: Thank you, Delegate Ikeda. Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I think there are two separate factors here which have to be dealt with separately, and I believe that in Chairman Okamura's presentation he did not separate these two different factors of governance of judges. No question has been raised as to the judges being governed by a judicial code of conduct. It was decided by the committee that they should not be excluded from this provision but they are indeed encompassed by it. The point that is being made by this particular amendment relates solely to financial disclosure; it is a fact that the existing code of judicial conduct makes no provision whatsoever for financial disclosure and that is what this motion addresses itself to.

CHAIRMAN: Thank you, Delegate Campbell. Delegate Okamura.

DELEGATE OKAMURA: I rise to speak against the motion once again. Regarding the financial disclosure statement, it was the committee's decision not to include that language within our article. We felt that, in testimony received from the chief justice, it was indicated that if it should be put into the Constitution, that requirement be inserted in the judicial article and not the ethics article, and for that reason I recommend that we vote against this motion.

CHAIRMAN: Thank you, Delegate Okamura. Are we ready for the question?

DELEGATE TAM: Mr. Chairman.

CHAIRMAN: Delegate Tam.

DELEGATE TAM: May I direct a question to counsel? Is the exclusion of members of the judiciary from the code that we are now working on violative of equal protection under the law?

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Short recess, please.

CHAIRMAN: The Chair declares a short recess, subject to the call of the Chair.

At 10:43 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:47 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. It is the judgment of our attorneys that this is not a 14th amendment issue. The explanation is a little complicated. Any delegate who would like further information on it may get this after the meeting, please.

DELEGATE IKEDA: Mr. Chairman.

CHAIRMAN: Delegate Ikeda.

DELEGATE IKEDA: I wish to speak against the proposed amendment. If the amendment is adopted, the possibility I think would be raised that the legislature would be in a position where it would be enacting legislation--a point that was very well made by Delegate Hamilton--that would affect, in essence, another branch of government, the judiciary, and in following through on the concept of the separation of powers between the executive, the judiciary and the legislative, I think that this kind of infringement would be unwarranted. I would for that reason prefer that if any change is made and if any requirement as to financial disclosure is to be made, that it should be made in the Constitution in the provision dealing with the judiciary--that is specifically, Article V.

CHAIRMAN: Thank you, Delegate Ikeda. Delegate Hale.

DELEGATE HALE: May I ask a question of someone?

CHAIRMAN: Is this a point of information?

DELEGATE HALE: Does this mean that the code of ethics proposed here does not cover the executive department? If we're going to talk about separation of powers.

CHAIRMAN: No, that's why the Chair said the explanation was a little complicated. It does not specifically exclude any department. The legislature, as I understand it, has by statute excluded the judiciary. Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, as I read the first part of the proposal as we have acted on paragraph 2, it says, "Each code of ethics shall be administered by a separate ethics commission." To me it would not seem that this would preclude the judiciary from setting up its own ethics commission which could then rule on ethical issues of the judiciary.

CHAIRMAN: It is the Chair's understanding that the intent of that language is state versus counties. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment because

I think that the issue of additional ethics or financial disclosure should be dealt with in the context of judicial discipline, judicial supervision, and all the other issues that are before the judiciary committee and that would be one of the issues they would be dealing with in their committee, to come to the floor with recommendations on. And I would speak against the amendment.

CHAIRMAN: Thank you, Delegate Waihee. Are we ready for the question? The question before the committee is to amend Committee Proposal No. 1 by adding a fourth paragraph to read, "Judges and justices shall be required to make public financial disclosure." All those in favor of the amendment, please indicate so by raising your hands. Thank you. All those opposed, please indicate so by raising your hands. The motion is lost.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Are we finally ready to vote on this?

CHAIRMAN: Mr. Clerk, do you have any additional amendments before you?

CLERK: No, I don't.

CHAIRMAN: The question before the body is the entire Committee Proposal No. 1 as amended.

DELEGATE HALE: I'd like to speak against the proposal as amended, the whole proposal as amended. First of all, I would like to explain why I seconded a great many of the amendments. I believe that we should have as many points of view as possible to enable us to vote intelligently on every issue, and since most of us were not members of this committee, this is the only way we had in participating in the thinking and trying to make up our minds as to whether or not we would be for it. However, I would also like to explain why I will vote against this whole proposal. I do respect the efforts of the committee, and particularly the chairman, for all of his and the committee's sincere efforts. I also believe that the confidence of the public in our public officials is at an all-time low, but I do not believe we are doing anything in this proposal that is going to make our government or our elected officials any better. There are a lot of fancy words here but many of them have not been explained to us adequately and certainly the public will not understand it either.

Many delegates have proposed amendments to the code of ethics that would make it stronger. Delegate Chun started out with one at the beginning, Delegate Crozier, Delegate Cabral, Delegate Chu and Delegate Campbell, and they were all voted down. I would like to state for the record that as a former elected official more than 20 years ago, I fought for a code of ethics on the county level, and our County of Hawaii had one of the first, if not the first, code of ethics, adopted in 1963 for county officials and employees. The constant references to the State Ethics Commission as good, as opposed to the County Ethics Commission, make it appear to me that there are political considerations in this proposal.

I have not been impressed myself that the State Ethics Commission has given the public any more confidence in state government than the County Ethics Commission has given in county government. Furthermore, I believe that the wording is adequate in the present State Constitution, which says, "Codes of Ethics, Section 5. The legislature and each political subdivision shall adopt a code of ethics, which shall apply to appointed and elected officers and employees of the State or the political subdivision, respectively, including members of boards, commissions and other bodies." And although I am not one of those who believe that our Constitution is perfect and doesn't need amending, in that particular area I would agree that the 1968 Constitutional Convention did as adequate a job as is possible. I think we have further confused the whole matter by saying we're not going to cover the judiciary, but this does cover the executive. We double-talk, we're talking out of two sides of our mouth. And furthermore, I believe that we should not mandate county government. I'm a firm believer in home rule, and I think the counties are perfectly capable of adopting their own codes of ethics that will be acceptable to the

people of that county. I am opposed to more verbiage for the sake of verbiage and I cannot be a part to a farce, which I consider this code of ethics to be. Thank you.

CHAIRMAN: Thank you, Delegate Hale. Is there anyone else who wishes to speak to the entire proposal? Is there anyone else who wishes to speak on the matter of proposal 1? Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I move that this body rise and report to the Convention.

CHAIRMAN: It has been--

DELEGATE OKAMURA: Excuse me, Mr. Chairman, I'm confused. You want to move for adoption? I made that motion initially.

CHAIRMAN: Stand by for a moment.

DELEGATE CROZIER: Mr. Chairman, point of order. Isn't there a motion on the floor right now?

CHAIRMAN: Do we have a second?

DELEGATE OKAMURA: I moved initially--

DELEGATE HALE: Point of order.

CHAIRMAN: The Committee of the Whole was resolved to consider Committee Proposal No. 1. At this time that is what we're doing and you spoke to the entire proposal. As soon as the Chair gets a second to Delegate Okamura's motion to rise and report, we will rise and report that the Committee of the Whole recommends adoption of this proposal with one amendment.

DELEGATE DONALD CHING: Mr. Chairman, I second the motion.

CHAIRMAN: All right, it has been moved and seconded that we rise and report to the Convention that we recommend approval of Committee Proposal No. 1 with the one amendment. It is not a debatable motion. All those in favor, please indicate so by raising your hands. Thank you very much. All those opposed, please raise your hands. Thank you very much. The motion is carried.

At 10:59 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on STATE BOUNDARIES, CAPITAL, FLAG AND MOTTO

Committee Proposal No. 2

(Article XV [XIII])

Chairman: DELEGATE LES IHARA

Wednesday, August 16, 1978 • Afternoon Session

The Committee of the Whole was called to order at 4:58 p.m.

Delegate Les Ihara presided as Chairman.

CHAIRMAN: The Committee of the Whole is now called to order to take under consideration Committee Proposal No. 2.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: I rise to speak in favor of the--

CHAIRMAN: The Chair will first speak on how it will proceed in the Committee of the Whole to make matters clear. First of all, if there are no objections, roll-call votes will be allowed in this Committee of the Whole. Also, if there are no objections, consideration of Committee Proposal No. 2 will be by sections. Section 1 will be considered first. Section 4 will be next, followed by any other matters relating to Committee Proposal No. 2. The floor is now open for consideration of Section 1 of Committee Proposal No. 2.

DELEGATE IZU: Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: Mr. Chairman, I rise to speak in favor of Section 1 of Committee Proposal No. 2. If I may, I'd just like to reiterate some of the comments made in Standing Committee Report No. 30. We realize that the State of Hawaii cannot change its boundaries through constitutional amendment. However, there is some ambiguity and uncertainty with respect to the boundaries of our State. We believe that further clarification of our boundaries by including the word "archipelagic" will serve to set forth our understanding of the boundaries of the State of Hawaii.

There is historical evidence that the boundaries of our State were very early considered archipelagic, as cited in the committee report. I won't reiterate these. However, I believe there are considerable and potential benefits for Hawaii to realize, should international acceptance of the archipelagic concept come about. For example, the State could assume control in regulating its local commerce and trade, and would also be able to utilize ocean resources acquired through the archipelagic status. Therefore, I ask my fellow delegates to look favorably upon Section 1 of Committee Proposal No. 2. Thank you.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: I rise to speak in favor of the motion. May I take this opportunity to commend the chairperson and committee members, especially Delegate Uyehara who spent many hours with me discussing the question of boundaries of our State, and my compliments to the committee staff for their diligence.

My Proposal No. 8, which is incorporated into this report, addresses itself to the

exterior boundaries of the State of Hawaii. The records indicate that the question has been discussed many times as to specific and precise boundaries, but was never decided. This is indicated in records of the joint committee hearings prior to the Admission Act of 1959, when definitions by latitude and longitude were discussed but not decided upon. It was understood from the beginning that any action in this direction could and would precipitate legal action. However, jurisdiction over channel waters, resources of the water columns and seabeds must be resolved. These are resources of the State of Hawaii, whether they be fishing resources or mining resources such as manganese--so essential to steel production--cobalt, etc., as well as the various forms of coral.

In anticipation of possible legal action, I offer these additional comments for the record. The names of the islands used in Proposal No. 8 were taken from the report of the original commission appointed by the President under the Joint Resolution of Annexation of July 7, 1898, for the purpose of identifying the transfer of the sovereignty of Hawaii to the United States of America. The legal point being, what did Hawaii lose in the period between the time of the kingdom going to the republic and the annexation and statehood or Admission Act? Secondly, in our argument we advance a scientific basis of proper boundaries by proposing a midocean archipelago or archipelagic concept, noting that discussion of the archipelago has been actively avoided by the leading nations of international community. This must be done. We have conflicting jurisdictions within our State--the Public Utilities Commission, Federal Maritime Commission, Civil Aeronautics Board, and theoretically the waters of our channels are now considered international. We have great wealth within our seas. These resources belong to our children. This is their heritage, to take care of and to pass on. We must control the problems and find solutions for waste disposal. We must be biologically sound, without hurting our ecosystems.

These are economics--major economics. Jobs and income for a growing Hawaii, controlled by Hawaii. I urge your support.

Thank you.

CHAIRMAN: Thank you, Delegate Sterling. Does the committee wish to further consider Section 1?

DELEGATE ALCON: Mr. Chairman, if we adopt this section of the proposal, does that mean the Russian fleet cannot go through Lahaina and the other channels?

CHAIRMAN: I believe so, but would the chairman of revision and amendment wish to respond right now?

DELEGATE UYEHARA: May I speak?

CHAIRMAN: Go ahead.

DELEGATE UYEHARA: This is only a concept of the boundary lines which is basically on the archipelagic waters. Probably one of the defenses of our nation or preferably of our State at the present time, which is located at the middle of the Pacific Ocean, is monitored by other countries as they come close to our waters--and yes, they have even come through the channels between Maui and the Big Island, to monitor some of our defense means throughout our State.

We like to set this boundary internationally, as well as clearly in our State's and country's mind, that this is part of our waters and any foreign vessels coming through our waters should be monitored, should be patrolled and, if they are fishing in our waters, I believe there even should be taxes like the kingdom did during the time of Kamehameha III. And with that we would like to set forth--since there are no nations right now trying to impose their boundary line upon us, and it is good in a way that we are so far away from all the nations interested in our waters--with this I hope to answer Delegate Alcon's inquiry.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, as a member of the committee and having deliberated on this, it was not my understanding that, by virtue of the passage of this

amendment, any change legally would take place ipso facto. But it would require the consideration of any international commission or body that might engage in treaty discussions, which might establish some international convention whereupon the existence of this concept in the Hawaii State Constitution, reflecting a traditional view of what the State consists of historically from the kingdom to this time, would provide the basis for consideration of these rights and these controls that were stated earlier. But not by virtue of passage of this amendment.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I don't think there is a problem here either because admiralty law is a creature of federal statute and it's solely within the purview of the federal government, and nothing that we can do here can interfere or cause any problems as in the examples of the first delegate who raised the question about Russian fleets. It's up to Congress whether or not the Russian fleet goes through our waters, and I don't see why we should stop passage of this particular proposal when we really don't even have to be concerned with this problem. If Congress wants to let Russian trawlers come through our waters, there is nothing we can do to stop them and there is nothing we can do to encourage them. It's up to Congress.

DELEGATE PETERSON: Mr. Chairman.

CHAIRMAN: Delegate Peterson.

DELEGATE PETERSON: I wish to ask a question to the offerers of this motion. Would passage of this amendment change or transfer any lands or increase the population of this State?

CHAIRMAN: Delegate Izu, do you wish to yield to that question?

DELEGATE IZU: Yes. The answer is no.

DELEGATE PETERSON: Thank you.

DELEGATE CHUNG: Mr. Chairman.

CHAIRMAN: Delegate Chung.

DELEGATE CHUNG: I speak in favor of the motion. I just want to share some information which is very pertinent. This is in respect to what John Craven told us at our committee hearing. As you know, John Craven is State Marine Affairs Coordinator and a renowned authority on marine affairs, and he advocated that we insert the word "archipelagic"--particularly because, in case of future litigation in relation to the determination of the Law of the Sea which is still pending and in conflict in relation to the United Nations' concern for the development of Third World countries with the possibility of great wealth in the ocean estimated to be over \$30 trillion, and he strongly felt that Hawaii's share in the future in economic development in sea mining must be preserved.

This is why he strongly advocated that this word be inserted to protect us if anything or any litigation should happen maybe 20 years from now. But as all of you have observed, we recently had a conference in Hawaii on this manganese sea-mining program. So perhaps all of these benefits shall be upon us sooner than we expect. Therefore, this particular amendment is very important for the future of Hawaii. Thank you.

CHAIRMAN: Does the committee wish to further consider Section 1? Delegate Tam.

DELEGATE TAM: Mr. Chairman, I would like to address a question to the Committee on Revision and Amendment. Is it the intent of the committee to allow our police department and other law enforcement bodies to pursue criminals and prosecute all crimes in archipelagic waters?

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: The principal idea behind the proposal is to establish the

exterior boundaries of the State, including the channels. It is not the intent of the proposal to question the idea of ownership, just to set up the exterior boundaries. As far as policing, that's another matter that will have to be considered when the time comes. Thank you.

DELEGATE TAM: Since the delegate didn't specifically answer the question, could we get some kind of expression on this matter? Some guidance?

CHAIRMAN: Delegate Izu.

DELEGATE IZU: Mr. Chairman, I'll speak for the second time on this. What the committee proposes to do by this is to set out the State's understanding of our boundaries. We are not changing our boundaries. If Congress or the United Nations--or whatever international law comes out in the future--says that we do not rightfully own these waters between the islands, then we do not rightfully own them and cannot do anything about it.

However, as was mentioned by previous speakers, there is ambiguity, there's uncertainty about what our boundaries are. We would like, by adopting this amendment in our present Constitution, to set forth what we believe our boundaries are. I don't believe that there will be any drastic or immediate change in what we presently do within the State as far as policing the waters, as far as taxing whoever comes through these waters. But we are saying that in the future should there be a need to tax whatever industry goes on in these waters, that we can say, through this amendment, that we understand these to be our boundaries. But let me reiterate that we unilaterally cannot change our boundaries.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: Point of inquiry. I am in a quandary. I very much support the archipelagic concept as something we definitely need in Hawaii, and I would do anything to make sure that we've got it. I realize that Dr. Craven has suggested this wording. But I was fortunate enough to have lunch with Patsy Mink, who also has a great deal of expertise in this area, and she said that this would be absolutely meaningless. Therefore the quandary. Has the committee fully researched this, and are they certain we aren't inserting a meaningless term into the Constitution?

DELEGATE STERLING: Mr. Chairman, may I respond? The present language says this: "The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on the date of enactment of this Act"-- and so forth. We used the term "archipelagic" to get away from the ambiguity of the "appurtenant reefs and territorial waters." The definitions of those words are very ambiguous. We also wanted to come to an agreement as to the fact that we are different from a continental shelf. Our proposal initially was to go with the midocean archipelago, then Dr. Craven responded with the "archipelagic." I am very much in favor of the motion and I don't want to lose this, and I don't think there are any delegates here who want to lose by default what is rightfully the heritage of Hawaii by not being able to take positive action to be precise, because this action has been considered. There are many, many records on Hawaii before statehood. There are records on this in the time of annexation. Thank you very much, Mr. Chairman.

CHAIRMAN: Thank you. Delegate Kaapu.

DELEGATE KAAPU: May I speak in response to Delegate Harris' point. I would like to believe that former Congresswoman Mink meant that what we are discussing here and others have said, that there would be no immediate effect of adoption of such language. But I do know, from the experience of having done a great deal of research in connection with the Hawaiian Native Claims and other claims such as in Alaska, that when Hawaii became a part of the United States, Congress in the Organic Act stated that all laws pertaining to land which were in existence prior to that time should continue and remain in effect until Congress should otherwise legislate, thereby establishing and freezing and maintaining concepts of Hawaiian land law that were not in existence throughout the country or even throughout the Western or European world. Now this became important later, even in the Alaskan case. When it was to be determined which lands belonged to the aboriginal Alaskan natives, the traditional practices and view of the land played heavily in the decision of Congress to grant to them some 10 million acres of land in their settlement.

Now, in the research done by our attorneys, Stewart Udall and his associates, I learned something that I was not even aware of. That in these matters of international law and the determination of rights and of territorial concepts, tradition plays an important part. While Patsy Mink may be correct--if that's what she meant--that passage of this would not bring us any immediate benefit, it could possibly bring us great benefit in the future if that body sat down to consider what has been our traditional view of our land. And from that standpoint I hope that these views can be reconciled and Dr. Craven and Mrs. Mink can be happy.

CHAIRMAN: Does the committee wish to further consider Section 1? Delegate Lacy.

DELEGATE LACY: I would like to speak in support of the amendment. I have had some training in international areas, in relations and in law, and I feel that there is nothing more important than that you assert yourself and the tradition, as spoken on by others of our body. I strongly recommend that you leave that word in and vote for it as it's written.

CHAIRMAN: Does the committee wish to further consider this matter of Section 1? If not--

DELEGATE CHU: I have a question, a point of inquiry. Do I have it correct that we as a State are asserting our rights, our claim to this area although it's sort of unclear whether or not the federal laws will grant us that particular area? Can I have that question answered?

DELEGATE IZU: We're not so sure that the federal government does not already recognize our boundaries, and therefore we are asserting that these are our boundaries.

DELEGATE STERLING: If that answer is not clear, I will try to clarify it.

DELEGATE CHU: I would like further explanation.

DELEGATE STERLING: In arguments during the public hearings, it was pointed out from a pamphlet--we showed that there were some 30 different countries having agreements with the United States, the boundaries varying from 3 miles to 12 miles and 200 miles. So, there is no consistency in the recognition by the United States of other countries. All we are asking is for a precise definition which can be measured under these terms for the State of Hawaii.

CHAIRMAN: Delegate Chung.

DELEGATE CHUNG: With your permission I just want to supplement what Delegate Sterling has said, referring again to Dr. Craven. The Law of the Sea, which is being battled from here to there, is yet to be determined. And it is because of the questions remaining as to the settlement of the Law of the Sea--whether it's going to be in favor of Hawaii or against us, we don't know. This is something that is yet to be developed or agreed upon. And he also said that there are several ways of describing our boundaries--one the legal, one the physical or the biological, or some phrase he used. And it depends on what you polarize to. If you go by the legal phrase, we might be in trouble. So, again, he's advocating that when the time comes for litigation, Hawaii has to be ready to argue the point in the supreme court to our advantage using the best legal approach, and therefore having this word, "archipelagic," documented in our Constitution would be an important reference if and when the litigation takes place. I wonder if this might help eliminate some of Delegate Chu's questions.

CHAIRMAN: Thank you, Delegate Chung. Delegate Izu.

DELEGATE IZU: I can try to clarify some of this by giving a little history on our boundaries. Our boundaries as stated in our Constitution are taken from the Admission Act of the State. The boundaries set forth in the Admission Act were taken from the Organic Act. The boundaries set forth in the Organic Act were taken from the Joint Resolution of Annexation, and nowhere in there is it clear where our boundaries are. In the Admission Act we agreed to accept the Submerged Lands Act. The Submerged Lands Act states that the boundaries of the State shall be 3 miles from the coastline, but if, by

prior law or Constitution, the territory which had now become the state recognized its boundaries as being more than 3 miles from the coastline, then this will not prejudice against the state that is being admitted. The United States will recognize the boundaries.

As the committee report states, the Kingdom of Hawaii did consider the waters between the islands to be part of Hawaii. I hope this clarifies for you the problem that we face with the federal government, not knowing whether they consider our boundaries to include the archipelagic waters between the islands.

CHAIRMAN: Thank you, Delegate Izu. Delegate Shinno.

DELEGATE SHINNO: I'd like to find out--if there is by chance a volcanic action that creates a new island, will this in fact help us claim the new island? If so, I'd like to leave it in.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: Mr. Chairman, I'd like to speak in favor of the motion. I'd just like to add a note of further clarity here. It is not a matter of interpreting some document, but that we have and always will recognize that the waters between the channels--the waters of the archipelago--are part of the State of Hawaii, that we always have, and we do now, and we will in the future. It's very important that the Convention go on record as stating that we do declare this has always been part of the State of Hawaii, not just an interpretation we're making at this point in time. I just wanted the record to reflect--at least I feel that they always have been part of the State of Hawaii, always will be, and we are simply reasserting that.

CHAIRMAN: Delegate Barnes.

DELEGATE BARNES: I just sat through a course on ocean law at the University with the Sea Grant Program. They did a research project on the archipelago, on this specific point, which is available at the Sea Grant Program. Choon Ho Park, an international expert from Harvard, along with Dr. Craven, who is an acknowledged expert in marine law, agree that, I would think, this would be a good idea for the State of Hawaii.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: I rise to speak in favor of the motion. Inasmuch as there will be a Second and Third Reading, perhaps we could offer caveat to the makers of that proposal to come forth with a little more of a legal opinion on it. But I think everyone here has some sort of feeling of support for the motion and its intent. So without procrastinating on the subject, let's vote on the question.

CHAIRMAN: Does the committee wish to further discuss this section? Otherwise we'll move on to Section 4. The floor is now open for consideration of Section 4 of Committee Proposal No. 2. Delegate Izu.

DELEGATE IZU: Mr. Chairman, I speak in favor of including the motto in our State Constitution, as is stated in Section 4. This motto was selected by joint resolution in 1959, under these considerations: one, its historical significance; two, its beauty and simplicity; and three, its expression in the Hawaiian language.

The historical origin of Hawaii's state motto began during the reign of King Kamehameha III. In February of 1843, the King was forced to issue a provisional cession of the Islands to the British. The Hawaiian flag was lowered and replaced by the British flag. On July 26 of the same year, British Admiral Richard Thomas negated the act of cession, and the Hawaiian flag was again raised in recognition of Kamehameha III as an independent sovereign.

At a Thanksgiving service, the king stated that life had been restored to the land. He is said to have then used the words which have become the motto of Hawaii. This motto has been inscribed in the coat of arms of the Kingdom of Hawaii, the seal of the Republic of Hawaii, the seal of the Territory of Hawaii and the seal of the State of Hawaii, and has inspired generations of Hawaii's people to the successive forms of government.

Today, the beauty and simplicity of the motto are understood and appreciated through-

out the Islands and its appropriate expression in the Hawaiian language reflects the State's unique heritage and perspective. Finally, in section 5-9 of the Hawaii Revised Statutes, the official state motto is recognized "so long as the legislature of the State does not otherwise provide." In order to insure its preservation, the motto should be accorded constitutional status. Thank you.

CHAIRMAN: Delegate Alcon.

DELEGATE ALCON: Mr. Chairman, I have an amendment to offer that has been circulated to all members of the Convention. I would like to move to amend Article XIII, Section 4, as circulated.

DELEGATE DYER: I second that motion.

CHAIRMAN: Moved and seconded that Article XIII, Section 4 be amended to include the English translation of the state motto: The life of the land is perpetuated in righteousness. Are you ready for the question?

DELEGATE DE SOTO: May we hear the rationale?

DELEGATE ALCON: I agree with the chairman of the committee that it is a simple and beautiful motto, and it should be included in the Constitution. But then, Mr. Chairman, most of us are not well versed in Hawaiian, and therefore you'll notice that the amendment is enclosed in parenthesis. All it does is explain what the Hawaiian words mean, and I think it is a beautiful translation of the motto.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: Mr. Chairman, I rise to speak for the amendment. My reason is that our Constitution is known as a model constitution by many other states. And since we are very proud of our motto, I would like those who study our Constitution to know what we mean, and then they will be inspired by our motto.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak on the motion. It appears that we are faced with the same problems for centuries. They never get away from us. "Ua mau ke ea o ka 'aina i ka pono." Everybody should learn to say that. It is simple. There are unintentional moves to continually implement genocide on the Hawaiian language. This should cause us to go and find out what "Ua mau ke ea o ka 'aina i ka pono" means. I therefore ask this body to consider--the Hawaiian language is a beautiful language; we're not asking you to rewrite the Constitution in Hawaiian. We're not asking anything more than what is put on our tourist brochures for people who do not understand our language. We're asking that the Hawaiian language be retained as proposed in Committee Proposal No. 2 and that there be no effort to put in the English language. To include the English language is an assumption that everybody in the world understands English; that all people who come to our shores understand English.

I think the first lesson for anyone who comes to Hawai'i nei is to learn the simple phrase that is the basis of Hawaii. The life of the land is perpetuated in righteousness. I ask all the delegates in the Convention to vote down this amendment for the reasons I have stated. Mahalo.

CHAIRMAN: Delegate Uyehara.

DELEGATE UYEHARA: I rise to speak against the amendment. Many of the beauties in Hawaii are hidden. If people go out and search for beauty, they will find that each of the Islands has lots of beauty--like going into Waipio Valley to experience camping, to return to simpler ways of life. Some of our beauty rests in the suffering in Kalaupapa. Some of us have hiked into the valley, to see and stand and walk in the places where much of the suffering of our diseased has been.

Some of the beauty rests in the mountains near us, and yet we're afraid to walk there because it may cause a little pain, and a little energy is needed in seeking out the beauties in our Waianae Mountains, or the other ranges. There are many beauties, and

the greatest of all is right here in the Constitution, in our motto that was stated, was worked on, and is recommended by the committee. And therefore, if one really wants to look into the beauty of our language and into the Constitution of the State of Hawaii, which is a model constitution of which we are very proud, I believe that if one really wants to know its meaning, let him find it. I think the female gender knows that hiding some of their beauty makes it much more interesting to those seeking. With this I would like to ask the delegates to vote down this amendment.

CHAIRMAN: Delegate Hino.

DELEGATE HINO: Mr. Chairman, I rise to speak against the amendment. And to answer particularly Delegate Dyer's concern that people of other states may not understand the Hawaiian language and therefore lose the value of this motto.

In preparing to become a candidate to this Convention, I read through 50 state constitutions. These constitutions come in two forms. One is the basic unaltered form, and if you skim the pages a little, you'll come to a section which repeats the constitution and has very useful annotations. I'm sure that the Constitution of the State of Hawaii will be so annotated that the English translation will be available to all in the United States.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman. I'm not sure if I share the view of Delegate Uyehara that obscuring increases the allure. However, I do know that in my own case, with my name, there have been those who have suggested that perhaps I should change my name because it's so hard to pronounce. I have to explain to them that I have changed it considerably and shortened it by about 40 letters because otherwise no one would ever ask for a roll-call vote.

However, I will say this. When I think of mottos, I think of the motto of the United States: "E pluribus unum." You don't see a translation on the coinage of this nation. I think that schoolchildren learn it as one of their first things. And I do agree with those who have stated that to have a motto of this sort without translation may make it the most learnt and most learned motto of any state in this country.

CHAIRMAN: Delegate Villaverde.

DELEGATE VILLAVERDE: I would like to speak in opposition to this particular amendment. But particularly I would not like to reiterate Delegate De Soto--she's Hawaiian. It's been part of my life that I've been reminded of the pronunciation of Hawaiian, and I think that we should have this in its proper form and pronunciation.

CHAIRMAN: Does anyone else wish to speak on the question?

DELEGATE ALCON: Mr. Chairman, as the movant of this amendment, I'd like also to say that we are not changing the motto, it's just a matter of explaining what it means. None of the beauties of this beautiful Island will be taken away. None of the beauties of the Constitution will be reversed. All it does is let us know what it means. I happen to know the motto of the United States is Latin and also, Mr. Chairman, it appears on quarters, dollar bills and so on. What it means, really, has no significance to me, except that I would like to know what the words mean and whether they are good or bad. Are we just to let it go as it is, without any meaningful explanation? I think, if you will recall, Mr. Chairman, this Convention's proposals also included one recommending that the English and Hawaiian languages be adopted as the languages of Hawaii, and to oppose a meaningful translation of this beautiful motto, I think, is voting against righteousness.

CHAIRMAN: Delegate Alcon, you were recognized for speaking. Delegate Chung.

DELEGATE CHUNG: Thank you. With due respect to Delegate Alcon and his concern, I'm speaking against his amendment. I feel that if we adopt his recommended English translation, it will look more like a tourist book. Everything you pick up for tourists, you have the Hawaiian and the translation on the side, above or below. And I think omitting the translation would certainly dignify our motto. Therefore, I say leave it the way it is to enhance the dignity of our state motto.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: May I ask for a quid pro quo, an expression used by the mayor of the City and County of Honolulu, and by lawyers and so forth, who quite frequently use Latin references without defining them in parenthetical expressions. So I say, in support of the amendment, that the argument made by Delegate De Soto is very meaningful and I speak in support of it.

CHAIRMAN: Delegate Cabral, are you speaking for the amendment offered by Delegate Alcon?

DELEGATE CABRAL: I was speaking in support of the argument presented by Delegate De Soto.

CHAIRMAN: Are you ready for the question? The question before this committee is whether we should amend Section 4 of Article XIII as follows: "The motto of the State shall be 'Ua mau ke ea o ka 'aina i ka pono (The life of the land is perpetuated in righteousness)'."

All those in favor of this amendment, raise your hands. Thank you. All those opposed? Thank you. The amendment fails.

The question is, does the committee wish to further consider Section 4? The question is now open for any other amendment pertaining to Committee Proposal No. 2.

DELEGATE IZU: Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: There being no further discussion, I move that we recommend approval of Committee Proposal No. 2.

DELEGATE KAITO: I second the motion.

CHAIRMAN: It has been moved and seconded that this committee recommend approval of Committee Proposal No. 2. Are you ready for the question?

All those in favor of the motion, say aye. Those opposed, nay. The motion passes.

DELEGATE IZU: Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: I move that we rise and report to the Convention that the Committee of the Whole recommends approval of Committee Proposal No. 2.

DELEGATE FUNAKOSHI: Second the motion.

CHAIRMAN: It has been moved and seconded that the committee rise and report on the motion that was adopted. All in favor say aye. Opposed, nay. The motion is carried.

At 5: 53 p. m. , the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on THE EXECUTIVE

Committee Proposal No. 3
(Articles V [IV] and XVIII [XVI])

Chairman: DELEGATE WALLACE WEATHERWAX

Thursday, August 17, 1978 • Afternoon Session

The Committee of the Whole was called to order at 1:09 p.m.

Delegate Wallace Weatherwax presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. The Committee of the Whole has been referred for consideration Committee Proposal No. 3 from the standing Committee on Executive.

Before we begin, I'd like to put out a few reminders and also advise you of the procedure for the Committee of the Whole. I will remind all delegates that in the Committee of the Whole motions calling for the question, for tabling or deferring or referring to a committee are out of order.

The Committee of the Whole will consider Committee Proposal No. 3 by sections-- Section 1 and Section 2 on Article IV and Section 3 on Article XVI--I believe you all have Committee Proposal No. 3 before you, attached to Standing Committee Report No. 32. You will note that particular issues will come up in due course as we proceed through the section; for example, the issue of whether or not there shall be a two-consecutive-term limit for the governor will come up in Section 1. The issue in Section 2 deals with the lieutenant governor; then the third section, which is on Article XVI, concerns the effective date for these amendments; and thereafter any new amendments that are proposed.

I'd like to call your attention to the amendments that have been placed on the clerk's desk--these are the blue sheets. For your information and referral, I will state the order in which the amendments will probably come up. First of all, there is an amendment proposed by Delegate Hale. I believe, Delegate Hale, you have withdrawn this amendment--is that correct? The amendment by Delegate Hale has been withdrawn and will not be considered. The amendment by Delegate Blean will be number one, the first amendment we will deal with. The next amendment, by Delegate Crozier, will be number two. Your third amendment is Delegate O'Toole's--there are two by Delegate O'Toole--the third would be the shorter of the two, which seeks to remove the requirement that the lieutenant governor and governor run together on the same ticket. The fourth would be Delegate O'Toole's other amendment, which seeks to expand the office of the lieutenant governor. The fifth amendment is by Delegate Barnes, and the sixth would be the one by Delegate Goodenow.

Just a few procedural rules: I would ask that members with questions regarding these amendments please take the opportunity to ask the movant your questions during recess periods. If we can save some time by avoiding questions between movants and individuals who have concerns on the amendment, we ask that during the recess you get together.

Some other reminders--recess will be taken when necessary and for good reason. The recesses will not be lengthy. If you have legal questions, please submit them in writing to legal counsel. I would also ask as a procedural rule that when you rise to speak for or against an amendment, you so state before beginning. So upon recognition by the Chair, please state whether you are speaking for or against the amendment.

I remind the delegates also of the limitations--the clerk as well as the Chair will tally the number of times you speak. Again, the limit is two, the first time for 10 minutes and the second time for five. The Chair, however, will recognize that if an

individual desires to speak last to an amendment--and the movant will normally be the one doing that--we ask that you take either the 10-minute period last or the five-minute. We also ask that the movant please speak to the motion to explain why you are amending.

There's a question on roll-call votes. If there is a desire for a roll-call vote, the rules call for 10 individuals to second the motion for roll call. Thereafter the question will be put to the committee and voted upon. If the majority of the committee feels that a roll-call vote should be taken, it shall be taken. If the vote is negative, then no roll call will be taken.

DELEGATE PETERSON: Mr. Chairman.

CHAIRMAN: Delegate Peterson.

DELEGATE PETERSON: I wish to raise a question regarding the rule which was just stated. If the body is to vote on whether a roll call is to be taken, is it necessary to have 10 people rise and second the motion?

CHAIRMAN: Yes, the rules call for that. The reasoning, or the rationale, I believe, is that no one person may impose on the majority the requirement for a roll-call vote, that it take at least 10 people to request that the question be put to begin with.

DELEGATE PETERSON: I misunderstood. I thought that a vote would be taken on whether a roll-call vote would be taken, but you are saying that after 10 people have seconded the motion, the question before the body would be put to a roll-call vote.

CHAIRMAN: No, that is not correct. If the motion is made to take a roll-call vote, there will be a requirement for 10 individuals, for 10 delegates, to second. Once we have those seconds, the motion can then be put--or the question put--to the committee in its entirety. The committee will then vote, not on a roll call but by either a show of hands or an oral vote, and if in fact the majority indicates that a roll-call vote is desired, then it shall be taken.

DELEGATE HARRIS: Mr. Chairman.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: I believe that's a deviation from our rules and I'd like an explanation if I could.

CHAIRMAN: First of all, the Chair would contradict that it's a deviation from the rules. If you'd like an interpretation from the parliamentarian, I can ask for that at this time.

DELEGATE CABRAL: Point of order, Mr. Chairman. I'd like to call for a recess.

CHAIRMAN: Mr. Parliamentarian, would you answer Delegate Harris' request as to whether the Chair's ruling on a roll-call vote is proper. One moment, please.

Delegate Harris, the parliamentarian concurs in the Chair's position, that it is not a deviation. I agree that it has not been done in this manner in the past. If that's what you mean by deviation, then I agree it's a deviation, but the Chair's ruling will be, at this time, that a roll-call vote may be put to the Committee of the Whole as to whether roll call will be taken.

DELEGATE HARRIS: Mr. Chairman, I appeal that ruling and I would request that the rule be read to the body as a whole.

CHAIRMAN: I'm sorry, Delegate Harris, could you restate that, please?

DELEGATE HARRIS: I appeal your ruling and I would request that the appropriate rule within our Rules be read to this delegation so that they can adequately judge.

DELEGATE TAIRA: Mr. Chairman.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: May we have a short recess? I think we can clear this without going through all this.

At 1:18 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 1:22 p.m.

CHAIRMAN: Will the Committee of the Whole come to order. For clarification here, the Committee of the Whole at this time will proceed under what was the past practice, which is that if a motion for a roll-call vote is made, and 10 individuals second it, then the roll-call vote will be taken. Now the rationale that the Chair put out was the other way, that the question would be put to the entire body. That is no longer the Chair's ruling. However, I believe that that rule should be clarified and should be referred to the rules committee for determination at a later time. But for now we will defer the consideration, and the present practice will be that upon motion and second by 10 delegates, the question will be put.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: May I ask, Mr. Chairman, how you intend to handle the two minority reports on our desks?

CHAIRMAN: The Chair is going to handle the minority reports as being received and before you. The minority reports will be referred to during the discussion or debate on the particular issue concerned when it comes up in the committee. At this time the Chair will recognize the movant of Committee Proposal No. 3. Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I rise to speak in favor of Committee Proposal No. 3. Traditionally, Hawaii has had a strong centralized form of government. This has been part of our heritage from the early 1800s when Kamehameha I united the islands and possessed virtually all powers of government. A strong and highly centralized executive branch was maintained throughout the territorial period and this type of governmental structure was reaffirmed in our first State Constitution. The principle underlying a strong, centralized executive branch is that the responsibility for government functions should be lodged in one individual elected by, and thus accountable to, the people.

Committee Proposal No. 3 retains this basic principle in Section 1, Article IV of the Constitution, while adding a safeguard to curb possible abuse of the executive office. The proposal limits the number of terms that a governor can serve to two consecutive full terms. This provision insures that no individual can perpetuate his reelection by using the office to build a political machine. This provision also helps to open up the political process by allowing new individuals to run for the executive office without the great disadvantage of running against an incumbent. The language of the proposal--two consecutive full terms--is framed so as to allow a person who succeeds to the office for the remainder of a term to subsequently serve for an additional two consecutive full terms.

Committee Proposal No. 3 also retains in toto Section 2 of Article IV, with one major change. This change is identical to that made in Section 1: it limits the number of terms served by a lieutenant governor to two consecutive full terms. The same rationale underlying the amendment to Section 1 applies in this instance.

The Committee on Executive also deliberated at length on the issues of abolishing or retaining the office of the lieutenant governor, expanding the powers of the lieutenant governor, and changing the method of electing the lieutenant governor. For the reasons stated in Standing Committee Report No. 32, the committee opted to retain Section 2 of Article IV substantially as it is. The committee felt that the office should not be abolished primarily because of the problem of successorship. Should a governor be unable to serve out his term, the continuity of government functions, which is guaranteed by maintaining the office of lieutenant governor, far outweighs any possible disadvantages.

In principle, the committee agreed that the lieutenant governor should play a larger role in the executive branch; however, it was concluded that no specific duties or functions

should be assigned in the Constitution. There was a general feeling among the committee members that specifying duties of the lieutenant governor could lead to serious conflicts between the governor and the lieutenant governor with regard to implementation of the governor's programs and policies. The legislature appears a more appropriate body to address the problem since it is better able to assess the results of assigning specific functions to the office and has the flexibility to respond to any negative results.

Finally, the executive committee received and considered various proposals altering the present method of selecting the attorney general. The committee recommends retaining the present method of selecting the attorney general, which is by gubernatorial appointment with the advice and consent of the senate. This recommendation is consistent with the committee's view that executive responsibility should be lodged in the chief executive's office. In order to effectively carry out his duties, the executive must be able to choose advisors and staff members in whom he has trust and confidence. This is particularly true in the selection of an attorney general since the governor must look to the attorney general to discharge the executive duty of faithfully executing the laws of the State.

The committee also discussed at length the issue of electing the attorney general and recommends against adoption of the elective method. The committee strongly believes that an elective system would lead to political conflict and hostility between the governor and the attorney general, and it expressed concern that an elected attorney general could use his office for political purposes disruptive to an incumbent administration's policies and programs. Numerous problems would be encountered by adoption of the elective method because an elected attorney general would find it difficult to act on controversial issues without considering how his actions would affect his chances of reelection. Further, an elected attorney general might be unduly influenced by those persons contributing to his campaign. Finally, an elected attorney general, during an election year, might spend more of his time campaigning than executing the laws of the State. Obviously, the attorney general's primary concern should be the administration of justice, not personal political ambition.

Mr. Chairman, these are the major issues raised before the executive committee and the results of your Committee's deliberations are reflected in Committee Proposal No. 3. This proposal recognizes that Hawaii's strong, centralized form of government has worked well and has produced an effective and responsible government. For all of these reasons, I recommend that Committee Proposal No. 3 be adopted. Thank you.

CHAIRMAN: Thank you, Delegate Fukunaga. At this time the Chair will recognize amendments to Section 1. Are there any motions to amend Section 1, which on Committee Proposal No. 3 would be lines 3 through 13 on page 1 and lines 1 through 9 on page 2. Are there any amendments?

There being no amendments, the Chair will now entertain motions to amend Section 2 of Article IV--Section 2 being lines 12 through 21 on page 2 of Committee Proposal No. 3. Delegate Blean.

DELEGATE BLEAN: I would like to amend Article IV, Section 2, by substitution to read as follows: "There shall be a lieutenant governor, who shall be appointed by the governor. He shall be appointed for the same term as the governor. No person shall be appointed to the office of lieutenant governor for more than two consecutive full terms. The lieutenant governor shall perform such duties as may be prescribed by law."

CHAIRMAN: Is there a second?

DELEGATE DiBIANCO: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 2 of Article IV be amended by substituting as follows: "There shall be a lieutenant governor, who shall be appointed by the governor. He shall be appointed for the same term as the governor. No person shall be appointed to the office of lieutenant governor for more than two consecutive full terms. The lieutenant governor shall perform such duties as may be prescribed by law."

At this time, before any discussion I will entertain any motions to amend the original language of Section 2 other than the amendment. Are there any such amendments?

Since this is by substitution, I'm asking to go back to the original Section 2--if there are any amendments to the language of the original Section 2.

There being no other amendments at this time, are there any amendments to the amendment? There being no amendments to the amendment, the Chair will now recognize the movant to speak to his amendment.

DELEGATE BLEAN: Thank you, Mr. Chairman. I would like to speak once, briefly to this amendment. I speak in favor of an appointed lieutenant governor for these reasons. First, I believe an elected lieutenant governor would lead to political conflict and hostility between the governor and lieutenant governor. Second, the office has often been used as a stepping-stone to higher office. I am concerned that an elected lieutenant governor may use his office for political purposes disruptive to an incumbent administration's policies and activities. Third, the lieutenant governor might be unduly influenced by those persons contributing to his campaign. Fourth, an elected lieutenant governor would find it difficult to act in controversial situations without considering how his actions would affect his chances of reelection. Fifth, I feel that the lieutenant governor's primary concern should be the administration of his duties and that personal political ambition could cloud the judgment of an elected lieutenant governor and distract him from the duties of his office. Sixth, in an election year I fear that an elected lieutenant governor might spend more time campaigning than tending to the duties of his office. Thank you.

CHAIRMAN: Is there other discussion addressing the amendment? Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I rise to speak against the amendment for the reasons stated in Standing Committee Report No. 32. I'd also like to emphasize that it was the feeling of the committee that the office of lieutenant governor should be retained as it provides for a successor, if necessary, for the governor, who was elected by all the people. This would not be the case if the successor to that office was an appointee or legislative officer. Thank you.

CHAIRMAN: Is there any further discussion addressed to the proposed amendment? Are you ready for the question? The Chair will restate the amendment proposed by Delegate Blean: "There shall be a lieutenant governor, who shall be appointed by the governor. He shall be appointed for the same term as the governor. No person shall be appointed to the office of lieutenant governor for more than two consecutive full terms. The lieutenant governor shall perform such duties as may be prescribed by law." That is the question. All those in favor raise your right hand. All those opposed, same sign. The motion to amend is not carried.

Again, are there further amendments to Article IV, Section 2? Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, should I read the whole thing? My 10 minutes will be up if I do.

CHAIRMAN: Delegate Crozier, I think the members of the committee can read it on their own.

DELEGATE CROZIER: Thank you. I move for the adoption of my amendment.

CHAIRMAN: Is there a second?

DELEGATE CAMPBELL: I second the motion.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 3 be amended by Delegate Crozier's amendment, which in essence seeks to abolish the office of lieutenant governor and replace it with a secretary of state with certain delegative powers.

At this time the Chair will entertain a motion to divide the question, to first address solely the portion of the amendment dealing with Section 2, which is that Committee Proposal No. 3 be amended by amending Section 2 to read: "There shall be a secretary of state, who shall have the same qualifications as the governor. He shall be appointed by the governor with the advice and consent of the senate. He shall perform such duties as may be prescribed by law." The Chair at this time would entertain a motion to divide.

DELEGATE CROZIER: I so move, Mr. Chairman.

DELEGATE FUKUNAGA: I second the motion.

CHAIRMAN: It has been moved and seconded that the question be divided to first take up Section 2 as recommended. The question before this body then is the amendment to Section 2 as read, which is the first paragraph in the amendment. Is there any discussion?

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: I move to amend the amendment by adding a slash and the word "she" in each area of the paragraph where the word "he" is indicated.

DELEGATE DYER: I second the motion.

CHAIRMAN: It has been moved and seconded that the amendment be amended by replacing the word "he" wherever indicated in the amendment with the term "he or she." Is there any discussion?

DELEGATE CROZIER: Mr. Chairman, I'd like to speak for the amendment to the amendment. Because there are quite a few women running for lieutenant governor at this time and to give them due courtesy, I'll go along with this.

CHAIRMAN: Is there further discussion?

DELEGATE CABRAL: Mr. Chairman.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: I move to defer voting on this particular amendment until all other amendments have been considered.

CHAIRMAN: Is there a second to this motion?

DELEGATE HALE: I second.

DELEGATE WAIHEE: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: I thought motions to defer were out of order. Maybe what we can do is ask the movant to withdraw that amendment and take it up at the end.

CHAIRMAN: Delegate Cabral, the motion to defer is out of order in the Committee of the Whole.

DELEGATE CABRAL: It says to lay on the table is not acceptable and the motion to postpone indefinitely is not acceptable. I don't see where deferment of consideration after other amendments is out of order.

CHAIRMAN: The motion to defer, as I understand it, would still be a motion to table. In this case you're asking that Delegate De Soto's motion be tabled until a later time.

DELEGATE HALE: Point of order.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I think a motion to defer until a certain time is a different motion. Can we get a ruling from the parliamentarian?

CHAIRMAN: The Chair would inform the members of this committee that we are not at this time dealing with the substance of the matter we are here for. I thought that

changing to the "he/she" term could be handled very quickly by vote, but apparently not. The Chair would ask that Delegate De Soto at this time withdraw her motion and make it at a later time. Delegate De Soto, do you concur with this?

DELEGATE DE SOTO: Yes, Mr. Chairman. I withdraw the motion.

CHAIRMAN: Thank you, Delegate De Soto. The motion to amend the amendment has been withdrawn. We therefore go back to the main motion, the amendment before you. Delegate Crozier, would you like to speak to your motion?

DELEGATE CROZIER: Yes, sir. Mr. Chairman and committee members, I would like to speak on the lieutenant governor's duties, which we all know are limited. I am going to take you back through history beginning with Statehood to prove my point.

Okay, consider some of the drawbacks of having an elected lieutenant governor--normally when the governor and lieutenant governor get elected, the lieutenant governor feels that he has contributed x number of votes to helping the governor get in. So then he feels that the governor owes him to some degree. Now we cannot use this year as an example.

So one of my arguments is to prove that we have to eliminate the lieutenant governor--we cannot give him more chores, we have to get rid of him. Under the situation now, where the lieutenant governor is elected separately from the governor, he is then obligated to follow the programs of the governor in case he has to replace the governor. If the governor and the lieutenant governor are elected as a team, he would then be obligated loyally to follow through with the policies of the governor, primarily the platform on which they got elected. But right now the elected lieutenant governor has no moral obligations, because he did it on his own. For example, when President Johnson replaced President Kennedy, he stated that he did in fact follow President Kennedy's program--until he won his own election and started his Great Society.

At present, we have a strong centralized government, with a strong governor and a weak legislature. If no clear-cut duties are given to the lieutenant governor, then the traditional type of candidate--a strong decision-making politician--will shy away from running for that office. The result will be that a more bureaucratic-type person will run for this office, rather than the decision-making person. If the governor doesn't die, we will be all right; but if the governor does die, we'd have a weak leader for the rest of the term, which could be as long as 3-1/2 years. If a secretary of state is appointed, there wouldn't be another governor until another governor could be elected which should be approximately 60 days.

It has been said that one of the functions of the lieutenant governor is to be a watchdog of the executive. This doesn't happen. What really happens is the lieutenant governor begins to grumble about the governor, and then after awhile he gets disruptive and jealous of the governor and finally he becomes a crybaby. Traditionally the governor has only allowed the lieutenant governor to do ministerial chores. And that's just the way the lieutenant governor, who is normally a successful politician used to having his own way, becomes disenchanted with the duties assigned to him. For example, since Statehood we have had five lieutenant governors, and only three have worked harmoniously with the governor. The rest have, in varying degrees, become irritants to the executive department. Some of you older delegates will remember this.

In the standing committee report, the first sentence of the last paragraph on page 4 says, "Your Committee also believes that the office of lieutenant governor is necessary because it provides a means by which a relative newcomer can be elected to a statewide office before seeking election to the chief executive's office." That's a pretty heavy statement. I cannot believe that the purpose--the reason we the people elect a lieutenant governor is to foster his career. If that is true, then are we not giving the lieutenant governor undue leverage over any other individual in seeking the governor's office? Isn't that exactly the opposite of our concept of a free and democratic society? What this report is saying is that once you get a machine of government going, you should give it an extra tool to protect itself. Fellow delegates, I cannot believe that we pay \$45,000 a year to support an apprenticeship program of one. If indeed we do this--the apprenticeship program--we had better put in some means to aid the lieutenant governor into getting to the governor's office. So far we have had five lieutenant governors and only one has been able to reach the governor's office.

The proponents of the status quo say that eliminating the lieutenant governor's office would give the governor more power. This is untrue. The lieutenant governor is now ineffective. And, on the other hand, the governor is only as powerful as the legislature allows him to be.

Ladies and gentlemen, if you reject the arguments in the committee report, then I ask you to take the other arguments with a grain of salt too, and vote with me to eliminate the lieutenant governor's office and replace it with an appointed secretary of state. Thank you.

CHAIRMAN: Thank you, Delegate Crozier. Is there other discussion to the amendment? Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I rise to speak against the motion to amend Committee Proposal No. 3 to abolish the office of lieutenant governor. One of the primary functions of the office of lieutenant governor is to provide a successor to the governor, who is elected by all the people. Furthermore, abolishing the office of lieutenant governor would not reduce the cost of operating this office. In reality the monetary costs may amount to more than the lieutenant governor's annual salary. Additionally, a special election to provide a successor to the governor's office would far exceed the cost of maintaining the lieutenant governor's position. Special elections have cost approximately \$1 million. Thus the lieutenant governor's annual salary, coupled with the security of knowing that there would be an immediate successor to the governor if necessary, does not amount to a significant monetary expense. Your Committee then recommends that the office of lieutenant governor be retained. Thank you.

CHAIRMAN: Thank you, Delegate Fukunaga.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I rise to speak for the motion. I'm sorry that I wasn't aware of this amendment until I came here today, and I think that's one of the problems that we're going to face as we go along because when new ideas come up and grab us right there, we really don't have a great deal of time to prepare for them. So my remarks are kind of off the cuff and probably not as good as they would be if I were prepared.

As one of the older delegates, if Delegate Crozier doesn't remember, I can remember there was a time when we were a territory and we did have a secretary of state. This is traditionally an office that Hawaii has had and, following the rationale of the executive committee of a strong, centralized government, this does follow that historical tradition.

I'd also like to say that I think it's a good proposal because a person who is appointed secretary of state does not have to have the same qualifications as the person elected to the office of lieutenant governor since the legislature will set up, I assume, the duties of the secretary of state, and the governor can then appoint somebody who fits the qualifications and has the necessary background to carry out the duties prescribed by the legislature.

What I like about this proposal is that if something does happen to the governor, if more than 6 months of his term remains, we will have a special election. If, say, the governor goes 2-1/2 years of his or her term and then something happens to the governor, there's still a year and a half in which you're going to have to be governed by someone. Circumstances in the State may have changed from the time you first elected that governor and lieutenant governor, and you might find a person available at the time of the special election who is better qualified for the position of governor.

I'd like to say also that I think it's a terrible waste of talent to elect somebody to twiddle his or her thumbs for 4 years as lieutenant governor on the hope or possibility that something is going to happen to the governor. Here we have a person who is qualified to be governor and yet has no particular duties. It's bound to be a very frustrating job and I don't see how we'll ever solve the problem of having a qualified gubernatorial candidate who is not allowed to serve in a position of executive responsibility.

I think, in an issue as important as this, that cost is a rather unimportant consideration.

I think we've all been concerned that, the way our Constitution is set up now, if we have a lieutenant governor who is not loyal to the governor, we're going to have unnecessary conflict and a situation in which the person is powerless to do anything except get publicity and maybe try to run for governor next time. On the other hand, if we have a situation--as the first proposal suggested, that I voted against--in which the governor appoints the lieutenant governor, then if something happens to the governor, the people never really got a chance to vote for the new governor, so it's no longer an elected position, which our governor should be.

It seems to me that this proposal does merit our very serious consideration. There are probably many other arguments that could be used for it and I'd like to commend Delegate Crozier for this proposal and suggest that all of you give it your very serious consideration and hopefully it will be adopted.

CHAIRMAN: Thank you, Delegate Hale. Is there other discussion on the amendment? Are you ready for the question? The question before the body is the first portion of the amendment proposed by Delegate Crozier.

DELEGATE ONTAI: Is it still possible to speak?

CHAIRMAN: Delegate Ontai.

DELEGATE ONTAI: Yes, I'd like to put in a good word for my colleague and roommate, if I might. I'd like to add one more thing to his proposal. From the time we became annexed to the United States until Statehood--approximately 60 years--we had a situation just like Delegate Crozier proposes. We had a governor and instead of a lieutenant governor, we had--I forgot his exact title but I think it was secretary of some kind, and I might just add it worked pretty well. I'd like to say I don't remember any fights then and I think I was old enough during part of that period. I think you should give it serious consideration. It came as a shock to me when I walked into my office this morning and found it was a proposal. Actually I wish we had a few more days, but it has merit, it's not something that we should treat lightly.

I might just add, on the possibility of a special election in case the governor dies or quits or gets impeached, there is a possibility but, in my honest opinion, the probability is about nil. In the history of the State and earlier the territory, I'm not really sure but I can't remember a governor dying, quitting or being impeached. So the probability is almost nil, about as rare as a dodo bird or a three-dollar bill. Anyway, that's about all I'd like to add to Delegate Crozier's proposal. Thank you.

CHAIRMAN: Thank you, Delegate Ontai.

DELEGATE CROZIER: Mr. Chairman.

CHAIRMAN: Delegate Crozier, you're going to speak for your amendment and this will be your last time. Let me inquire if there are any other speakers. Are there others who would like to address the amendment at this time? There being no others, Delegate Crozier, you may speak for your amendment.

DELEGATE CROZIER: Yes, I'd just like to apologize to the body for not going around and lobbying for this amendment because for one thing I'm an amateur politician and I'm not sure how to do these things. Plus, I've been developing arguments. Believe me, I really tried to study the matter and am asking you to do the same in three minutes. The arguments that I presented are all real arguments, so please accept them. Thank you.

CHAIRMAN: Thank you, Delegate Crozier. Are you ready for the question? The question before the body is the proposed amendment.

DELEGATE HALE: I'd like a roll call.

CHAIRMAN: You would like a roll-call vote? I will consider your motion at this time. The question before the body is the amendment proposed by Delegate Crozier, in particular the first section of Delegate Crozier's amendment which is before you, replacing the position of lieutenant governor with secretary of state in Section 2 of Article

IV, thereby abolishing the office of lieutenant governor. I leave the remainder of that section of the amendment for you to read. That is the question before the body. At this time the Chair will entertain a motion for a roll-call vote.

DELEGATE HALE: Mr. Chairman, I'd like to move for a roll-call vote.

CHAIRMAN: Are there 10 delegates who wish to second for a roll-call vote? There being 10 individuals, a roll call will be held. The clerk will call the roll.

Roll call having been ordered, the clerk proceeded to call the roll. The motion was lost by a vote of 27 ayes, 73 noes and 2 excused; with Delegates Barnes, Barr, Blean, Cabral, Campbell, Laura Ching, Chu, Chun, Crozier, Eastvold, Ellis, Goodenow, Hale, Hino, Hoe, Hornick, Dennis Ihara, Kono, Rachel Lee, Liu, Miller, Nozaki, Ontai, Pulham, Sterling, Takitani and Chairman Weatherwax voting aye; Delegates Alcon, Anae, Andrews, Barnard, Blake, Burgess, Chang, Calvin Ching, Donald Ching, Haunani Ching, de Costa, De Soto, DiBianco, Dyer, Fernandes Salling, Fujimoto, Fukunaga, Funakoshi, Fushikoshi, Hagino, Hamilton, Hanaike, Harris, Hashimoto, Hayashida, Hirata, Hironaka, Hokama, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaapu, Kaito, Kimball, Kojima, Lacy, Ledward, Marion Lee, Lewis, Marumoto, McCall, Nakamura, Nishimoto, Odanaka, Okamura, O'Toole, Paty, Penebacker, Peterson, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Stone, Sutton, Taira, Takahashi, Takehara, Takemoto, Tam, Tamayori, Uyehara, Villaverde, Waihee, Wurdeman, Yamashita and Yoshimura voting no; and Delegates Chong and Chung being excused.

CHAIRMAN: The motion fails. Delegate Crozier, at this time I would like to ask if you would withdraw those portions of your amendment which we divided, which would be your Sections 2, 3, 4 and 5, and 6 and 7 of your amendment.

DELEGATE CROZIER: Most graciously, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Crozier. The Chair at this time will entertain further amendments to Section 2, Article IV.

DELEGATE O'TOOLE: Mr. Chairman.

CHAIRMAN: Delegate O'Toole.

DELEGATE O'TOOLE: I'd like to amend Article IV, Section 2, as follows: "There shall be a lieutenant governor, who shall have the same qualifications as the governor. He shall be elected at the same time, for the same term, and in the same manner, as the governor; provided that the lieutenant governor shall be elected independently of the governor. No person shall be elected to the office of lieutenant governor for more than two consecutive full terms. The lieutenant governor shall perform such duties as may be prescribed by law."

CHAIRMAN: Is there a second to the motion?

DELEGATE DiBIANCO: I second the motion.

CHAIRMAN: It has been moved and seconded that Article IV, Section 2, be amended by Delegate O'Toole's amendment which is before you. At this time, being the mover would you like to address the amendment, Delegate O'Toole?

DELEGATE O'TOOLE: Mr. Chairman, this amendment calls for a lieutenant governor who is elected separately from the governor. I would like to preface this by saying that I do not think this is an issue between Democrats and Republicans. Our current system of electing the governor and lieutenant governor together was designed to establish a working relationship between the two. This has not proved to be the case. We have had only two lieutenant governors since Statehood who have worked compatibly with the governor. I ask you, also, how many lieutenant governors since Statehood would have continued the program of the governor in the event of the governor's death or disability? The only logical reason for electing the two officers together is thus eliminated. If we did not have a closed primary in this State, I think it would be safe to say that independents would outnumber both Democrats and Republicans. In other words, in today's society people vote for the person and not the party. As it stands now, most candidates do their

own organizing and formulate their own platform. The party platforms are now nothing more than symbolic. I ask your support so that we can elect the lieutenant governor on his or her own merits and not on the coattails of the governor. Thank you.

CHAIRMAN: Thank you, Delegate O'Toole. Any discussion on the amendment?

DELEGATE CROZIER: Mr. Chairman.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: I'd like to speak against the amendment. I just proved-- well, I tried to prove anyway--that the lieutenant governor and governor do not get along and they come from the same party. Now if we get somebody from a different party, it's going to be twice as bad. Really, we shouldn't allow this. If anything, they should be team players. Thank you.

CHAIRMAN: Thank you, Delegate Crozier. Is there anyone else who would like to address the amendment? Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I would also like to speak against the motion to amend Committee Proposal No. 3 to provide for special election of the lieutenant governor in the general election. As Delegate O'Toole stated, there is a need for a harmonious relationship between the governor and the lieutenant governor. If the governor and lieutenant governor were from different parties, there would be an even greater likelihood of conflicts and disputes within the executive branch. The lieutenant governor could interfere with the implementation of the governor's policies. In electing the governor, the people have expressed their desire for his programs and policies. If the lieutenant governor and the governor were from different political parties, the lieutenant governor's political philosophy would not, in all probability, be harmonious with that of the governor. As a result, a situation of confusion and upheaval could arise if the lieutenant governor were to assume the office of governor. A major reorganization of executive policy, new department heads, suspensions of programs, etc., might be required. The wishes of the electorate, as seen in the governor's election, would not be fulfilled. Therefore, the recommendation of the committee is to retain joint election of the lieutenant governor and governor. Thank you.

CHAIRMAN: Thank you, Delegate Fukunaga. Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I rise to speak in favor of the motion. I don't think we should let our constitutional policy be dictated by the rare event of a governor's death in office. We seem to be structuring the entire executive department on the premise that all of our governors are going to die in office--die within the first 90 days--and that the lieutenant governors succeeding will all be disruptive influences.

The governor, as we pointed out, has not generally in the history of this State gotten along very well with the lieutenant governor. I don't think, however, that selecting a lieutenant governor from another party--should that even occur--will in any way diminish the role of the governor or cause any interference in the functioning of the executive department. One good thing about allowing the governor and lieutenant governor to run separately is that there will be no such allegiance as that pointed out by Delegate Crozier, that the governor somehow owes something to the lieutenant governor. The person who is elected governor will presumably have made it on his own, on his own votes and on his own party platform. The man who made it to lieutenant governor, whether he comes from that party or another, will have done likewise and there will be no suspicion that the one person owes anything to the other. There is no need to worry about a lack of harmony between the governor's office and the lieutenant governor's should the lieutenant governor come from another party, or such disharmony disrupting the executive department, because as the lieutenant governor's office is presently established, there are no duties and therefore it's impossible for him to interfere with the functioning of the executive office.

What we will get out of all this is that at least we will have a lieutenant governor who can stand on his own two feet without worrying about any allegiance or that he is lieutenant governor only because the governor put him there, that he came in on the coattails of the governor; that lieutenant governor would therefore be a much more effective watchdog of the actions and activities of the executive branch and I don't think that would be harmful to the State.

CHAIRMAN: Thank you, Delegate DiBianco. Is there further discussion on the amendment? Are you ready for the question? Delegate Eastvold.

DELEGATE EASTVOLD: Yes, I'd like to speak in favor of the motion. Speaking as a Republican, it would only be by chance that a republican candidate could possibly get in as lieutenant governor, I think, but it might be better for a democratic governor to have a republican lieutenant governor. It would be less of a threat to him.

CHAIRMAN: Is there further discussion? Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I would rise to speak against the amendment. I feel first of all that each lieutenant governor is elected on his own in the primary election. In the primary as it is now constituted, each candidate runs on his own and wins on his own, so I don't think anybody owes anybody when they get past the primary election. But I think we also have to recognize that both the governor and lieutenant governor are, under our system of democracy, more than just public officials. They are also the heads of their party. They represent in the State the top officials of the party to which they belong. Now that's our system of government. So, what I think--for instance, a hypothetical situation that would bother me would be if the Republicans were finally to succeed in electing a governor in this State and if he had a lieutenant governor as his counterpart from the democratic party, and just when the Republicans are beginning to make changes in the executive department, something would happen to the governor and all those changes would be cut short. I feel that when you vote for a political party, at the very least you're entitled to four years of that party's influence. Thank you.

CHAIRMAN: Thank you, Delegate Waihee. Are there other speakers to the amendment? Delegate Villaverde.

DELEGATE VILLAVERDE: Thank you, Mr. Chairman. I'm speaking against this particular amendment. This amendment seems to me like--you know, putting two people together--like in a zoo where a section has been fenced off for a mongoose and a snake, or even a cat and dog-- There is a rationalization here regarding independent types; in the election, putting them together could destroy the essence of partisan politics, which are traditional in this country as well as in this State. I don't mean that the majority party should prevail today or the minority party should disintegrate. I mean that other parties could be viable in this State in the future, when our children may want to have another party or other parties involved. But to rationalize this idea of putting two independents together is bad, and most of the time it'll only result in a situation of scraps versus contributions to the process of good government.

CHAIRMAN: Thank you, Delegate Villaverde. Other discussion? Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, I speak in favor of the amendment. Looking over the years that we've been a state, we've had considerable trouble right straight through. About two months ago a youngster asked me if that was the man and the other man who were always fighting. A 10-year-old boy. And this has been constant since we've been a state. Now I honestly believe that the system we have right now with this "marry-them-up" general election is wrong. If you're going to marry them up, you should do it at the beginning, so if you've got a team effort, it's going to be with you. But this is not the case. What's happening right now is that out of a clear blue sky--let's say either party--you get two people and they're at each end; they are the leaders of the ticket and you married them up in the primary and then in the general election, and since then it's been trouble, trouble, trouble. I think this amendment is one of the healthiest ideas we've promoted, and I ask all of you to seriously consider it. And, let me say this, I honestly believe if you have a split ticket, it can work very well. I know members of opposite parties that have worked very well and I don't think this would be a detriment at all to the State of Hawaii. Please seriously consider this amendment.

CHAIRMAN: Thank you, Delegate Blake. Are there other speakers?

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I simply wanted to echo Delegate Blake's remarks and to

remind everybody here that, 200 years ago when this country was founded, the way we elected our President and Vice-President was that the candidate who got the most electoral votes became President, and the candidate with the second most electoral votes became Vice-President. They were necessarily from different parties and our country did not disintegrate.

CHAIRMAN: Thank you, Delegate DiBianco. Any other speakers?

DELEGATE CROZIER: Mr. Chairman.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: I speak against the motion. I just got through speaking about President Johnson's obligation to follow President Kennedy's programs, and that he did as long as he was fulfilling President Kennedy's term, but once he began his own term, he started his own program, which was the Great Society. But he did wait. Now, if one Republican and one Democrat get in, would the lieutenant governor follow the policies of the opposite party's program? I would say that's hard to believe. Thank you.

CHAIRMAN: Thank you, Delegate Crozier.

DELEGATE FUSHIKOSHI: Mr. Chairman.

CHAIRMAN: Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: I would like to speak against this motion because I've seen this situation, having lived in Colorado for 13 years. In Colorado the governor is a Democrat and the lieutenant governor is a Republican, and all the time I lived over there, I never saw them work together. So I'd like to tell the members this is not the way to go. Thank you.

CHAIRMAN: Are there others who would like to address the amendment? Speak now or forever hold your peace. Delegate O'Toole, would you like to address the amendment last? Delegate O'Toole.

DELEGATE O'TOOLE: In response to Delegate Crozier, the situation with President Kennedy and Vice-President Johnson, I think, is a little bit different considering the fact that they were both nominated by a convention. Therefore, President Johnson had much more of a duty to follow the program. In our situation I do not think--especially with some of the lieutenant governors we've had--that they would follow the programs of the governor. Also, as far as a republican lieutenant governor and a democratic governor, I don't think that that would necessarily cause more friction. Let's look at the situation between our governor and mayor right now; they're both from the same political party and yet can we have more friction than we do between those two? Thank you.

CHAIRMAN: Thank you, Delegate O'Toole. The body is ready for the question, the question being the adoption of the amendment proposed by Delegate O'Toole, to insert into Article IV, Section 2, that the lieutenant governor shall be elected independently of the governor. The question is before this body. All those in favor of adopting the amendment, raise your right hand. All those opposed, same sign. The motion fails. At this time, the Chair will entertain other amendments to Article IV, Section 2. Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, I guess if you don't win the first time, you can always try again. Again I'd like to amend Section 2, and I don't want to read through the whole thing but--

CHAIRMAN: Please state the essence of your motion.

DELEGATE O'TOOLE: Right. Basically what it does is expand the powers of the lieutenant governor. It does this by (1) having him serve as secretary of state, with responsibilities for the supervision of elections, recordation of legislative and gubernatorial acts, certification of state documents and custodian of rules and regulations promulgated by governmental agencies; (2) making him head of the regulatory board; and (3) having him serve as coordinator of volunteer programs in the State.

CHAIRMAN: Is there a second?

DELEGATE DiBIANCO: I second the motion.

CHAIRMAN: It has been moved and seconded that Committee Proposal No. 3 be amended by adopting the language contained in the amendment before you, which seeks to expand the duties of the lieutenant governor. At this time the Chair will entertain motions to amend the amendment. Are there any motions to amend the amendment? There being none at this time, the question is for adoption. Would you like to speak to your motion, Delegate O'Toole?

DELEGATE O'TOOLE: Mr. Chairman, many have said that the office of lieutenant governor is a spare wheel. I think almost everyone agrees with this statement. However, if we did not have a lieutenant governor, the governor would be the only elected executive officer in the State. We would also have a problem as far as there being an elected official to succeed the governor in the event of his death or disability. The current lieutenant governor, Nelson Doi, has stated that the office of lieutenant governor should: (1) attract candidates of gubernatorial potential to vie for the office; (2) make productive use of the talents and abilities of the officeholder; and (3) prepare the officeholder sufficiently for ultimate responsibility. I think most of us would agree with the criteria set up by the lieutenant governor; yet the current office does not do this. I would like to quote item 6 from Minority Report No. 1 on the duties of the lieutenant governor: "Since, as the majority indicates, the lieutenant governor is the only other statewide elective office, and therefore does provide a means by which a relative newcomer can be elected to a statewide office before seeking election to the chief executive's office, an expanded role becomes even more necessary as preparation for the higher office."

This amendment would first make the lieutenant governor a secretary of state as well as the chief election officer, which he is now according to law. The majority committee report stated that there would be more flexibility if the legislature prescribed duties for the lieutenant governor that would take advantage of the individual lieutenant governor's area of expertise. I really question whether the legislature would do this to any great extent. Also, we don't assign special duties to any other elective official. This would also give the lieutenant governor the meaningful position of head of regulatory agencies as well as coordinator of volunteer programs. If properly structured by law, these duties can greatly benefit the State without being used for political purposes.

CHAIRMAN: Thank you, Delegate O'Toole. Are there other delegates who wish to address the amendment?

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: May we have a short recess?

At 2:23 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 2:35 p.m.

CHAIRMAN: The question before the body remains the motion to amend by adopting Delegate O'Toole's amendment, which would expand the duties of the lieutenant governor. I believe at this time we're taking further discussion on this matter.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: Thank you. I don't want to belabor this point because I think everybody here realizes that at the present time the lieutenant governor's office does not have anything to do and the lieutenant governor is wasting his time. The lieutenant governor himself said substantially the same thing to the executive committee. He implored us to either give him something to do--give the lieutenant governor something to do--or abolish the office. Those were Nelson Doi's words.

The question arose during an executive committee meeting as to whether we could give him something more substantial than even what is being suggested here, such as making him the chief ecology officer or head of the Department of Health or some similar function. The problem with these particular proposals, however, is that they do create a lot of possibilities for disharmony within the governor's cabinet since these are all policy-making positions.

However, the role that Lieutenant Governor Doi has requested be assigned to that office--which you can find in Proposal No. 419, which was submitted by the President of the Convention on request and which is set forth in Delegate O'Toole's present amendment and in the minority proposal that Delegate O'Toole referred to just now--is different in nature from those kinds of suggestions. Nothing being suggested for the lieutenant governor in Delegate O'Toole's amendment is of a policy-making character--it is all ministerial in nature. It is, in one phase of the word, busywork but, on the other hand, it is important busywork. It involves the responsibility of seeing that the businesses, trades and professions function properly, that volunteer programs of the State are coordinated properly, and these are tasks which could be carried out by the lieutenant governor, whether or not he is of the same party, the same mind or the same philosophy as the governor. It seems to me that it would not be harmful or in any way dangerous to assign these kinds of functions to the lieutenant governor.

The majority report of the executive indicates that if in fact the lieutenant governor's office is to be given additional powers, we should let the legislature do it. The problem with that is that the legislature has had the opportunity for the past 15 to 20 years and they've never gotten around to doing it. Maybe they consider it a hot potato and don't want to handle it, or maybe they just don't want to be bothered. But, for one reason or another, they've never seen fit to do anything and so it's up to us, the Constitutional Convention, to do it.

The complaints we've heard throughout the past few years about waste of state resources are nowhere more apparent than in the lieutenant governor's office. We hear complaints about letting our schools sit idle during the summer, our community recreation centers, our senior citizens' centers idle during certain months, we don't make enough use of our state facilities, of our state personnel--and yet we let a lieutenant governor, a highly qualified and generally highly popular individual, sit idle for four years, and at a time when he could be of great benefit to the State.

The point very simply is if you have a Rolls-Royce, you ought to drive it. I think we are being wasteful and irrational in not giving the lieutenant governor something to do.

CHAIRMAN: Any further discussion?

DELEGATE SOUKI: Yes, Mr. Chairman.

CHAIRMAN: Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I wish to speak against the amendment. For one thing, items 1, 2 and 3 under Section 2 are statutory and I believe better provided by the state legislature than included in the Constitution.

CHAIRMAN: Thank you, Delegate Souki. Are there other speakers to the amendment?

DELEGATE TAMAYORI: Mr. Chairman.

CHAIRMAN: Delegate Tamayori.

DELEGATE TAMAYORI: Yes, Mr. Chairman. I rise to speak against the amendment. Proponents of abolishing or expanding this office have used as the basis of their arguments the meaninglessness or meaningfulness of that office as it is presently. They speak of the frustration and dissatisfaction that previous lieutenant governors have expressed over the lack of executive power.

Mr. Chairman, I believe this frustration to be a result not only of the structure but more of personal expectations. The Hawaii Revised Statutes and the Organic Act clearly designate the lieutenant governor as records keeper, elections administrator

and preserver of laws. The office of lieutenant governor in Hawaii is a conceptual combination of secretary of state and lieutenant governor. Both the statutes and the Organic Act give little or no executive authority to either position. Any person choosing to be a candidate for any political office, I presume, would have full knowledge of the functions and duties of that office.

History indicates that personal dissatisfaction and frustration have resulted in some worthwhile and effective changes to our system of government. I cannot see using the same argument as a basis for abolishing the office of lieutenant governor. Nor can I agree that this is reason to constitutionally empower our lieutenant governor with greater executive authority. The power to effect executive policy has never been granted to any assistant governor in Hawaii's history of centralized government. The electorate, through its representatives, has prescribed certain functions and duties to that office. Changes in these statutes can be accomplished at the legislative level.

The office of lieutenant governor is critical. He or she is the elected state official who is first in the line of immediate succession to the governor. This is crucial for two reasons: first, executive responsibility cannot and should not be placed upon a legislative officer who lacks the approval of the entire electorate; second, the lieutenant governor, as assistant governor, would provide the necessary stability during transition. Mr. Chairman, I suggest that the lieutenant governor's is the one elected office within our executive branch in which an individual can exercise the greatest degree of independence in choosing his or her role. The means are available.

The office of lieutenant governor is a full-time position, equipped with a full-time support staff. Moneys needed for its operation are appropriated by the legislature directly to the office of the lieutenant governor. There is nothing in our statutes or in our Constitution that precludes Hawaii's lieutenant governor from initiating programs that would bring some meaning to that office. The biennial budget of \$2.2 million now appropriated for the operation of that office can be effectively utilized for any number of in-house programs that may have tremendous value for our State.

To illustrate this point, I will address myself to a few of the accomplishments of the lieutenant governor who served from 1966 to 1970. On a staff and budget of half that of today, the lieutenant governor managed the following programs without gubernatorial approval: one, the design and implementation of a new computerized voting system that is in effect today; two, the design and implementation of a consumer advocate program, which included a price list index and shopping guide in newsletter form for the shoppers in Hawaii; three, the administration of an extensive cost study of food and housing in Hawaii. I might add that the volunteer program which we ourselves have evidenced was initiated by our present lieutenant governor.

Mr. Chairman, let me clearly state that my intention is not to discredit any of the individuals who have or are presently serving in the office of lieutenant governor. The purpose of my comparison is only to point to the possibilities that exist in the office, should one desire to exercise his or her initiative in bringing more meaning and responsibility to that office. I therefore urge all of you to vote against this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Tamayori. Are there any other speakers to the amendment? Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I rise for a personal privilege. Is it too late for me to delete something from this amendment?

CHAIRMAN: You seek to amend the amendment?

DELEGATE CROZIER: Yes. Can I still do it, or did I miss the boat?

CHAIRMAN: I would say you missed the boat.

DELEGATE CROZIER: Then I'll speak against the amendment.

CHAIRMAN: Thank you, Delegate Crozier.

DELEGATE CROZIER: On the third item in the amendment, the lieutenant governor

would serve as the coordinator of volunteer programs in the State. Volunteers are special types of people. They're willing to work hard for free. And if the lieutenant governor became the coordinator, dealing with these people all the time, he could develop a machine for his own good. So I would be very fearful about giving a man who has nothing to do the job of lobbying for these people. And I found out how important lobbying is. So I speak against this motion.

CHAIRMAN: Thank you, Delegate Crozier.

DELEGATE DiBIANCO: Point of inquiry, Mr. Chairman.

CHAIRMAN: State your inquiry.

DELEGATE DiBIANCO: I know that you indicated you did call for amendments to this amendment at the beginning of the discussion, but is it not true that under Robert's Rules Delegate Crozier can make his amendment at any time during the argument on the amendment if he so chooses?

CHAIRMAN: He can make the amendment. The Chair was in a quandary because everyone had been given an opportunity to do that, so it was just a question of timing. Of course I believe that Delegate Crozier feels at this time it's not necessary to make the amendment. In fact, he has stated his argument. Your point of inquiry is well taken. Delegate Barr.

DELEGATE BARR: Mr. Chairman, I share Delegate Crozier's concern and I would ask special dispensation to move to strike item number 3--on serving as coordinator of volunteer programs in the State--from this amendment.

DELEGATE HALE: I second the motion.

CHAIRMAN: It has been moved and seconded that the amendment be amended by deleting the paragraph numbered 3, which states, "Serve as a coordinator of volunteer programs in the State." Is there discussion on this motion? Are you ready for the question? The question before this body is to amend the amendment by deleting item 3: "Serve as a coordinator of volunteer programs in the State." All in favor of that motion, raise your right hand. All those opposed, same sign. The vote is 37 ayes, 39 noes, and the motion fails. We're back to the main question and we'll take discussion on the entire amendment, again including item 3. Are there any speakers to the amendment?

DELEGATE KIMBALL: Mr. Chairman.

CHAIRMAN: Delegate Kimball.

DELEGATE KIMBALL: Thank you, Mr. Chairman. I'd like to speak in favor of the amendment. First, I recognize the necessity of assuring the continuance of the exercise of vital functions of the governor as the primary role of the lieutenant governor and the equal importance of his election on a statewide basis. Therefore, I concur with retention of this office. Secondly, I'd like to address my speech to the problem of the delegation of executive duties by the legislature. It is improper for the lieutenant governor's duties to be assigned by statute. The lieutenant governor, with his duties assigned by statute, subjects that executive position to legislative control. That legislative control dilutes the executive capacity of the position and is in violation of the doctrine of separation of powers. Our Constitution specifies one of the basic doctrines is separation of powers between the branches. It is the duty of this Convention to resolve this basic constitutional conflict and I believe the amendment before us will do that. Thank you.

CHAIRMAN: Thank you, Delegate Kimball. Any others who would like to address the amendment? Are you ready for the question? The question before the body once again--

DELEGATE O'TOOLE: Mr. Chairman.

CHAIRMAN: Delegate O'Toole.

DELEGATE O'TOOLE: I'd like to move for a roll-call vote.

CHAIRMAN: A roll-call vote has been requested. Do we have 10 seconds? A roll-call vote will be mandated. Delegate O'Toole, before we put the question, would you like to be the last speaker to the question?

DELEGATE O'TOOLE: Mr. Chairman, I just have one very brief statement. I think on behalf of the taxpayers in the State, the office of lieutenant governor should be expanded so that it's worth being in that number two spot.

CHAIRMAN: Thank you, Delegate O'Toole. At this time the question will be put before the body again. The question is the adoption of the amendment by Delegate O'Toole expanding the office of lieutenant governor. Mr. Clerk, will you read the roll.

DELEGATE HALE: Mr. Chairman, may I request that everybody speak directly into the mike. Some of us are interested in knowing how the votes go but we can't hear some of the delegates.

CHAIRMAN: Thank you, Delegate Hale. Delegate Hale has asked that members answer the roll call by speaking into the mike. Delegate Sutton.

DELEGATE SUTTON: May we have the roll call from Z to A instead of A to Z?

CHAIRMAN: We'll follow the usual procedure, I think. As you've noticed, if all of you turn your mikes on at the same time, we get a protest from the mikes. I would ask that you only turn your mike on when you're going to answer the roll. Mr. Clerk, will you call the roll.

Roll call having been ordered, the clerk proceeded to call the roll. The amendment was lost by a vote of 33 ayes, 68 noes and 1 excused; with Delegates Anae, Barnes, Barr, Blake, Blean, Burgess, Cabral, Campbell, Chu, Chun, DiBianco, Eastvold, Ellis, Fernandes Salling, Goodenow, Hale, Hanaike, Harris, Hoe, Hornick, Kimball, Kono, Lacy, Rachel Lee, Liu, Marumoto, Miller, Odanaka, O'Toole, Peterson, Shon, Silva and Takitani voting aye; Delegates Alcon, Andrews, Barnard, Chang, Calvin Ching, Donald Ching, Laura Ching, Haunani Ching, Chung, Crozier, de Costa, De Soto, Dyer, Fujimoto, Fukunaga, Funakoshi, Fushikoshi, Hagino, Hamilton, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hokama, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaapu, Kaito, Kojima, Ledward, Marion Lee, Lewis, McCall, Nakamura, Nishimoto, Nozaki, Okamura, Ontai, Paty, Penebacker, Pulham, Sakima, Sasaki, Shinno, Souki, Stegmaier, Sterling, Stone, Sutton, Taira, Takahashi, Takehara, Takemoto, Tam, Tamayori, Uyehara, Villaverde, Waihee, Wurdeman, Yamashita, Yoshimura and Chairman Weatherwax voting no; and Delegate Chong being excused.

CHAIRMAN: The motion fails. The Chair will now take amendments to Section 3 of Committee Proposal No. 3 dealing with Article XVI, which is, I understand, a housekeeping matter. Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, the amendment to Article XVI is primarily a housekeeping measure which would implement the amendments made to Sections 1 and 2 of Article IV. We have received some questions about the language used in this section and I would therefore recommend to the Committee on Style that the amendment in this particular section be shortened to reflect the same intent. Thank you.

CHAIRMAN: Are there other amendments to Article XVI? At this time the Chair will entertain motions to amend or add new sections to Article IV.

DELEGATE BARNES: Mr. Chairman.

CHAIRMAN: Delegate Barnes.

DELEGATE BARNES: Mr. Chairman, I move to amend so much of Article IV of the Constitution as set forth in Committee Proposal No. 3 by adding thereto a new section to read as follows: "There shall be an attorney general, who shall perform such duties as may be prescribed by law and who shall be the chief legal officer of the state. The attorney general shall have the same qualifications as the governor and, in addition, shall have been admitted to practice law before the supreme court of the state for a period of at least five years. The attorney general shall be elected at the same time, for the

same term and in the same manner as the governor, and removal shall be by the same manner as for the governor. In the event a vacancy occurs during a term, succession to office shall be as prescribed by law." I'd like to point out a typographical error--it's Article IV, not Article III in the first line of the amendment.

CHAIRMAN: Thank you, Delegate Barnes. Is there a second?

DELEGATE DiBIANCO: I second the motion.

CHAIRMAN: It has been moved and seconded that a new section be added to Article IV, in essence making the attorney general an elected position. Is there any discussion? First, though, I would ask if there are any amendments to the amendment. There being none, we are open for discussion with respect to the main motion, which is the adoption of the amendment. Delegate Barnes, will you speak first?

DELEGATE BARNES: Thank you. I'd like to speak to my motion. Again, I realize many of those who are not on the committee will be seeing Minority Report No. 2 for the first time perhaps only briefly, but I hope you will take the time to review it. I'd like to highlight several of the major points, in my opinion at least, and the opinion of several of the others.

One of our main points is that we see the attorney general having a strong, independent role enforcing the organized crime laws at the criminal level and also civil laws as the advocate of the consumer. Because the attorney general is presently an appointee of the governor, his independence is necessarily limited. It's difficult to conceive of a situation where the governor would appoint someone truly independent and not a supporter of the governor's campaign efforts and priorities.

Further, we see that a major role of the chief legal officer is the public watchdog of government. No other government agency is cloaked with the power to investigate abuse and corruption in state government. The ombudsman and the legislative auditor can be helpful in this area, but they do not have the prosecutorial power to make them effective.

I further believe that, as the records seem to indicate, in the public role of the only representative actually for the consumer in the State of Hawaii, in the 10-year period prior to 1975 when the last legislative auditor's report came out, appointed attorney generals have not been as effective as they might have been in representing the interests of the consumers of the State of Hawaii.

Perhaps one of the strongest examples we might look at would be in the antitrust area. We note that throughout Hawaii's history there has been a strong concentration of power in the government as well as in private industry. Because of the way our industries have developed--out of the sugar plantations and so forth, with large corporations controlling the tourist industry--the antitrust issue is a very real problem and concentration of power in our media is apparent to all of us, as can be seen by some of the resolutions submitted in this Convention regarding the media here in Hawaii. Therefore, we feel that an elected attorney general would be more responsive to voters and therefore directly responsible in terms of representing the interests of the consumer.

We again point out that 42 states on the mainland elect their attorney generals and we see no movement in those states to change that system. Thus the arguments heard in the committee--that this would be used as a stepping-stone by the politically ambitious politician--do not seem to be holding much weight on the mainland, for these 42 states continue to elect their attorney generals. For these reasons, then, we ask you to carefully consider this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Barnes.

DELEGATE HAMILTON: Mr. Chairman.

CHAIRMAN: Delegate Hamilton.

DELEGATE HAMILTON: I rise to speak in favor of the amendment. You may have noted that I signed the minority report with reservations. I did this because not all of the appointed attorney generals whom I have known have been unprincipled scalawags--some perhaps, but not all.

I also can't take very seriously this argument that the attorney general might become politically ambitious. If political ambition were to be considered a disqualification for public office, this Convention could meet in a telephone booth. But it does seem to me that we're in an era when citizens have lost confidence in their governor and government. Evidence of this abounds on all sides. We're also in a period which is notoriously litigious and for better or worse--and I expect it for worse--I see no possibility of that tendency abating. And thus it seems to me giving the people the right to elect their chief legal officer may go some distance in restoring faith in our government, and if we have no faith in each other and no faith in our government, we have come upon bad times indeed.

CHAIRMAN: Thank you, Delegate Hamilton. Any other speakers? Delegate Blake.

DELEGATE BLAKE: I speak in favor of the amendment. However, I'd like to direct most of my remarks against Standing Committee Report No. 32 as passed out, which all you delegates I assume have read. At this time, these are some of the questions I would like to ask of the committee and I'd like some answers.

After reviewing Standing Committee Report No. 32, it appears that the State's chief legal officer serves the people only indirectly because his initial and direct allegiance is to the governor. Does the committee recognize this fact and wish to have this situation continue? Is the State's legal officer the governor's attorney or the people's attorney?

The committee states that the chief executive acts from the broadest political base and therefore his actions are subject to vigorous scrutiny. Did the committee feel that direct accountability should be sacrificed to guarantee the absence of conflict between the governor and the State's legal officer? Is it necessary for the governor to personally trust and be able to demand the personal loyalty of the attorney general in order to govern, or is it only necessary for the governor to be able to trust in the legal ability and ethical character of the attorney general? Should the people be deprived of the opportunity to select their legal officer so that the governor can demand and be assured of the personal fealty of the attorney general? Under the proposed system, doesn't it appear that the attorney general's loyalty to the governor could often conflict with his duty to serve the people?

The committee states that an elective system would lead to political conflict and hostility between the governor and the attorney general. We must rely upon the governor and the attorney general to act ethically, honestly and in the interest of the people.

Do you consider the price of harmony worth depriving the people of the opportunity to elect their chief legal officer? Is harmony at all costs worth depriving the State's chief legal officer of the right to voice his opinions and concerns when they happen to be adverse to the governor's? Regarding the stepping-stone to higher office: I see no problem as long as the duties of the office are properly discharged while the attorney general is in office. Also, many offices are used as stepping-stones to other offices without the public suffering, unless the stepping-stone becomes the sole end of the officeholder. Regarding undue influence by campaign contributors: this is no more a problem than what is presently experienced by other elected officials. However, there is now the chance of undue influence being exercised upon the attorney general by the governor.

I ask you, fellow delegates, all of you who are present here today, you represent the people of Hawaii. We are talking about the legal officer representing the people--not one person. I'd like to ask you to seriously search your hearts on this particular question. Who does he represent, the governor or the people of Hawaii? I ask you, ladies and gentlemen, delegates, to seriously consider this point. Thank you.

CHAIRMAN: Thank you, Delegate Blake.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: I rise to speak against the amendment. I would invite the delegates' attention to Section 5 of Article IV. "The governor shall be responsible for the faithful execution of the laws. He shall be commander in chief. . . . The governor may grant reprieves, commutations and pardons. . . ." The governor must have a team of his own choosing.

If we have to determine the method of selecting the attorney general, whether to elect him or appoint him, we must keep in mind the function--the primary function--of an attorney general, which is that he should advise the governor. He is the governor's chief legal advisor, and his duties commensurate with the responsibilities assigned to the governor. He has responsibilities for which we hold him accountable. Therefore, I believe that he should be able to choose his own team, people who can work with him.

I am basing my argument against the proposal on the function of the attorney general as a member of the governor's team, as his chief legal advisor, to allow him to fulfill the responsibilities of his office. Thank you.

CHAIRMAN: Thank you, Delegate Sterling.

DELEGATE MARUMOTO: Mr. Chairman.

CHAIRMAN: Delegate Marumoto.

DELEGATE MARUMOTO: I rise to speak in favor of amending our State Constitution to change the office of attorney general from an appointive position to an elected one. My reasons are based on the fact that this office is a very important one, one with great powers, among which are those termed quasi-judicial and quasi-legislative. By the exercise of these powers, the attorney general exerts vast authority and influence on all three branches of government as well as on the entire legal community. We must recognize the far-reaching effects of the legal advice rendered in opinions of the attorney general to state agencies and to the legislature. Insofar as these groups are concerned, the word of the attorney general is law. It stands until otherwise overturned by the courts. The net result of this unique position is to enable the attorney general to legislate and rule in areas where the law is ambiguous, obscure or nonexistent.

There is the possibility of conflict of interest when an appointed attorney general must service both the executive and legislative branches. For instance, an opinion can be slanted to prevent the legislature from enacting law inimical to the governor's interest. In effect, this situation encourages a breakdown in the separation of powers and reduces the ability of the legislature to serve as a check on the executive and judicial branches of government.

The actions of the attorney general, as the chief legal officer of the State, can set the tone of the appearance and reputation for the entire legal community, and throughout the counties. In this era of eroding public confidence in government, there must be an independent attorney general, free of any cloud of political cronyism. He must, therefore, stand alone, slightly apart--no, slightly above--the daily machinations of government. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Marumoto. Other speakers? Delegate Izu.

DELEGATE IZU: Mr. Chairman, I rise to speak against the amendment, for the following reasons.

One, for the purposes of administrative efficiency and public responsibility, the attorney general should be appointed by, removed by, and responsible to the governor, as the person responsible for the faithful execution of all state laws.

Two, an appointed attorney general is freer to act on controversial issues than an elected attorney general, who must consider the cost of the act in terms of votes.

Three, an elected attorney general may be in complete disagreement with the governor on important policy questions and would be an outspoken political rival to the governor, with the result that the office of attorney general may be used to obstruct the workings of government.

Four, the attorney general's functions as legal advisor to the governor and other state officers, with duty to aid in the enforcement of state laws, are essentially part of the executive power and should be performed by one in agreement with the chief executive.

Five, since the attorney general is the legal advisor of the governor, the latter

should have the privilege of selecting as his legal advisor the person who is, in the governor's judgment, the most competent, whose views are similar and in whom there is complete confidence.

Six, gubernatorial selection of the attorney general brings into public service attorneys of marked ability and high reputation, who may not otherwise be available if forced to submit to an election to obtain that office.

Seven, making the attorney general appointed by the governor, fully and directly responsible to the governor, and subject to removal by the governor is consistent with the basic theory of centralized administration and a strong responsible governor.

And eight, the task of the administration of justice is a professional one, not political, and the attorney general should be interested first in the administration of justice as a professional function, not for personal political ambition.

The real question before us is whether the elective process can produce as well- or better-qualified attorney generals than we have had in the past under the appointive system. I submit that the answer is no and that the appointive system should be retained.

Mr. Chairman, I strongly urge the Committee of the Whole to vote down this proposed amendment.

CHAIRMAN: Thank you, Delegate Izu. Other speakers to the amendment?

DELEGATE CHU: Mr. Chairman.

CHAIRMAN: Delegate Chu.

DELEGATE CHU: Mr. Chairman, I would like to speak in favor of the amendment because I feel that the attorney general, as the chief legal officer of this State, has awesome powers in interpreting and enforcing the laws of this State. He has as much power as the judiciary--if not more--because as one person, the attorney general has influence in the legislative process and in the executive process, as well as in the judicial. As one person he has more power than all the judiciary combined. A book put out by the Legislative Reference Bureau specifically states more than 150 statutory duties of the attorney general.

Now it becomes a question of who does the attorney general serve. Who is his boss? Should it be the people, or the governor? I feel that the attorney general should not be beholden only to the governor, he should be beholden to the people as well. Of course if he is appointed, he will feel loyalty to the governor rather than loyalty to the people. To whom does the accountability go. To the governor or to the people? The majority report indicates that the governor is accountable to the electorate for any poor appointments. I feel that that is not sufficient; it is once removed from his direct accountability to the people and it is unlikely that the governor will not be reelected because of a poor appointment. The governor has many other duties he is pursuing during his term and when the voters examine the job he is doing, they aren't likely to single out the poor appointment of an attorney general as sufficient reason not to reelect him. However, it would certainly be a lot more likely that an elected attorney general would not be reelected because he was a poor attorney general.

There is nothing wrong with accountability and loyalty to the governor if the governor has appointed you. In fact, I would want a governor who could command that kind of loyalty and that kind of coordination to carry out his executive policies. There is nothing wrong--I am not attacking the caliber of the attorney general--they are all quite competent, but that's not the question. The question is whether or not the attorney general can exercise his true independence.

It has been mentioned that the attorney general must naturally be part of the team. It is therefore not likely that he would attempt to pursue actions disruptive to the governor's political goals, and I think that he would be less than enthusiastic about fulfilling his role of investigating abuse and corruption within the executive department and also less than enthused about prosecuting these particular crimes or organized crimes. We need centralized coordination within the executive branch for the enforcement of laws. Now

we have the county prosecutor, the crime commission and we also have the governor who has the power to release funds for a crime-fighting unit. And then we also have the federal authorities. Often there is not enough coordination among these different areas, and not enough attention to the vigilant pursuit of crime. The Hawaii Revised Statutes states that the attorney general "shall be vigilant and active in detecting offenders against the laws of the State, and shall prosecute the same with diligence."

As stated in Minority Report No. 2, in "the days of yesteryear, crime was unsophisticated, simple and generally contained to each county. In this modern age of plane travel and instant communication, crime is becoming more sophisticated and complex. No longer are the activities of criminals isolated within the boundaries of each county. Increasingly, the need for coordination among the various county prosecutors as well as between state law enforcement agencies is becoming apparent." I believe that the people deserve a strong advocate and strong law enforcement. Faithful execution of the laws in government should go hand in hand with serving the people of the State.

CHAIRMAN: Thank you, Delegate Chu.

DELEGATE KAAPU: Mr. Chairman.

CHAIRMAN: I'd like to remind the speakers again that there is a 10-minute rule. If the Chair is required to enforce it, the Chair will come down and enforce it. There's a 10-minute limit on speeches and we'd like you all to please abide by that. Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I would like to speak against the amendment, not because there is not merit in it but because perhaps there is a better way of doing it. There are not just two choices, whether to elect the attorney general or not to elect the attorney general. I have seen on my desk a proposal which achieves some of the good of both sides. In the case of the attorney general, it's a very powerful office. I don't think, however, I share the sentiment that it is so powerful as to be greater than all of the judiciary. If that were the case, the attorney general should be anointed rather than appointed. I think the attorney general should not view as his boss either the governor or the people directly or the views of the people, but he should look to his conscience and to his understanding of the law to render opinions independently the best he can as he knows the law and in view of the public good.

I too serve on a public body in which, I think, we have the same problem; we view with suspicion the corporation counsel, who in fact is an appointee of the mayor subject, of course, to our confirmation. We feel that sometimes perhaps his opinions are politically motivated rather than generated by a fair and impartial understanding of the law. And this suspicion cannot be allayed by anything he might say or anyone else might say, and I'm sure that that same view would hold with an attorney general who happened to give an opinion supportive of his appointer, the governor, and who would be suspect, no matter what.

I think the way to correct this situation is--not the alternative, an elected attorney general, because of the problems of great visibility and of the attorney general having to consider before every decision how his opinion will appear to his constituents, the voters. I think the attorney general would be better served if he were selected by a process that would encourage selection of a scholar of the law and a person of high integrity, which I think could be done by some form of merit selection similar to that which we are recommending in the case of judges. And I think this would not do violence to the necessary review by the senate, since the proposal on my desk does contain that. Nor would it do violence to the idea that the attorney general should be appointed by some single individual who would be accountable for the quality of that appointment.

So I would suggest that we not elect an attorney general, which could create new problems, nor should we stay with a directly appointed attorney general, which creates suspicions of a different nature and perhaps lack of public trust; but that we instead create an alternative--an intermediary body appointed by several others to review and then propose a panel of highly qualified individuals to the chief executive, who selects one from that panel, subject to approval by the senate. Having thus been confirmed, he is subject to removal under the terms of the present Constitution. I think that that sort of an approach would give us a greater degree of public acceptance and would remove some of the imagined or real evils of both systems. Thank you.

CHAIRMAN: Thank you, Delegate Kaapu. Delegate Goodenow.

DELEGATE GOODENOW: Mr. Chairman, I'd like to speak in favor of the amendment to elect the attorney general, briefly. Fellow members of this Convention, I hope that you will recognize the need for an independent attorney general, one who will be strong and act as the public advocate, an attorney cognizant of his duty to the people as well as to the governor. If you decide against this proposal, you are adding water to the wall around government, a wall that is designed to keep the people out. Such action cannot be justified on the basis of accountability--a position that I have shown cannot stand under the light of close examination. Accountability is the proposition that goes hand in hand with public view of performance. Accountability to the people will come about if we elect the attorney general.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: Mr. Chairman, I rise to speak in favor of the amendment. All the arguments presented here today, both pro and con, can be construed to be what I would consider valid, depending upon one's point of view or one's belief. But I remind this body here today that we are here expressly to represent the people, and if you recall the polls and surveys that were taken on Con Con issues, consideration for the election of the attorney general ranked very high, and even though pressed, I myself have some reservations about either/or. I feel dutifully bound to try to present this particular issue to the voters of the State of Hawaii.

CHAIRMAN: Thank you, Delegate Cabral. Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I rise to speak against the amendment. I really do not think that making the attorney general an elected position will improve the administration of justice or serve the public interest. Whereas the governor can appoint a person he feels will best be able to carry out an efficient administration of justice in the State and thereby add to the success of the overall state administration, an elected attorney general is more likely to be one who is charismatic and most able to utilize the media at election time. Electability by no means assures quality. I do not think we want an attorney general who plays upon the media and seeks popularity above all else. Quality and justice in the office of attorney general is more likely to be served through the appointive process. In this age of million-dollar campaigns, I question whether an elected attorney general will be more accountable to the people than to special interest groups. Thank you.

CHAIRMAN: Delegate Miller.

DELEGATE MILLER: Mr. Chairman, I rise to speak in favor of the amendment for the election of attorney general. In Standing Committee Report No. 32, fourth paragraph on page 6, it states, "The executive acts from the broadest political. . . ." I have arranged for copies of the results of the 1974 governor's election to be distributed to all delegates. You will note that in the primary election our present governor received 71,319 votes out of the total 235,992 cast. That is about 30 percent. That 30 percent is based on 29.8 percent of the population. In other terms, the vote the governor received represents about 10 percent of the population. This can in no way be construed as the broadest political base. These figures, taken from the State of Hawaii Data Book, are positive proof that the governor doesn't act from a wide political base. If the argument for appointing the attorney general has been based on this broad political base, then the only recourse is to support the amendment to elect the attorney general. Having talked directly to a 5-term elected attorney general from the state of Iowa, who is enthusiastic about continuing with this process, I am supportive of an elected attorney general.

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak to the motion. I'm rather confused. I don't have any strong feelings one way or the other, but if I'm to believe my sister Delegate Miller in saying that the governor did not run from a popular or wide-spread political base, then neither did we, if you all remember what the turnout was at the Con Con election. However, there appears to be a misconception that the elective

process insures accountability, insures complete and pure independence. I'm confused since we also elect the legislature but there are moves to discredit them. We say that candidates for any office--statewide offices especially, like my brother Delegate Okamura says--that the candidates have to get money to run for these races. I'd be scared to death wondering who gave them the bread. I just wanted to speak to the motion and to appraise the delegates that there seems to be something wrong over here. Mahalo.

CHAIRMAN: Thank you, Delegate De Soto.

DELEGATE HALE: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order, please.

DELEGATE HALE: You announced at the very beginning that we would have to speak for or against the motion and we first would have to state our position, and I think you should hold to that.

CHAIRMAN: Thank you, Delegate Hale. The Chair interprets Delegate De Soto's statement as being against the motion.

DELEGATE HARRIS: Mr. Chairman.

CHAIRMAN: Delegate Harris, did you wish to speak?

DELEGATE HARRIS: Yes, I did. Thank you, Mr. Chairman. I wish to join my fellow delegates in supporting this important amendment. I think it's crucial that the attorney general of this State be independent of both the executive and the legislative branches. The attorney general must be free to support the people, to report to the people any wrongdoing in any part of our government. We can only guarantee this type of independence through the elective process.

Perhaps the most forceful and frequent argument used by this delegation for retention of the bicameral legislative system was that this is the system that has been successful in a vast majority of the states. I ask you, is this not an analogous situation, with 42 states electing their attorney generals? In testimony opposing this important amendment, we've heard a litany of the horrors that will occur if we join the rest of the states in electing our attorney general. I contend that these horrors have not occurred in the other states and that this process has proven to be far superior to the appointive process. I ask the delegates to join me in voting for this important amendment.

CHAIRMAN: Thank you, Delegate Harris.

DELEGATE HINO: Mr. Chairman.

CHAIRMAN: Delegate Hino.

DELEGATE HINO: I rise to speak in favor of retaining our innovative system of gubernatorially appointed attorney general and against the amendment to revert to the archaic and traditional method of electing the attorney general. If there is any delegate who believes that a change toward electing the attorney general is a reform action, I refer that person to pages 21 through 28 of the Hawaii Constitutional Convention Studies 1978, Article IV: The Executive, so ably compiled by the Legislative Reference Bureau.

About 50 years ago, Governor Alfred E. Smith of New York stated: "I am satisfied that the attorney general should be appointed by the governor, and I state that from experience. We are still electing the attorney general in New York State and it is a mistake. The attorney general is the state's lawyer, and the governor should select the lawyer. He is responsible." This view is in harmony with our State Constitution, Article IV, Section 5, the provision that places responsibility for the faithful execution of the laws on the governor. The attorney general acts in an advisory agency capacity to the chief executive rather than in a passive watchdog role that proponents of an elected attorney general seem to prefer. There are enough watchdogs in the executive branch, in the legislature with its ombudsman, the judiciary, the prosecutors in the several counties and the various media representatives who are given extraordinary protection by the New York Times v. Sullivan rule when the subject matter reported on involves public

officials or issues of public concern. The recent Watergate experience has shown how effective the media watchdog can be in toppling a chief executive and his appointed attorney general from power.

Aside from the theories of executive unity and accountability, I am concerned about restricting our selection of an attorney general to only those who are willing to stand the rigors and expense of an election campaign. If memory serves me rightly, one of the most highly respected and distinguished attorney generals of our State has never run for any elective office. It would be sad indeed to be denied the services of a person similarly inclined if we were to mandate election of the attorney general.

I am also concerned that an elected attorney general would be a natural candidate for governor. Our future governors would then tend to be lawyers. I shudder at that thought because I envision a first-term lawyer/governor and an elected attorney general, also a lawyer, engaged in a running debate and campaign throughout their terms of office. The lawyer/governor would be so engrossed in replying to the charges of the watchdog attorney general that neither would have the time to insure that the laws were faithfully executed.

My fellow delegates, let us not box ourselves into the kind of situation where lawyers would dominate the office of governor. Let us retain the reforms started by the first constitutional convention and affirmed by the second. By design we have created a strong executive. By design we have instituted proper checks upon his power and today, by design, we have limited the chief executive to two consecutive terms. Let us leave our amendments of Article IV to that extent and approve in entirety Committee Proposal No. 3. Thank you.

CHAIRMAN: Thank you, Delegate Hino. Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, I rise to speak in favor of the amendment to elect the attorney general. On page 6 of Standing Committee Report No. 32, in the last three lines on the page it states: "...being charged with the responsibility of faithfully executing the laws, [the governor] must look to the attorney general to discharge that responsibility." The Charter of the County of Hawaii provides for an elected prosecuting attorney. The Kauai County Charter provides for an elected prosecuting attorney. And now the City and County of Honolulu is proposing a charter amendment to provide for an elected prosecuting attorney. The situation now exists in which an appointed attorney general is over two elected officials. This is an untenable situation.

I should also bring to your attention that the Commission on the Organization of Government Report to the Ninth State Legislature, dated February 1977, page 41, states, "...1. The State Attorney General is the chief law officer of the State and has the ultimate power and responsibility to uniformly enforce the criminal laws of the State and thus can intervene, supersede, or replace or advise the prosecuting attorney in any specific case; and 2. The State Attorney General has the power to take appropriate action against any County Prosecuting Attorney for misfeasance or malfeasance." That statement clearly states the attorney general has complete and total control over the county prosecutors, who are elected officials. The implications are ominous.

Further, House Bill No. 257, introduced in the 1977 session, states: "...the authority of the Attorney General to prosecute criminal cases where the attorney of a county or city and county responsible for criminal prosecution has made some decision contrary to the judgment of the attorney general." This bill tried to establish as law the recommendations in the report of the Commission on the Organization of Government. Standing Committee Report No. 867 from the house of representatives, dated March 28, 1977, states: "The proposed bill clearly specifies that the attorney general may supersede a county prosecutor in any investigation, participate in any investigation, or initiate any investigation. This bill would codify the recent findings of the Circuit Court of the First Circuit, State of Hawaii, *Amemiya v. Sapienza*, Special Proceeding No. 4207." Senate Bill No. 1047, Senate Draft 1, clearly specifies that the attorney general may supersede a county prosecutor in any investigation, participate in any investigation or initiate any investigation. This bill again would codify the recent findings of the Circuit Court of the First Circuit. I ask, my fellow delegates, what are the implications of that judgment, say, in the recent Madamba case or the Kohala Task Force case or the Kukui Plaza case?

The legislature clearly recognizes that the prosecuting attorney is not a deputy of the attorney general and cannot be removed by him. Both houses of the legislature introduced bills to give the attorney general clear supervisory authority over prosecuting attorneys to enforce the laws of the State. This in itself is not particularly bad, except our attorney general is appointed now and two prosecuting attorneys--and maybe soon a third, from Oahu--would be subject to the above law if passed by the next legislature. When politics and the law conflict, where does an appointed attorney general stand? With the governor, his direct boss? Or the people, his boss by the law of our land?

Electing the attorney general clearly and surely puts politics above the law. It is reversing the democratic process to make an elected official subservient to an appointed official. It is contrary, untenable and morally wrong. The attorney general's should be an elected position. Thank you.

CHAIRMAN: Thank you, Delegate O'Toole. Delegate Hagino.

DELEGATE HAGINO: I rise to speak against the amendment. The executive committee considered election of the attorney general as a possible alternative to gubernatorial appointment. Delegate Fukunaga had mentioned earlier some of the reasons why the committee rejected the elective method and there are other reasons given in the committee report. I would like to stress two points which I believe are very important.

First, those proposing the amendment assume that an elected attorney general would be unbiased and impartial, and that he would vigorously pursue certain types of cases. Obviously, however, the elected attorney general would have his own interests to protect. He would be a political being, and his judgment would be affected not only by whether a particular action could lose him votes but, more importantly, whether it could lose money for his campaign. Would an elected attorney general really be able to pursue those cases which might be in the public interest? For instance, would he be likely to pursue an antitrust action against several big businesses, knowing that these same businesses could provide him with financial support in his next campaign? I raise this point not because I think an appointed attorney general will necessarily not succumb to such temptations, but only to show that the basic assumption--that an elected attorney general would become the people's champion merely because he is elected--is erroneous. There are just as many possible conflicts inherent in the elective method as the appointive, and possibly more.

Second, I would like to speak to the watchdog argument so often raised in these debates. I do not believe that the primary duty of the attorney general is to act as a watchdog on the executive. I think that this is where the real division in philosophy lies, between those advocating election of the attorney general and those advocating retention of the appointive system. In Hawaii the attorney general acts as a legal advisor to the governor and state executive and administrative departments. He also represents the State in civil actions and he acts as an advisor to the legislature, although it should be noted that the legislature does have separate counsel in the house and senate majority and minority staff attorney's offices. However, by statute most of the attorney general's prosecutorial functions are delegated to the county prosecutors. The argument has often been raised that there is no one office charged with investigating the executive branch. However, to some extent the ombudsman's office acts in this capacity. It is true that the ombudsman cannot directly prosecute, but by statute the ombudsman must report any unlawful activities to the appropriate authorities.

I agree with Delegate Hino that our government is designed to provide checks and balances on each branch. Thus, I believe it is the legislature's function to act as the watchdog when necessary; it is also the court's function, and ultimately it is the people's function. These are the checks provided in our Constitution and I feel that they have been and are effective.

CHAIRMAN: Thank you, Delegate Hagino.

DELEGATE BLEAN: Mr. Chairman.

CHAIRMAN: Delegate Blean.

DELEGATE BLEAN: Mr. Chairman, I rise to speak in favor of this amendment.

Earlier I made an impassioned plea for an appointed lieutenant governor. The argument used to justify a point in both positions was identical. In fact, I copied it from the standing committee report. Therefore, I hope that this body will be consistent in its logic and the plea for an appointed attorney general will fall on equally unsympathetic ears. Thank you.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak against the amendment. Before addressing the question directly, I might add that I do not share Delegate Hino's concern over the governorship being occupied by a lawyer.

Addressing the question, when the voters of Hawaii elect the governor for a 4-year term, the governor is given 4 years in which to carry out the platform, or program, by which he was elected. In order to effectively carry out this program, the governor must depend upon his cabinet officials, who head up his various departments. These department heads make policy decisions every day and often these decisions are dependent on an interpretation of law. The governor and his department heads must depend on the attorney general and his deputies to interpret the law. Now, if the law was black and white and always clear, I would not have as great a problem with an elected attorney general. However, the law is rarely clear. Rather, it is usually various shades of gray and much latitude for interpretation exists on either side of any legal issue.

If we are to gain from the experience of states that have an elected attorney general--such as California--the attorney general's office more times than not has been a springboard to the governorship, and in many cases an elected attorney general has challenged an incumbent governor. If the attorney general is challenging the governor, he--the attorney general--and presumably his deputy attorney generals may do everything in their power to make the governor look bad and cause the governor's programs to fail. This possibility would place the governor in an untenable position, depending on interpretations of gray areas of law being made by an attorney general who is after the governor's job.

As one who served as a deputy attorney general for the State of Hawaii for over 5 years under the late Governor John Burns, and having served in the departments of agriculture, health and transportation, I was able to observe firsthand the importance of having an appointed attorney general and his deputies, who were able to carry out the programs so as not to constitute a roadblock for the governor. Thank you, and I urge the delegates to vote against this amendment.

CHAIRMAN: Thank you, Delegate Lewis. We'll go to Delegate Sterling and then we'll take Delegate DiBianco thereafter.

DELEGATE STERLING: I'm speaking against the amendment. Delegate O'Toole showed a beautiful sense of research in his remarks for the amendment. In the Amemiya case against the appointed prosecuting attorney Sapienza--I think that's a little different from the case which he spoke against when he referred to the Madamba case on our Island. We have an elected prosecuting attorney. Now, we're talking about the prosecuting attorney, not corporation counsel. I think it should be brought out--and we were involved in one way or another--that the appointed attorney general of the State made a good contribution in his cooperation with the prosecuting attorney of the County of Hawaii.

But I do want to make this point--and I know the prosecuting attorney personally. He did not believe in politics--in running for political office--and I'm quite sure that, regardless of the outcome of the Madamba case, he will not run again. This Madamba case received not only statewide notoriety but national notoriety as well, and Paul DeSilva--the name of Paul DeSilva--became quite well known in legal circles. But he had no inclination to enter the political arena. He would have made a good attorney general but--again we're pointing out this fact--we have many qualified men who for one reason or another may not wish to enter the arena of active politics. Thank you.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: For the past hour I've been sitting here listening to the doomsayers tell us what a horrible thing will happen to the executive branch of govern-

ment if we elect our attorney general. Had I just walked into this hall, I'd have a suspicion that what is being suggested is so unusual, so rare that it has never been tried in any government on the face of the earth. We all know that to be a lie, we all know that 42 states presently elect their attorney generals, and it does not seem to have caused the kind of chaotic conditions and disruptions mentioned here.

DELEGATE SOUKI: Point of order, Mr. Chairman. Is the speaker speaking for or against the motion?

CHAIRMAN: Thank you, Delegate Souki. Point sustained. Will you please state whether you are speaking for or against the motion.

DELEGATE DiBIANCO: I am speaking for the amendment. I don't know how else to express it since I'm the one who introduced the original proposal. I sort of assumed everyone knew that.

I don't understand why, then, we don't look to the history of these other states to determine whether in fact they've had the kinds of trouble we suspect we're going to have here should we elect our attorney general. The only answer to that would be that those who have looked to these other states realize that that problem does not exist. The speculation of horror that they have been trying to pervade this argument with has not occurred, and therefore an elected attorney general would be in the best interest of the people.

I would like to share with you some of the comments that were made during our executive committee meeting. The present attorney general, Ronald Amemiya, did come to our executive committee meeting. And at that time I asked him whether, during the time he had been attorney general, his office had ever investigated or brought charges against any other executive department. His answer was no. Delegate [Donald] Ching on the committee shared with us the fact that as a senator he knew of at least one incident in which an executive department had been investigated by another department of the executive, but that that particular investigation had been done quietly and the wrongdoing corrected. And I think that remark might show that the executive does in fact take care of itself. I appreciate the remark, but I ask you if that's the way you want to have our laws enforced. Do we want to have it done quietly, or do we want to have the kind of exposure that we had in the Kukui Plaza case? We want to have the kind of light shed on political and governmental activity that was shed in the Kukui Plaza case. Doesn't the public have the right to know what is going on at all levels of government, and can they know if everything is done quietly and matters cleared up without public knowledge?

I think many of the arguments made so far today that we retain the appointive system in the interest of harmony are, in point of fact, arguments to retain the appointive system in the interest of cronyism. I don't think an elected attorney general poses the kind of threat that many have talked about, that an elected attorney general would be more concerned with furthering his own political career, because the present elected attorney general-- I don't necessarily mean the one we have right now, but under the present system in which we have appointed attorney generals, they are concerned with furthering the political future of the governor who appointed them, so those very same arguments will hold true for them--that they will not want to handle controversial cases that would embarrass their governor. The point of it is this--I don't think that a day of jubilee will be upon us if we elect the attorney general, as opposed to having him appointed. I think through the screening process of an election we can come up with a very good attorney general. I think through the appointive process we can also come up with a good attorney general.

But what really concerns me is that this Convention seems to be on the verge of deciding that people are too stupid to decide this question for themselves, that we are so arrogant in this hall that we are not going to let the people of the State of Hawaii decide whether or not they can have an attorney general, that for their \$2.5 million price tag all they're going to get from Diamond International is a blank ballot printed in four languages. I tell you to let the people decide this question and let them decide the other important questions because they are not fools and they will not be fooled by this kind of smoke screen.

CHAIRMAN: Thank you, Delegate DiBianco.

DELEGATE CHUNG: Mr. Chairman.

CHAIRMAN: Delegate Chung.

DELEGATE CHUNG: I haven't said a word. May I put in my two bits, please?

CHAIRMAN: Yes, please.

DELEGATE CHUNG: I speak against the motion. There are several reasons why I feel this way. Once I used to think that we should elect our attorney general, particularly after the Watergate incident, when John Mitchell was convicted and sent to the correctional facility in Alabama. I thought, well, we'll run into trouble here on the appointive basis, but as I carefully examined the anti-affairs of Watergate, it was more than John Mitchell; it was the whole shebang of attorneys in Nixon's office. So this nullified my concern in that area.

I am particularly concerned about elective positions in a high office such as the attorney general for three reasons. Number one, the high cost of an election and its ramifications. I like to feel, as Elmer Cravalho said once, "The job seeks the man, not the man seeking the job," and I'm thinking in terms of the best way of getting the most qualified people in government service, whether it's on an appointive or elective basis. I see no panacea or magic in either. I think I would take the route that's the lesser of the evils, but no matter which way we go, there are pitfalls. There is no perfect way. But if the way to go is to have the job seek the man, perhaps the appointive way would be better.

The second reason is--our government will work successfully only through interdependence, not complete independence, and this is one of the very reasons why some areas in our government, locally and nationally, have gone down the drain. We've got to have more teamwork--not one department or department head trying to knock over another. Team effort can only come through an appointive system. I'd hate like hell to be working side by side with a member who would chop me down every chance he got or would cry every time he was faced with a problem. Team effort consists of taking the hard knocks and working together.

Finally, our governor is held accountable. He appoints not only the attorney general but all the other department heads, and he cannot operate efficiently or effectively for the public without team effort. If every one of these department heads were totally independent, thinking only of their own selfish needs, we'd have total chaos. Again, let me say we don't have the perfect way but we ought to look toward the way where we can have the best man on the job, working with the rest of the people in the department.

CHAIRMAN: Thank you, Delegate Chung. Delegate Pulham.

DELEGATE PULHAM: Thank you, Mr. Chairman. I'm going to speak in favor of the amendment. We have also been sitting here for quite a while and, as I think my friend Delegate Hamilton would say, "The platitudes drop like horse apples around our ears." I have noticed--and I hope you've been keeping score--that both sides are using identical arguments to argue their case, but I'm not going to go into that.

The attorney general referred to just seconds ago was an appointed attorney general, if that has any bearing on that, but I don't think it does. Those qualities you seek in an elected governor you say make a bad attorney general. I don't think it computes, but maybe you can convince me otherwise. It seems to me that it boils down pretty much to this--you have to decide whether the attorney general works for the governor or works for the people, and then you vote accordingly. I would ask you to just make the decision and do it. Thank you.

CHAIRMAN: Thank you, Delegate Pulham. The Chair will take a 5-minute recess. Before you leave, however, remember this is a 5-minute recess. Please consider when you come back that we should be nearing the time to look at the question. Just a reminder.

At 4:01 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:08 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order at this time. For those of you who may have forgotten, the question before us is the amendment proposed by Delegate Barnes to amend Committee Proposal No. 3 for an elected attorney general. Delegate Hornick.

DELEGATE HORNICK: Mr. Chairman, I would like to speak briefly for the amendment. This debate centers around the advisability of having a highly centralized State. Many of us are satisfied with the current degree of centralization because we are satisfied with the current administration. However, I would like to borrow an equal-system approach and bring it to this discussion. In biological terms, analogy as such is highly unstable. It is an ecological maxim that in diversity there is stability. I feel that analogy is apt in a political sphere also. When a state is highly centralized, it is unstable. I feel that an elected attorney general may bring another degree of diversity to the State of Hawaii. I urge all the delegates to vote in support of this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Hornick. I would like to remind the delegates here to show common courtesy when others are speaking. Please give them the same courtesy that you would expect from your fellow delegates. Other speakers? Delegate Hanaïke.

DELEGATE HANAÏKE: Mr. Chairman, I'd like to speak in favor of the amendment. I feel I have to speak because I wasn't in the committee and I campaigned on this issue.

I disagree with the basic premise of the committee report in regard to the purpose of an attorney general. In essence, the idea is that the State and the governor work with the attorney general, and that the attorney general represents the governor. I disagree with that--I believe that not only does the attorney general represent the governor but he also represents the people of the State, and I'd like to concentrate on one specific duty of the attorney general to show my point here.

The attorney general is supposed to advise the governor and various departments on the law and things that are related to it, but he's also supposed to keep the governor and the departments in line. I'd like to cite a specific case on this. I read a paper recently on the state Land Use Commission and something was so glaring--I think a lot of you realize this--that the state Land Use Commission isn't abiding by their own laws. Now the only way to enforce the laws and make the Land Use Commission abide by those laws is to have the attorney general--unless there is some other way someone can think of--enforce the laws of the State. Up to now, it has not been done.

A current example here on the windward side of Oahu right now is the Land Use Commission's decision on Kawainui marsh, which is in the courts not because the attorney general brought it to court but because a coalition of people did, and also the Department of Planning and Economic Development. Now, it's very difficult for people to take something to court when they disagree with a decision and, as you've all read and as far as I'm concerned, that was a very erroneous decision and needs to be challenged in court. Land use decisions of this sort--if there's no help doing it--make it very difficult to enforce the laws of the State.

I'd also like to bring up another point that was made. A lot of people feel that the office of attorney general is not a political one, but I disagree. My point in all this is that if you elect the attorney general, you recognize that it is a political office, and the election would just bring up that point. Thank you.

CHAIRMAN: Thank you, Delegate Hanaïke. Are the members ready for the question? Delegate Lacy.

DELEGATE LACY: Mr. Chairman, I speak in favor of the motion. I think that the delegates understand, from newspapers and effects in their own communities and even while they were campaigning to be members of this delegation, that crime is probably one of the main issues confronting the people of their community. What are we going to do about crime? We're not here to pass laws, we're here to make a structured and decent correcting of our Constitution, to make it possible to bring greater pressure in some of those social areas.

I am in favor of having elected officials in as many places as we can. I believe that the attorney generals we have heard about throughout our nation, who made the great jump from that position maybe to the Presidency or to governor of their state, were the greatest crimefighters. Personally I believe we need two things done in this State to really help fight crime: we have to have a strong prosecutor system with full support for those prosecutors--and we'll get that with a tough attorney general; and the other thing is we must have good justices. Our judiciary committee, in their meetings, apparently has come forth, or so the press reports, for the merit selection of judges. We hope that that structure, and that change in the system, will aid in strengthening the system of justice. The people who elected us--on an overall average of over 62 percent--say they want an elected attorney general. My district tells me it wants an elected attorney general. I'm going to vote for an elected attorney general. Thank you.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I speak in favor of the amendment and have two brief points to make.

First, in response to those who have made unkind remarks about attorneys, I would simply remind them that the heroes of Watergate were also attorneys--Senator Sam Ervin from North Carolina, Judge John Sirica, Sam Dash and many others. But the more important point I would like to make is that the attorney general is the chief law enforcement officer of the state, and probably the most important part of his job is to make sure that the government itself obeys the law. With all due respect to the very able arguments that have been made on the other side, we have been through, in the last 3 or 4 years, the Watergate era, and we've also seen examples of similar things that have happened in our State and our own city and county. We have seen, unfortunately, that the government itself and the people in high office often try to hold themselves above the law, and an appointive attorney general has a built-in disability to enforce the law against the people who appointed him. That's the built-in conflict that makes it virtually impossible for an appointive attorney general to do his most important job.

If you remember in the Watergate case, when the appointed attorney general, John Mitchell, and then Elliot Richardson, with the prodding of Congress, appointed a special Watergate prosecutor to look into the Watergate affair. The first special prosecutor was Archie Cox. He started probing very enthusiastically, and found himself fired. If you remember the "Saturday night massacre" where Attorney General Elliot Richardson resigned instead of being fired and another attorney general, Archie Cox, was appointed and then he too was fired--that's the problem. The appointed attorney general has divided loyalty. His loyalty is to his boss, since that's the one who appointed him. It's only human nature that he would not vigorously prosecute either the person who appointed him or one of his nominees, one of his department heads, for example.

Teamwork, we all know the advantages of teamwork. But remember the Nixon tapes, the Watergate tapes, and the little team sitting in the White House, talking about "screwing our enemies" and getting this guy "on the team"--those are some of the actual words from that tape. That kind of teamwork is not what we mean when we talk about enforcing the law and making sure the government obeys the laws.

There are some risks in any method of appointing, but I respectfully submit that with an elected attorney general, his duty is undivided, his duty is to do the best job for the entire State of Hawaii, and he would, without any hesitation, enforce the law and enforce it vigorously. I urge you all to support the amendment.

CHAIRMAN: Thank you, Delegate Burgess. Delegate McCall.

DELEGATE MCCALL: Thank you. Although I hardly agree with Delegate Lacy and all the others who spoke on the need--I'm speaking against the amendment--the need for a strong prosecutorial function, I do want to remind the delegates that the primary duty of the attorney general is to advise the executive branch. Secondly, he advises the legislature, and his prosecutorial duties are rather minor as far as time is concerned.

I also rather dislike the implication that there is a conflict between his duty to the

executive and his duty to the people. This has happened very seldom and only upon those occasions when the executive is actually breaking the law. And this is assuming that he does it fairly often if we say that that is an important part of his job. Thank you.

CHAIRMAN: Delegate Kono, you're our 20th speaker.

DELEGATE KONO: Mr. Chairman, I rise to speak in favor of the elected attorney general. I think that the strongest argument for an elected attorney general is accountability in government. Accountability, as Delegate Burgess clearly pointed out, is to check on the executive and be accountable to the electorate. If the delegates will recall the workshop meeting that was held by the League of Women Voters, Professor James MacGregor Burns said that the foundation of our government is based on checks and balances and that the system of checks and balances is based on the fact that ambition was meant to counter ambition and that's why we have countervailing powers in the separation of powers within our government. That is also why we have elected officials who are judged on the merits they bring to the office and their performance in office.

We've heard several theoretical arguments against elected attorney generals. One was that special interest money would dominate the election, and another that there would be a lack of dependable legal counsel for the governor. I'd like to counter these examples--or these arguments--by providing a practical example of how the elected prosecutor works on the Island of Hawaii.

In 1976, Paul DeSilva ran for the office of prosecutor on a platform of fighting crime on the Island of Hawaii. He ran against a candidate who declared himself as an alternative to DeSilva, who had served as a prosecutor prior to the 1976 election, and the claim made by the opponent was that DeSilva was not following through on fighting crime and, as we've seen in the polls, crime is the one biggest problem facing the residents of our State. I think the results of the Madamba slaying proved conclusively that Paul DeSilva did follow through on his campaign promise to fight crime. I think this indicates that he did not bow to any special monetary interests because his personal pride was put on the line by the fact that he ran for office. Secondly, it did not hinder Hawaii county's chief executive, the mayor of Hawaii county, because we also have a legal counsel that provides all the necessary legal advice to the mayor. So, the result is that today we have a prosecutor on the Island of Hawaii, an office of prosecutor that is highly respected and has the great confidence of the public, and I implore the delegates to give us an elected office of attorney general to parallel the experience of Hawaii county.

CHAIRMAN: Thank you, Delegate Kono. Delegate Souki.

DELEGATE SOUKI: Yes, Mr. Chairman, I would like to speak against the motion. Much has been mentioned here about checks and balances, and fighting crime. I should like to make note that the executive office is not to provide checks and balances. The legislative branch, by its structure and spirit, is the branch that checks on the executive. If it fails--if the executive branch needs to be checked more closely, then through the legislative process the responsibilities of the legislative auditor and the ombudsman can be increased so that these offices will provide that function.

Within the executive branch, like any business, you should have teamwork--if I can use that word again. It's a much used word; however, it is important when we consider that what we want is a skillful, managed, efficient government. And without all the departments in this framework working in cohesion, you are not going to get the desired result. Furthermore, I wish to add that the primary responsibility for criminal investigation and prosecution lies with the respective counties and not the State. Traditionally in Hawaii this has been the style and method. That's all I have to say, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Souki. Delegate Barr.

DELEGATE BARR: Mr. Chairman, your delegate from Makawao, who would prefer being in up-country Maui right now, would like the record to show that he favors an elected attorney general, and I would like the delegate from the Big Island to note, please, that I'm speaking for the amendment. I am still smarting from Delegate Hamilton's comment about the political ambitions of convention delegates. I am reminded--as we were a few moments ago by another delegate from the Big Island--of James Madison's advice more than 200 years ago that to protect the freedom of people, the structure of government should

put ambition against ambition. The unique role of the attorney general in a society ruled by laws is just the right place to put lower ambitions against those we already have institutionalized on the state level. Thank you.

CHAIRMAN: Thank you, Delegate Barr. Delegate Hamilton.

DELEGATE HAMILTON: Mr. Chairman, I rise again to speak in favor of the amendment. However, I don't want Delegate Barr to end up smarting from any suggestion I made about the political ambitions of this group. There are political ambitions and political ambitions, and I've already been assured that the political ambitions in this Convention are all of a benign nature. But I would like to speak once more for the amendment--and for the last time. Simply that if there be doubt in your mind--as indeed there must be, if not conviction that the attorney general should be elected--if there be doubt, for heaven's sake, let's let the people decide.

CHAIRMAN: Thank you, Delegate Hamilton. Are there other speakers? Are the members ready for the question?

DELEGATE WAIHEE: Mr. Chairman.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: I'd like to speak against the amendment, Mr. Chairman, for the following reasons. I think that each of us ought to ask ourselves exactly why we would want to see this change take place. Why are we really changing this?

It seems to me that one of the reasons put forth was the idea that an elected attorney general may be a better watchdog over the state government, so I asked myself, "Will this really occur? Is it possible?" And I answered myself, "I don't think so." I think most of the arguments that have been made today for a watchdog in the state government really relate to the prosecutor's function. It is the prosecutorial function, which is delegated to the counties, and to make the elected attorney general take over this role would seem to me, first of all, a violation of our present status of county home rule of some sort. It would violate our present delegation of authority.

It seems to me that these arguments are better fit for having an elected prosecutor on Oahu. The reason I say this is because most of the attorney general's job, if not all, is essentially to provide interpretation and guidance to the executive branch with respect to the law. I would therefore suggest a newer and maybe a radical idea--that we would be better served if the attorney general should not necessarily be loyal and obedient either to the governor or to the people. I would suggest that the State of Hawaii would best be served if the attorney general was loyal to his conscience. What the attorney general should be is an independent legal thinker who puts forth what he sees as best in the law, irrespective of who has appointed or elected him. He serves his masters best by serving his conscience, and I don't think this would be possible under an elective system. I think we need an attorney general first of all to see if there are any violations or mistakes in the law and if none, to support the executive and his program.

A case in point I'd like to show, for example, where if there were contradictory opinions between the governor and the attorney general, something might not have occurred, would be the example of Waiahole-Waikane. In the Waiahole-Waikane issue, there was substantial disagreement over the laws. It was a gray area. The attorney general noted the possibility as it could be interpreted within the perimeter of the law and supported the governor. An attorney general who had in mind further political ambitions, who had in mind any kind of antagonism toward the governor, perhaps would not have gone along those lines. So for these reasons, Mr. Chairman, I would speak against the amendment.

CHAIRMAN: Thank you, Delegate Waihee. Delegate DiBianco.

DELEGATE DiBIANCO: I think now we've heard all the arguments at least once for and against an elected attorney general and I fully intend to move for a roll-call vote on this matter. I simply want to point out that the issue before us right now is not whether we should have an elected attorney general, it's whether we should allow the question of an elected attorney general to go to the people. A yes vote means yes, we will let the people decide whether they want to retain the present system or change it and elect

their attorney general; yes, we will let the people listen to the arguments and make up their own minds. A no vote is a vote for arrogance; no, the people are too stupid, they can't follow the arguments.

DELEGATE TAIRA: Mr. Chairman, point of order.

CHAIRMAN: State your point of order, Delegate Taira.

DELEGATE TAIRA: This type of description of what we as delegates are voting for is the prerogative of the Chair and not for one of the delegates to describe.

CHAIRMAN: One minute please, Delegate DiBianco, if the Chair can advise. The Chair is going to sustain Delegate Taira's point of order. The Chair would like to state that you not address the question of the representative function of each of the delegates here because I believe they all understand that. I would ask that you continue your argument with reference to this amendment, please.

DELEGATE DiBIANCO: Well, I appreciate that very much, Mr. Chairman, but I also think I should have an explanation of your particular ruling, as to why I'm being cut off on my interpretation--my making my point in my own way and my interpretation of how my argument will best affect other delegates.

CHAIRMAN: Delegate DiBianco, the Chair has ruled and has explained its ruling. Do you wish to appeal the Chair's ruling?

DELEGATE DiBIANCO: Is it debatable?

CHAIRMAN: No, it is not.

DELEGATE DiBIANCO: Yes, I will appeal.

CHAIRMAN: Delegate DiBianco has appealed the Chair's ruling with reference to sustaining the point of order by Delegate Taira. All those who wish to overrule the Chair's ruling please signify by raising your right hands. All those against, your right hands, please. The ruling of the Chair is sustained. Delegate DiBianco, would you please continue your argument now without addressing the issue of the representative function of the delegates.

DELEGATE DiBIANCO: I have nothing else to say except that the people are watching your vote.

DELEGATE WAIHEE: Mr. Chairman.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: I would like to speak for the last time on this issue. I would ask us all to seriously consider this and remember our function is to recommend the best possible changes to the people of this State.

CHAIRMAN: Delegate Chang.

DELEGATE CHANG: Thank you. Point of information, Mr. Chairman.

CHAIRMAN: State your point of information.

DELEGATE CHANG: Delegate Waihee referred to the function of the attorney general as a counselor and it raised a question in my mind. I would like to inquire of the delegate from the Big Island whether the corporation counsel is elected or appointed.

CHAIRMAN: The delegate from the Big Island--I believe it is Delegate Kono, do you wish to yield? Is it Delegate Kono or Delegate McCall?

DELEGATE CHANG: Any delegate that has that information.

DELEGATE KONO: The corporation counsel is appointed on the Big Island.

DELEGATE CHANG: Thank you.

CHAIRMAN: Thank you, Delegate Chang. Are there others at this time who wish to speak to the amendment before this body? Delegate Campbell.

DELEGATE CAMPBELL: Yes, Mr. Chairman, I'd like to speak very briefly. I think it would help all of us if we would refresh our memories prior to voting as to whether or not the function of the attorney general is indeed prosecutorial. I have before me Appendix B in the Legislative Reference Bureau book covering the executive, the list of statutory duties of the attorney general, and I would like to quickly run through those functions which are indeed prosecutorial.

He is to prosecute "election law violations." His duties include prosecution "of offenders and enforcement of bonds and other obligations in favor of the State. Prosecution of violations on public thruways and property. Conduct investigations of alleged violations of the law.... Administration of the organized crime unit.... Prosecution for violation of laws in respect to the assessment and taxation of property.... Prosecution for payment of inheritance and estate taxes.... Prosecution of actions against employers for failure to give security under the workers' compensation law.... Prosecute or defend all actions brought under the Hawaii insurance law.... Prosecution of violations of the laws of the practice of chiropractics...." I believe there's also the prosecution "to revoke or suspend private investigator licenses" and prosecution "of actions for violation of fair trade regulations." I may have missed some, but I believe that substantiates the position that the attorney general does indeed have a prosecutorial function.

CHAIRMAN: Thank you, Delegate Campbell. Are there others who wish to speak to the amendment?

DELEGATE WAIHEE: Yes, I rise to a point of inquiry.

CHAIRMAN: State your point of inquiry.

DELEGATE WAIHEE: May I ask Delegate Campbell if it would not be a fact that all of these prosecutorial functions are taken out at the bidding of the respective departments of the State? That in essence the attorney general would be providing the service for the state department?

CHAIRMAN: Delegate Campbell, do you wish to yield to answer the question? The delegate does not wish to yield.

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I want the record to reflect at this point in time that no amount of name-calling or coercion will ever force me to do anything which I believe in my conscience--the very soul of me--to be wrong. I vote my conscience. I am not running any other political campaign, I'm not conscious of TV cameras, nor do I need to make remarks about--

DELEGATE HALE: Mr. Chairman, point of order.

CHAIRMAN: Delegate Hale, one moment please. Delegate De Soto, the Chair recognizes that there is no need to explain one's vote. However, your views have been so stated at this time. Are there other speakers who wish to address the amendment?

DELEGATE BLAKE: Mr. Chairman.

CHAIRMAN: Delegate Blake.

DELEGATE BLAKE: I'd like to speak for the second and last time on this topic. I feel that this is a decision that the general public should decide, and I ask you--this has been expressed throughout the State--whether you're going to vote against this amendment.

DELEGATE McCALL: Point of order.

CHAIRMAN: Delegate Blake, I would ask that you confine your remarks more to the topic of an elected attorney general and the amendment. We have already had the problem raised on a previous point of order with reference to the representative function of the delegates here. Each delegate will have to decide for himself.

DELEGATE BLAKE: I ask you all to support the amendment.

CHAIRMAN: Thank you, Delegate Blake.

DELEGATE DiBIANCO: I rise to a point of personal privilege.

CHAIRMAN: Delegate DiBianco, will you state your point of personal privilege.

DELEGATE DiBIANCO: I have to complain about the manner in which the Chair is cutting off this kind of debate. With all due respect, as to whether we are not supposed to be telling people how to vote, I do think there is nothing wrong in reminding the delegates of their duty to the people that they serve.

CHAIRMAN: Your point is well taken.

DELEGATE McCALL: Mr. Chairman.

CHAIRMAN: Delegate McCall.

DELEGATE McCALL: Point of personal privilege. I don't think I care for another delegate telling me what my duties are.

CHAIRMAN: Thank you, Delegate McCall. Your point is well taken.

DELEGATE McCALL: I have more knowledge of my own duties than he does.

DELEGATE HALE: Point of personal privilege.

CHAIRMAN: At this time I would ask that the members of the delegation please consider that this argument is settled. We ask that you address the substance of the amendment and not to what the role of each delegate is. Otherwise, we can argue the representative function or the pure--this thing has been debated from Plato down to Montesquieu to Rousseau. The Chair does not wish to take it up again at this time, so I ask that we please end this type of discussion and address the substance of the amendment. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I just rise to say that I speak for the amendment, but whether or not it passes on a roll-call vote, Delegate De Soto is my friend. Thank you.

CHAIRMAN: Thank you. I don't believe expressions of sincerity and affection at this point are necessarily in order. Are the members of this committee now ready to address the question, or is there further discussion?

DELEGATE CABRAL: Mr. Chairman.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: I move for a roll-call vote.

CHAIRMAN: Are there 10 seconds to the roll-call vote? A roll-call vote will be taken. Before we take the roll, Delegate Barnes, out of courtesy the Chair gives you the opportunity to speak last on your motion. Do you wish to speak?

DELEGATE BARNES: No.

CHAIRMAN: Thank you, Delegate Barnes, for your courtesy. The question before the body is whether or not to adopt the amendment of Delegate Barnes, which in effect provides for an elected attorney general. Mr. Clerk, will you please call the roll.

Roll having been taken, the motion failed to carry by a vote of 45 ayes, 56 noes and 1 excused; with Delegates Anae, Barnes, Barr, Blake, Blean, Burgess, Cabral, Campbell, Laura Ching, Chong, Chu, Chun, Crozier, DiBianco, Dyer, Eastvold, Ellis, Fernandes Salling, Funakoshi, Goodenow, Hale, Hamilton, Hanaike, Harris, Hoe, Hornick, Dennis Ihara, Kimball, Kono, Lacy, Rachel Lee, Liu, Marumoto, Miller, Odanaka, Ontai, O'Toole, Paty, Peterson, Pulham, Shon, Stegmaier, Sutton, Takitani and Wurdeman voting aye; Delegates Alcon, Andrews, Barnard, Chang, Calvin Ching, Donald Ching, Haunani Ching, Chung, de Costa, De Soto, Fujimoto, Fukunaga, Fushikoshi, Hagino, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hokama, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaapu, Kaito, Kojima, Ledward, Marion Lee, Lewis, McCall, Nakamura, Nishimoto, Nozaki, Okamura, Penebacker, Sakima, Sasaki, Shinno, Silva, Souki, Sterling, Stone, Taira, Takahashi, Takehara, Tam, Tamayori, Uyehara, Villaverde, Waihee, Yamashita, Yoshimura and Chairman Weatherwax voting no; and Delegate Takemoto being excused.

CHAIRMAN: The motion is defeated. At this time, the Chair will consider additional amendments to Committee Proposal No. 3. Delegate Goodenow.

DELEGATE GOODENOW: Mr. Chairman, I would move to amend Article IV by adding a new section. I would like to say that we're purposely going to keep this as brief and to the point as possible, realizing this is as popular at this moment as a penguin at the equator.

But on with it. I will briefly outline what this is about. It provides for the merit selection of the attorney general by a nomination commission, basically of lay people. Two members would be picked by the senate president--again that's lay people--two picked by the house speaker, two by the house minority party and two by the senate minority party. These eight then will select one on their own to make a commission of nine people. The attorney general must have been admitted to the bar for at least five years, and the governor will make a selection from the committee's list of candidates. Now, on your desks are copies of all the details. At this time I will close what I have to say.

CHAIRMAN: Is there a second?

DELEGATE HALE: I second.

CHAIRMAN: It has been moved and seconded to amend Article IV by adding a new section which would in fact provide for choice of an attorney general by recommendations from a nominating commission. That is the question before the house. Is there any discussion? At this time I would recognize--are there any amendments to the amendment? There being no amendments to the amendment, the Chair recognizes the mover of the amendment to speak for her amendment. Delegate Goodenow.

DELEGATE GOODENOW: Well, I will briefly say that I hope you will all use two hands as you vote this one in, so we can have a little action here this afternoon. I totally believe in this, I think it would be a very, very fair way of selecting this individual so he is beholden to no one. And the governor wouldn't have all the pressure on him. I think this would be a very fair way. Thank you.

CHAIRMAN: Thank you, Delegate Goodenow. Are there others who wish to address this? Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to speak in favor of this amendment. I concur that, in the last analysis, the people's best interests are served when the governor has trust and confidence in the attorney general who works with him and the attorney general is responsive to him. However, in balancing the equity I believe we must take into account that the best interests and the welfare of the people are served when the attorney general is chosen on the basis of merit rather than by friendship or political consideration, and the best interest of the people, I believe, is of primary concern to us as delegates to this Convention.

This amendment presents a compromise between quality control and complete control by the governor. Under the amendment, the attorney general would still be chosen by the governor, but selection would be made from a list of three to five nominees chosen

by a merit nomination commission. One component of this commission which wasn't mentioned is that none of the members of the commission could hold public office. As noted earlier, the chief distinguishing feature of this idea is that it establishes a merit system on the basis of quality and away from selection purely on the basis of political or friendship considerations. Under this system, the attorney general would still be responsive to the governor and the governor could still relieve him under existing statutory law should he prove either incompetent or in any way a disruptive influence. This means that he would not be completely independent of the governor, as would be the case were he elected, but this could work better in the team relationship, which I think does have significance in this particular office.

This system would protect the governor, I submit, from the kind of criticism which occurred in connection with the Kukui Plaza investigation. Therefore, investigations by the attorney general's office of criminal activity or organized crime or such would be judged on their own merit, and not charged with political motivation. Also, under this arrangement the attorney general could not use his position purely for purposes of advancement politically since the amendment specifically prohibits the attorney general from running for office either during his tenure or in the first election after he leaves office.

Finally, this plan builds in the necessity of the advice and consent of the senate after the governor has made his choice, which is the component added to my own proposal submitted to the Convention. Based upon all these considerations, I urge the delegates to choose this method of selecting an attorney general. Thank you.

CHAIRMAN: Thank you, Delegate Campbell. Are there others who wish to speak to the amendment? Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I think that this amendment has considerable merit for the reasons cited by Delegate Campbell. It serves the purposes which Delegate Waihee earlier raised in terms of the specifications the public expects in the attorney general, in the way in which he performs his duties and the master he serves, which would in fact, in this case I believe, be more nearly his own conscience than the advantages of the position, or having to run for reelection, as well as having to worry about furthering the governor's cause.

The commission as set forth here is somewhat unusual, and while I would personally prefer to see a judicial commission or some other body already in existence as the one to make the nominations, I think the purpose is essentially the same, and that is this: that the commission, because of its varied composition, would nominate people who had broad acceptance, who were recognized for the quality of their legal experience as well as their integrity and who would as a group provide enough latitude to allow the governor to make adjustments to choose those with whom he could work individually.

So it would go through two tests and arrive at, I believe, a very fine compromise, with the best characteristics of each. For that reason, I support this amendment as one familiar with the pressures of political office and what these can cause to happen not only to lawyers but even those of us who are not.

CHAIRMAN: Thank you, Delegate Kaapu. Others who wish to speak to the amendment? Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I rise to speak against this motion. I believe that a nominating commission procedure places control over the selection of the State's chief legal officer in the hands of a very limited number of people. Under our present system, the governor appoints with the advice and consent of the senate. Thus at least 26 representatives of the people are involved in the selection process. Our present selection process is also highly visible. The governor nominates, the senate holds confirmation hearings and then votes. A commission's deliberations take place in secret with no public input.

Another problem with a nomination commission is that accountability for the final appointment is diffused. Now we can point to the governor as the one responsible for choosing a certain individual to serve as attorney general. Under a commission system, on the other hand, the governor could validly contend that the commission provided him

with a poor list from which to choose. The commission could in turn point to the governor and say--well, the choice was his. For these reasons, I urge the delegates to vote against adoption of this nominating commission procedure. Thank you.

CHAIRMAN: Thank you, Delegate Fukunaga. Are there others who wish to speak to the amendment?

DELEGATE KAAPU: Point of inquiry, Mr. Chairman.

CHAIRMAN: State your point, Delegate Kaapu.

DELEGATE KAAPU: Am I incorrect in thinking that the amendment here proposed does not require the advice and consent of the senate? Am I mistaken? I believe it is contained in the committee report.

DELEGATE CAMPBELL: Mr. Chairman, it does contain advice and consent of the senate. I pointed that out.

DELEGATE KAAPU: I notice that in the committee report it states as one of the objections to a nominating committee the fact that the senate does not have a review and consent. I don't understand whether the committee report relates to this proposal or some other proposal.

DELEGATE CAMPBELL: Mr. Chairman, may I answer that? Delegate Kaapu, if you look at line 7 on the first page of the amendment, you will find that it specifies--excuse me, just a minute--yes, line 7. The original proposal that was introduced in the Convention was without advice and consent. This one deals it in.

CHAIRMAN: Do we have others who wish to speak to the amendment? Delegate Chu.

DELEGATE CHU: Mr. Chairman, I would like at this time to offer an amendment to this amendment. I apologize, I was not aware of the entire contents of this amendment until now, and I would like to offer an amendment to the last sentence on the first page of this proposed amendment. In this sentence, starting at the third to the last line, the words "...and the eight members thus appointed shall within thirty days thereafter appoint a..." Those words would be stricken and replaced as follows: "The governor shall be the ninth member who shall serve as chairperson of the commission." So that entire paragraph will read: "There shall be a merit nomination commission composed of nine members. The president of the senate, the speaker of the house of representatives and members of each house belonging to a party or parties different from that of the president or the speaker shall each appoint two members who shall be lay persons, not holding any other political office. The governor--"

DELEGATE HOKAMA: Point of information, Mr. Chairman.

CHAIRMAN: Delegate Hokama.

DELEGATE HOKAMA: Is it correct that a delegate needs a written amendment?

CHAIRMAN: This is an amendment to the amendment, so there is no rule as far as a written amendment being required.

DELEGATE HOKAMA: Thank you.

CHAIRMAN: However, we would ask that if you do have it in writing, that the Chair be sent a copy so that we know exactly what your amendment is. Do you have that, Delegate Chu?

DELEGATE O'TOOLE: Mr. Chairman.

CHAIRMAN: Delegate O'Toole.

DELEGATE O'TOOLE: Can we have a short recess?

CHAIRMAN: I'd prefer not to at this time. I would like to stick to this matter

and I'm sure we can get it finished. We can take sort of an administrative break for about one minute, but please don't leave your chairs.

At 5:00 p.m., the Committee of the Whole took a one minute administrative break.

CHAIRMAN: Members of the Committee of the Whole, the motion is before this body to amend the amendment at line 19 on the first page--to insert a period after the word "office" and thereafter to delete the following: "...and the eight members thus appointed shall within thirty days thereafter appoint a...." Those words are deleted and replaced by the following: "The governor shall be the...." These new words then continue with the rest of the sentence, to read: "The governor shall be the ninth member who shall serve as chairperson of the commission." That is the motion--is that correctly stated, Delegate Chu?

DELEGATE CHU: That's correct, Mr. Chairman.

CHAIRMAN: Is there a second?

DELEGATE CAMPBELL: I second.

CHAIRMAN: Delegate Campbell seconds the motion. Delegate Ching.

DELEGATE LAURA CHING: Was the word "public" stricken from the 19th line and substituted with "political"?

CHAIRMAN: No, I believe that was a misreading by Delegate Chu. It remains "public." It's been moved and seconded that an amendment be made to this amendment. Is there any discussion? Delegate Goodenow.

DELEGATE GOODENOW: May I call for a roll-call vote?

CHAIRMAN: Not at this time, Delegate Goodenow. Please, if I might--the question before the house is on the amendment. There's been a motion and second. We'd ask for discussion at this time. Let me at this point go to the movant of the amendment to the amendment to explain her amendment.

DELEGATE CHU: I think all of the concerns by the individuals who are against an elected attorney general may be addressed with this particular amendment, in that the public will now have confidence in the selection of the attorney general which in fact will be based on merit, hopefully, and the governor will at the same time have others who will assist him. He should have a role in this, but there will be others who will assist in this decision-making process.

CHAIRMAN: Are there others who wish to speak for this amendment?

DELEGATE BARR: Mr. Chairman.

CHAIRMAN: Delegate Barr.

DELEGATE BARR: Yes, I wish to speak against the amendment. The whole idea of having a commission is to give the attorney general some independence from the governor. If we're going to have the governor in on it, why not just let him appoint the attorney general? It seems to me that with his position, with his prestige, he will tend to dominate those other eight except in very rare situations, and that would defeat the whole purpose of having the commission. Therefore, I speak against the amendment.

CHAIRMAN: Thank you, Delegate Barr. Are there others who wish to address the question?

DELEGATE KAAPU: Mr. Chairman.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I think the idea of having the governor serve on a nominating commission, or committee, is contrary to the purpose of an independent

body that reflects the confidence of the entire public; therefore, since the governor will have to make the selection from a panel that is submitted to him by this body--under the proposal--I think he should not take part in any way in the deliberations and nominations.

CHAIRMAN: Thank you, Delegate Kaapu. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I rise to speak against the amendment to the amendment. I think this would really be a very dangerous thing to do. If you're going to elect eight members--or select eight members--who are supposedly going to impartially select qualified persons, giving the impression to the public that this is a merit selection, and then to put the governor up there--it subjects every one of those eight members to a vindictive kind of campaign against him in every kind of way for the next four years. I think it's a very dangerous thing and I would urge everybody to vote this amendment down.

CHAIRMAN: Thank you, Delegate Hale. Others? Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, I speak against the amendment. I think it's in poor taste to place the governor on a commission of this nature.

CHAIRMAN: Thank you, Delegate Blake. Are there others who wish to speak to the motion, the amendment to the amendment? Are you ready for the question? The question before this body is the amendment to the amendment offered by Delegate Chu, which seeks to insert the words, "The governor shall be the..." and then continues "...ninth member who shall serve as chairperson of the commission." Do you wish to request a roll-call vote? All those in favor of the motion, signify by raising your right hands. All those opposed, same sign. The motion fails, the amendment to the amendment does not carry.

The question before the body at this time is again the amendment to Committee Proposal No. 3 offered by Delegate Goodenow. Are there any other speakers who would like to speak to the amendment? Delegate Harris.

DELEGATE HARRIS: Mr. Chairman, I'd like to speak in favor of the amendment. I have to admit that I am saddened by the work of the delegation today, not because my side lost--I seem to have been on the losing side of every vote taken so far--but because I feel that we're ignoring the will of the people. I think that the public has let it be known they're not happy with the present selection process. That's the message I got from my constituents on Kauai. I think if we can't go through with an elective process, that we all could come up with some kind of compromise. They say the art of politics is compromise. I think this proposal is certainly a compromise proposal. I urge my fellow delegates to support it. Thank you.

CHAIRMAN: Thank you, Delegate Harris. Are there others who wish to speak to the amendment? Delegate Kaapu.

DELEGATE KAAPU: I'd like to--for what it's worth--offer an amendment to the amendment, to substitute for "merit nomination commission" the words "judicial selection commission," and strike all references to the composition of the commission that exist here. Also, they should dissolve after making the nominations.

DELEGATE SUTTON: Mr. Chairman, I'd like to second the motion.

CHAIRMAN: Could I have that in writing again, Delegate Kaapu, please?

DELEGATE LAURA CHING: Mr. Chairman.

CHAIRMAN: Delegate Ching.

DELEGATE LAURA CHING: Mr. Chairman, point of information. What does judicial have to do with this--in that "judicial selection commission."

CHAIRMAN: I believe--if I might answer for Delegate Kaapu--I believe that he is considering the possibility of a judicial commission being created in the judiciary committee and that same commission would now have the responsibility of selecting the attorney general also. Is that correct, Delegate Kaapu?

DELEGATE KAAPU: This is correct. And it is coming before our action on the other. However, it was the intent of my motion to make the body that submits these nominees one that would already be in existence and that would be in the business of considering qualifications of persons with legal background, rather than our creating some new body which would have only one function.

DELEGATE HAMILTON: Mr. Chairman.

CHAIRMAN: Delegate Hamilton.

DELEGATE HAMILTON: I think I would like to speak against the amendment because we would be putting the nominating process in the hands of a commission which we have not yet approved, and I'm already confused enough without doing that.

CHAIRMAN: Thank you, Delegate Hamilton. At this point, however, there is a motion and it has been seconded, to insert--I believe this is line 14 on the first page of the amendment to Committee Proposal No. 3, Delegate Goodenow's amendment--at line 14, to read: "There shall be a..." and delete the words "merit nomination commission"--

DELEGATE KAAPU: That should be lines 6 and 7.

DELEGATE LACY: Point of inquiry.

CHAIRMAN: Delegate Lacy.

DELEGATE LACY: I believe that it starts at line 6. My understanding is that Delegate Kaapu wanted to remove all that information, from line 14 on, because it describes the commission.

CHAIRMAN: Thank you, Delegate Lacy. This is the problem when we try to make an amendment without putting it in writing. Since this is a proposed amendment, my understanding is that at lines 6 and 7 you wish to eliminate the words "merit nomination commission" and to insert therein "judicial selection commission." Is that correct, Delegate Kaapu? Does everyone understand the question?

All right, the proposed amendment to the amendment--again restating the question--is at lines 6 and 7 to delete "merit nomination commission" and insert therein "judicial selection commission." Any discussion? Would you like to address that, Delegate Kaapu?

DELEGATE KAAPU: This is very similar to the unicameral-bicameral thing in that, while we have some indication already on the thinking of the Committee on Judiciary, its proposal has not yet been acted upon by this body. The recommendation here is that the commission that submits to the governor a list of qualified persons for attorney general, from which he would select a nominee to send to the senate, would be one that was already in existence and whose job it would be to review the qualifications of those of legal background in order to recommend a panel of distinguished lawyers who would serve the public good, as Delegate Waihee said, by serving their own conscience.

CHAIRMAN: Anyone else who wishes to address? Delegate Barr.

DELEGATE BARR: I thought I heard, when the delegate made his amendment to the amendment, that he was going to delete a bunch of other things.

CHAIRMAN: Delegate Kaapu, is it correct that the deletion is everything from lines 14 thru 21 on the first page? If not, please correct the Chair.

DELEGATE KAAPU: Right, delete everything that describes the other commission.

CHAIRMAN: Would you do that by line, please, for the information of the other delegates?

DELEGATE KAAPU: The deletion should be lines 14 thru 21 on the first page, and on the second page, in line 3, the period should come after "office of the attorney general." So that sentence would read: "The commission shall propose a list of not less than three

nor more than five nominees to fill any vacancy in the office of the attorney general." And then, "The governor shall appoint a person to fill the office of the attorney general from this list."

DELEGATE STONE: Mr. Chairman.

CHAIRMAN: Delegate Stone.

DELEGATE STONE: Aren't we getting a little confused? Are we talking about onions or are we talking about potatoes? I understand we're talking about the attorney general and that's in the executive branch. The judicial is in the judiciary.

CHAIRMAN: Are you speaking against the motion?

DELEGATE STONE: Yes, I am.

CHAIRMAN: Thank you. Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman. I also speak against the motion. All I see here is that we're giving one nominating body undue influence on the State by letting it deal with both the judiciary and the executive branches, and I think that is dangerous.

CHAIRMAN: Delegate Goodenow. Do you speak for or against?

DELEGATE GOODENOW: In between--point of information. Is it possible to offer a third amendment?

CHAIRMAN: No, it is not.

DELEGATE GOODENOW: My idea is to just use the word "commission" and let the legislature take care of which it's to be.

CHAIRMAN: No further amendments can be entertained at this time. There are two amendments now under consideration.

DELEGATE HAMILTON: Mr. Chairman.

CHAIRMAN: Delegate Hamilton.

DELEGATE HAMILTON: I have a point of parliamentary inquiry. I'd like a ruling from the Chair as to whether it's possible to make a motion to refer something to a non-existent body.

CHAIRMAN: Delegate Hamilton, at this time the question that is before the body is to substitute the words "judicial selection commission," and whether there is in fact one in existence or anticipated, I think the members of this delegation will be aware. If there is none, then the amendment is going to be meaningless, but at this time we will take a vote on that and I think the body will respond in a proper manner.

DELEGATE SOUKI: Point of personal privilege, Mr. Chairman.

CHAIRMAN: Delegate Souki.

DELEGATE SOUKI: Will my colleague, Delegate Kaapu--through you, Mr. Chairman, if you could pass this information--will my colleague withdraw the amendment, please?

CHAIRMAN: Your request is noted. Delegate Kaapu.

DELEGATE KAAPU: Yes, Mr. Chairman, had you recognized me before Delegate Souki, I would have anticipated his remark in that, if it's going to cause confusion, I'd rather have it removed because I think that the proposal, the original proposal, has considerable merit even as it stands. I was just seeking a way to simplify it, but apparently in a body like this and at a time like this it's just not possible, so I withdraw the amendment.

CHAIRMAN: Thank you, Delegate Kaapu. At this point we are back to the question

before the body of the amendment to Committee Proposal No. 3 by Delegate Goodenow-- Delegate Goodenow's amendment. Are the members ready for the question?

DELEGATE GOODENOW: May we have a roll-call vote?

CHAIRMAN: Request has been made for a roll-call vote.

DELEGATE HALE: I second it.

CHAIRMAN: Are there--there are 10 seconds, a roll-call vote will be held. Do the members know the question? The question is the adoption of Delegate Goodenow's amendment. Mr. Clerk, will you call the roll.

Roll call having been taken, the motion failed to carry by a vote of 43 ayes, 57 noes and 2 excused; with Delegates Alcon, Anae, Barnes, Barr, Blake, Blean, Burgess, Cabral, Campbell, Laura Ching, Chu, Chun, Crozier, DiBianco, Dyer, Eastvold, Ellis, Fernandes Salling, Goodenow, Hale, Hamilton, Harris, Hoe, Hornick, Dennis Ihara, Ikeda, Kaapu, Kimball, Kono, Lacy, Marion Lee, Rachel Lee, Liu, Marumoto, Miller, Odanaka, Ontai, O'Toole, Peterson, Pulham, Sutton, Takitani and Wurdeman voting aye; Delegates Andrews, Barnard, Chang, Calvin Ching, Donald Ching, Haunani Ching, Chong, Chung, de Costa, De Soto, Fujimoto, Fukunaga, Funakoshi, Fushikoshi, Hagino, Hanaike, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hokama, Les Ihara, Teruo Ihara, Iwamoto, Izu, Kaito, Kojima, Ledward, Lewis, McCall, Nakamura, Nishimoto, Nozaki, Okamura, Paty, Penebacker, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Sterling, Stone, Taira, Takahashi, Takehara, Tam, Tamayori, Uyehara, Villaverde, Waihee, Yamashita, Yoshimura and Chairman Weatherwax voting no; and Delegates Ishikawa and Takemoto being excused.

CHAIRMAN: The motion to amend fails. At this time the Chair will entertain any further motion.

DELEGATE DiBIANCO: Point of inquiry, Mr. Chairman. I'd like to know who was excused and for what reason.

CLERK: Two were excused, Mr. Chairman, Delegates Ishikawa and Takemoto.

CHAIRMAN: Delegate Takemoto was excused by the Chair for personal reasons. As for Delegate Ishikawa, I have no information.

DELEGATE LEWIS: He was excused for personal reasons also.

CHAIRMAN: If there are no further amendments at this time, the Chair will entertain a motion to have the Committee of the Whole rise and report, and recommend the adoption of--one minute, please. Just as a matter of cleaning up, Delegate O'Toole, for your information, your amendment on Article IV dealing with the duties of the lieutenant governor, the portion amending Article III, Section 4, paragraph 10, on the chief election officer-- will you withdraw that portion of your amendment at this time?

DELEGATE O'TOOLE: Yes, I will, Mr. Chairman.

CHAIRMAN: Thank you, Delegate O'Toole. At this time the Chair will entertain a motion to rise and report with reference to the recommendation on Committee Proposal No. 3. Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I move that the Committee of the Whole rise and report, and that we recommend adoption of Committee Proposal No. 3 without amendments.

CHAIRMAN: Is there a second?

DELEGATE SOUKI: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that the committee rise and report to the Convention and recommend approval of Committee Proposal No. 3 without amendments. All in favor, please say aye. All opposed, no. The motion is carried.

At 5:20 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on PREAMBLE, GENERAL AND MISCELLANEOUS PROVISIONS, REVISION AND AMENDMENT

**Committee Proposal No. 4
(Articles XVI [XIV] and XVII [XV])**

Chairman: DELEGATE LES IHARA

Friday, August 18, 1978 • Evening Session

The Committee of the Whole was called to order at 7:08 p.m.

Delegate Les Ihara presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. This evening the Committee of the Whole will be discussing Committee Proposal No. 4 as submitted by the Committee on Revision, Amendment and Other Provisions. Before we start the Chair would like to make sure that everyone has a copy of all the amendments submitted in writing. The amendments were distributed this afternoon. We'll have a short recess subject to the call of the Chair.

At 7:10 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 7:13 p.m.

CHAIRMAN: The Committee of the Whole is now in session. I want to give you the order of the amendments we will be taking up this evening. The first is entitled "Employees' Retirement System"; the second is "Plain Language"; the third amendment is the amendment by Delegate Randall Peterson; the fourth amendment is entitled "Constitutional Revision Commission." The second "Constitutional Revision Commission" amendment by Delegate Chu has been withdrawn. Now, we have five amendments. The fifth amendment is on the Preamble.

The scope of Committee Proposal No. 4 includes Article XIV and Article XV. It does not include Section 5 of Article XIV relating to codes of ethics. If there are no objections, consideration of this committee proposal will be done in the order of the amendments just announced, followed by any other amendments the committee may have. The Chair will now entertain a motion for the first amendment.

DELEGATE IZU: Mr. Chairman, may I speak on section 1 in the proposal?

CHAIRMAN: Delegate Izu.

DELEGATE IZU: Mr. Chairman, I rise to speak for the amendment to Section 3 of Article XIV as proposed in section 1 of Committee Proposal No. 4. The inclusion in our Constitution of a provision for disqualification from public office for subversive activities has a colorful history which, with your indulgence, I'd like to briefly relate. Especially since this is something of a history dealing with statehood, and since this is Admission Day and we're working--I thought maybe you would appreciate this.

The origin of such a provision dates back to the Statehood Enabling Act of 1950 of the U.S. Congress. That bill obviously failed, and similar bills failed for almost a decade thereafter. However, the Hawaii Constitutional Convention of 1950, the predecessors of Delegate Crozier's "Panasonic Club," wanted statehood slightly ahead of their time, and therefore sought to comply with what Congress would require of a state. The Statehood Enabling Act included a section which disqualified any person who advocated or belonged "to any party, organization, or association which [advocated] the overthrow by force or violence of the government of the State of Hawaii or of the United States..." In 1950 many

people in Hawaii were doubly concerned about being "American." Not only was statehood a goal but also it was the era of McCarthyism and the Red Scare. One delegate to the constitutional convention resigned, his reason being that his cooperation with the House Un-American Activities Committee in helping to expose Communist activity in Hawaii and concurrent attendance at the constitutional convention might embarrass his fellow delegates and prejudice the cause of statehood for Hawaii. Another delegate was forced by the convention to forfeit his seat due to his failure to cooperate with the House Un-American Activities Committee.

By 1968, however, the original language drafted in 1950 was found to be unconstitutional, in violation of the First Amendment rights of association and belief. In several U.S. supreme court cases, decisions were rendered declaring that denial of federal employment on the basis of advocacy of the overthrow of the government is unconstitutional. Therefore, the foremost concern of the delegates to the 1968 Constitutional Convention was rewriting the section to make it constitutional, which they did and which was ratified by the voters.

However, upon subsequent re-examination of this provision, it appears that our present Constitution does not require a conviction or even an indictment of a treasonable act as a basis for disqualification. There are possibilities that security programs under this provision could offend the due process by establishing vague standards of determining disloyalty or by presuming disloyalty on the basis of inadequate evidence. In disloyalty proceedings before a nonjudicial or quasi-judicial body, methods employed in obtaining information could possibly be constitutionally questionable.

By the amendment proposed in Committee Proposal No. 4, we are making it clear that a conviction--in other words, a judgment by the courts--will be required to bar anyone from public office or employment on the basis of disloyalty. I urge all my members to vote aye.

CHAIRMAN: Delegate Izu, the Chair asks if you made a motion.

DELEGATE IZU: I'm sorry. I'll just ask for final approval at the end.

CHAIRMAN: Thank you. Delegate Wurdeman.

DELEGATE WURDEMAN: I move to amend Article XIV, Section 2, "Employees' Retirement System," to add in the Constitution the words: "Any such system shall not discriminate in benefits provided by class of employee or officer unless such differences in benefits bear a reasonable relationship to the individual contributions made or be based upon the special problems of those employees whose duties involve danger to life."

DELEGATE ELLIS: I second the motion.

CHAIRMAN: It has been moved and seconded. Is there any discussion? Delegate Wurdeman, would you like to speak to your motion first?

DELEGATE WURDEMAN: Yes, I would like to speak first and last.

I can only agree with the standing committee report that the present system of favoring certain types of public employees in the retirement system is a matter of genuine concern. The present system is bad enough at first glance; it appears to allow elected officers and judges to build up a retirement benefit based on 3-1/2 percent of their highest salary per year of service, while regular employees get 2 percent and both contribute the same amount. This alone would appear to be an abuse.

But closer inspection makes the abuse even greater. Those with service as judges or elected officials can retire at any age with ten years' service. And to add more inequities, they get back their entire contribution in the form of an annuity which is added to their pension. In summary, they contribute nothing to the system but take out up to ten times as much.

The argument has been made that this system encourages qualified people to seek the judiciary. The facts are contrary. What it encourages are politicians seeking the judiciary so that they can inflate the final salary upon which their pension is computed.

It is no accident that the names of people who would later be judges are prominent in the legislative committees that gave us the law that created this legalized theft. It is also sheer naivete to think that some other body, be it legislative or judicial, will correct this abuse. These are the bodies that benefit. It is only the taxpayers and other public employees who suffer. As in so many areas in this State, those close to political power have found a way to bleed the public by burying their scheme in complex legalities.

No other body will correct this abuse. The public employees' unions, which supposedly represent those discriminated against, are strangely silent, maybe because they are not aware of it. The legislature benefits, the people blissfully suffer. Only this Convention can put an end to the taxpayers supporting 50-year-old men with \$35,000 a year in public welfare while they seek other careers. Such an annuity can be calculated to be worth close to \$500,000. If the people wish to make those that run this State millionaires, then so be it. But let the people know what they are doing, and end the hypocrisy of so-called "public servants" walking off with windfalls that it would take a \$100,000-plus salary to accumulate in private life.

Fellow delegates, the people of this State are laughing at us and calling this Convention a \$2.5-million throwaway. For once, I urge you to vote for those who have elected you. Mahalo.

CHAIRMAN: Thank you, Delegate Wurdeman. Delegate Izu.

DELEGATE IZU: I rise to speak against the amendment. At least four states have some kind of coverage for the legislature. In most of those states there are some differences, either in age, service or final average salary, which distinguish legislators from other covered employees. Coverage in 29 states is optional. The importance of these factors is that legislators are considered in a different category from general employees, being subject to election and short careers. As a consequence, most states allow individual legislators to choose whether or not they wish to participate. In other words, these states recognize that the nature of the legislative position is sufficiently different from the nature of general public employment to merit different treatment.

With respect to judges, 75 percent of the states have special provisions. This reflects several factors. One, judges are in service at relatively late ages as compared with general employees. Two, their terms of service are technically shorter than those of career employees. Three, special provisions are necessary to encourage qualified attorneys to leave private practice to serve on the bench.

Total compensation paid to elected officials and judges should not exclude other benefits received, such as retirement pay. Both the 1971 and 1975 legislative salary commissions expressed the view that a salary plan for legislators should take into account the existence of other payments and benefits, including retirement allowances. Differentials in retirement benefits can be justified on the basis of lack of long tenure for elected officials and judges, in contrast with the security of regular employment for the general public servant. The incentive of such benefits encourages people to seek public office and to remain in office. In the case of judges, public service means divesting themselves of outside interests and activity, which means giving up a lucrative law practice that provides income much in excess of what is earned in a judgeship.

Furthermore, the high risk involved in reelection or reappointment must be given due consideration. For this reason, I urge my fellow delegates to vote against the amendment.

CHAIRMAN: Thank you, Delegate Izu. Are we ready for the question? Delegate Hale.

DELEGATE HALE: I'd like to speak for the amendment. I support this amendment even though it may mean I may be affected financially myself. For I am one of those getting retirement at 3-1/2 percent of my pay, based on ten years of elected service at the county level. The reason I support this is that it corrects an inequity that I have long felt exists in the law. But never having been a member of the legislative body of this State, I was not in a position to do anything about it.

When I served the County of Hawaii from 1955 to 1965, and when I retired from elective office, I had had my ten years. I had joined a retirement system in the beginning,

but it had been my understanding from the very beginning that it would be just the way it was when I joined the retirement system previously as a schoolteacher, and I was naive enough to think that I really wouldn't be enjoying this retirement pay until I reached retirement age. When I was retired involuntarily from public service at age 47, I didn't even know I was due this money. But about a year and a half later, one of my former colleagues asked me if I was getting my retirement. I thought surely I would have to wait until I was 55 because I knew that the law had been changed from 60 to 55. But out of curiosity I wrote to the state retirement system, gave them my history and found that I was due a pension. And I have been receiving it ever since.

Unfortunately, I'm not wealthy enough to turn this money back to the State, but I do feel that it is really unfair. I would like to say several things in answer to this question about legislators. We have in our State some legislators who have served nearly 24 years or more. And I don't think that can be considered a short career. Furthermore, legislators know what they are getting into; they ask the public for the chance to serve them. And I can see no reason that legislators and judges get extra money upon retirement. If this is an incentive for judges, then perhaps it would also be an incentive for the appointment of department heads, so we can get the best-quality people from private enterprise to help run our State. But appointed officials do not get 3-1/2 percent, only elected officials and judges. And it has long been my private opinion that the reason judges are always included in retirement and pension bills is that that way they can never be declared unconstitutional.

I feel fairly strongly about this even though, as I said, I may be affected financially. I am the beneficiary of something that I have no part of, and it's perfectly legal, and I have been, I'll admit, accepting it. It could cause a financial hardship on me now, having adjusted my lifestyle to getting approximately--the pay when I retired was much different from what it is today. When I retired as county chairman, as Delegate Blake over there knows, I was getting \$15,500 a year. The mayor of the County of Hawaii today gets over \$43,000, so there is a great difference between what I get in a pension and what they get presently under the present system of legislators and elected officials.

I still think the system is wrong. I feel that every state employee should be treated equally, and I think if anything legislators ought to get less, not more. They make the laws, and they've made it for themselves. I think it's about time that we did something about it.

CHAIRMAN: Thank you, Delegate Hale. Does anyone else wish to speak on the motion? Delegate Ikeda.

DELEGATE IKEDA: Mr. Chairman, I rise to speak in opposition to the proposed amendment. There is one point that I think should be made: differential in pay for the class described as legislators and judges, as contrasted with other public employees, does not mean discrimination. I think it's generally recognized that legislators and judges do not earn salaries commensurate with the scope of their responsibilities, and the only way this inequity can be corrected is by making retirement benefits a means of equalizing the total compensation package for judges and legislators.

Under the retirement credit system for regular employees, judges and legislators cannot accumulate the type of retirement benefits that other public employees earn, simply because in general they cannot or they do not serve terms as long as the typical tenure of service of a public employee. Judges serve limited terms--in the case of circuit court judges and supreme court justices, for terms of ten years, and district court judges for six years. The exception rather than the rule is that one term is the limit. Legislators run the risk of not being elected every two or every four years, as the case may be. And because of that, in both situations the chance of accumulating substantial retirement benefits is simply not available.

CHAIRMAN: Thank you, Delegate Ikeda. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I rise to regretfully speak in favor of this proposed amendment. With all due respect to the points made by the distinguished previous speaker, I would submit that this proposed amendment has merit and is worthy of your consideration, particularly as it applies to legislators, because their peculiar benefit is one which is, I think, generally not understood or known to the public. It is a benefit

that is peculiarly excessive when you consider that a legislator works part-time--the total time consumed is somewhere in the area of 3-1/2 months, maybe 4 months out of the year--yet he receives a benefit of 3-1/2 percent; whereas the rank-and-file public employee receives only 2 percent for working the full 12 months of the year.

It is, I submit, a provision which cannot realistically be expected to be remedied by the legislature. I think the only way it can be remedied, particularly as it applies to legislators, is by a constitutional provision. And I would recommend it for your consideration.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Uyehara.

DELEGATE UYEHARA: I rise to speak for the amendment. I think some of us sitting here tonight have come across this issue for the first time. We need to think about it. Many of us did not have time to lobby for this amendment, and I think it is worthy of your consideration now.

The retirement system dips into the pocketbook of every person who is publicly employed. Some of us had definite ideas for changes in specific items when we came here as delegates to the Convention. Some of us have been involved in the process and are suddenly faced with this decision. You must look into yourselves as you make this decision. The state retirement plan may be one rarely looked at or thought about by young people, because those under 29 feel they're going to live forever. The middle-aged, now in the prime of their working careers, may sometimes check on that little nest egg called retirement or pension plan. And then there are the others within our illustrative body who are now in their retirement years and are now enjoying some of their income from our state retirement plan.

Mind you, we all are putting 6 percent of our income monthly into the retirement plan, plus 1.8 percent in the post-annuity plan, which actually is putting 7.8 percent into the state plan. And a special class of people called judges and elected officials retire with 3.5 percent for each year of their service. Judges are tenured at 10 years, as are all legislators. And yet I agree that their pay is low--\$12,000 a year, and they work about 4 months in a year. Don't you, as Con Con delegates, work the same amount of time? And you are not in a retirement program, as far as I know. And you're receiving only \$4,000 for the work that you're doing. I don't see anybody griping. We are here for a purpose. We are here for a cause. I think most of us are very happy and proud that we can be representatives in this Constitutional Convention.

Years ago good judges were hard to come by. They had to offer incentives in the form of a retirement program. But today there are many attorneys, some of them out of jobs. And there are some good attorneys who would be willing to give 10 years of service to the State. I don't believe there should be an incentive to become rich in the retirement program or to make money out of it. And \$42,000 is a good salary for any judge. But these are the inequities. They are receiving 3.5 percent while the rest of us employed by the State receive only 2 percent. For this reason, I speak for the amendment.

If you read the amendment very closely--those whose jobs involve danger to life, like policemen, firemen, prison guards, those working in the sewage system whose lives are shortened by breathing poisonous gas--they are receiving 2 percent, and I don't agree to that. Their lives are endangered daily.

So with this, I'm hoping and praying that you will work with your conscience--not your union and not your pocketbook and not your causes and groups--to make this a fair and equitable plan for the whole state retirement system of Hawaii.

CHAIRMAN: Thank you, Delegate Uyehara. Delegate Ellis.

DELEGATE ELLIS: I rise to speak in favor of the amendment. Let me recall for you 3 years ago when we had that infamous scandal at our legislature, in which the members proposed to increase their own retirement benefits and pay. And if you recall, it turned out that they were so embarrassed, they pulled the proposed bill back from the governor. We really need to put some sort of a lid on our retirement system and its benefits and not leave it subject to the legislators who can then, at any time in the future, change their own benefits. So I'm speaking very strongly in favor of putting a limit on what can be done with the retirement system.

CHAIRMAN: Thank you, Delegate Ellis. Are we ready for the question? Delegate Cabral.

DELEGATE CABRAL: I rise to speak in favor of the amendment. I think if ever there was an obvious disparity in equality, it is what exists in the government employees' retirement system. By way of analogy, I'd like to offer a comparison with the federal military retirement system, of which I am very familiar. I think if you were to ask--well, perhaps put the question, that there might exist even within the federal military system an inequity in the retirement system, it would, of course, naturally be the disparity that exists between the lower, enlisted grade and the general officer--or the salary a general officer earns for his service as compared to the lowest-ranking private first class.

But when it boils down to a retirement plan, I don't think anyone can challenge it as being unfair, because it is based on the very same system. I for one was attracted to the military because of its short retirement plan--20 years of service after which you would receive 50 percent of the base salary of your highest grade or rank or salary attained. That same plan also applies to the lowest rank-and-file private first class. If he gets paid only \$700 a month and that is his highest grade attained by the time he completes 20 years of service, then he receives 50 percent of his base salary, based upon 20 years of service. The higher-ranking officer receives 2-1/2 percent for each year over 20 years, as does the enlisted man--2-1/2 percent for each year over 20 years.

But the state government system has a very obvious inequality, when you compare 2 percent with 3-1/2 percent. They too have a system whereby the rank-and-file obviously receive lesser salaries than higher executives or legislators or judges. But the fact remains that there is a disparity in the system used for the retirement computation. I think we all would like to be treated fairly and equally. I ask you to search your consciences as to whether this is not a very obvious disparity. I think this particular amendment offers a very solid solution to the problem. Therefore I urge you to support this amendment.

CHAIRMAN: Thank you, Delegate Cabral. Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I rise to speak in opposition to this amendment. It grieves me greatly to have to make this speech at this time. I think we are being asked to discriminate, and discriminate very badly, between those who have served in public office up to now or in the judiciary up to now, compared to those who will be coming in as public servants--whether in the halls of the legislature, the council or the courts--from here on out. Something like this is not going to be retroactive. My colleague from Hawaii is worried that this might affect her retirement. That will not be the case. I am retiring, as all of you know, in a few weeks, and this is not going to affect me, not one bit. So I can speak without any conflict of interest no matter what people say. I really grieve that we, as members of this Convention, are doing something or may be doing something which, in my mind, is going to be awfully discriminatory to those who will follow in our footsteps. At the same time, I think we should clear the air as to what the facts are.

If I recall correctly, there was a statement made that legislators and judges contribute nothing to the retirement system. That is not true. We all contribute 6 percent plus the post-retirement of 1.8 percent. It's true that for every year of service, legislators and judges receive a credit of 3-1/2 percent, compared to 2 percent for regular employees. Very true. But as has been stated, let us remember that legislators--especially if they run for the house--have to stand for election every 2 years. For those of you who campaigned here, you know very well what a tough job it is to go to the public and ask to be elected. One has to do this five times, to be reelected to the house of representatives for 10 years, in order to meet the minimum qualifications for your 10 years times 3.5, or 35 percent of \$12,000 as your pension. Thirty-five percent of \$12,000, regardless of age, is \$350 a month. And I don't think a \$350-a-month pension for a legislator with 10 years of dedicated service is what some people call ripping off the public. I think before I sit down I should tell you that upon my retirement, I will have finished 16 years of service, both in the house and in the senate. I also have had 9 years of service as a public employee, as a schoolteacher. That totals 25 years of service for the State of Hawaii. When I retire--and I don't want you to all drop dead, because this is my monthly pension--my monthly pension is going to be about \$620 a month. Now, if that is what you call ripping off the public, then I certainly don't know what the term "ripping off" means.

Mr. Chairman, as I said before, it really grieves me to have to speak this way, but I thought I should speak up to make sure that, as we vote on this amendment, we will know clearly what we are doing. Thank you very much.

CHAIRMAN: Thank you, Delegate Taira. Delegate Uyehara.

DELEGATE UYEHARA: I would like to speak on what the previous speaker mentioned. According to the retirement program, for each year of service he has 3.5 percent. So he actually has 35 percent of \$12,000 a year. I realize that \$12,000 a year is a very minimum salary for a legislator to live on, and hard for any legislator to live on. I believe it is up to the Constitution to give legislators better pay. I believe we will be addressing ourselves to that in the near future. I for one have proposed to raise the legislative salary to \$17,000. I believe in it. What I'm talking about is the retirement system. After 10 years of service--and mind you, these are public servants, they run voluntarily, and they run to serve the public. I think we need to keep this in mind. If they lose--it's at the discretion of the public to decide whether they want that representative to represent them. And if these servants can only receive an equal retirement pension, I would be happy to sit down and close my mouth.

I'm not looking for anything special for them, except that their retirement pay should be equitable to that of the rest of the public employees who serve the public. Thank you.

CHAIRMAN: Thank you, Delegate Uyehara. Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to speak in favor of the amendment. I believe if there is any just and fair and equitable method which we as delegates can employ to reduce government spending, it behooves us to take it very, very seriously. I think when Delegate Ellis talked about the public outcry some years ago when the change was proposed in the legislature with respect to retirement benefits, there was an outcry because people generally were having to tighten their belts, live with less and spend more, and to see that kind of change, which would be so lucrative for legislators and judges, hurt them very deeply. That is one thing we ought to take into account when we look at this particular amendment. I do not believe that judges' salaries are diminutive. I think they compare quite favorably with judges' salaries in other states. I believe I received something like \$17,000 a year when I was serving. The salary is now \$40,000 for a district court family judge.

Delegate Taira speaks of discrimination against judges and legislators. Well, I believe if there is any discrimination, it's against the rank-and-file. I was reviewing a study made by Actuaries of the Pacific, Inc., and according to them, for every \$6 a rank-and-file individual contributes into the pension system, he gets \$2. For every similar \$6 a legislator or a judge puts in, he gets out \$10. Where is the discrimination?

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: I rise to speak in favor of the amendment. I believe that the argument that we should continue with discriminatory practices in order to avoid discriminating is fallacious. I contend that perpetuating a wrong does not make it right. I urge my fellow delegates to wipe out this discrimination against the rank-and-file and vote for this amendment. Thank you.

CHAIRMAN: Question? Delegate Izu.

DELEGATE IZU: I'd like to make a couple of points. When we talk about inequities in the system, I'd like to point out that regular public employees can vest after 5 years' service. The class of employees under discussion right now cannot vest until after 10 years of service. Also, regular public employees can collect up to 80 percent of their average final compensation, whereas the class of employees or officers under discussion right now can only collect up to 75 percent. Talk about inequities--there are a few.

CHAIRMAN: Thank you, Delegate Izu. Delegate Wurdeman.

DELEGATE WURDEMAN: The people in the 2-percent class are people like department heads--for example, the Department of Transportation. Now that particular man gets 2 percent back. So, if you're attracting people into a system--and he in particular

is managing millions of dollars of federal monies or even state money in the highway system--there really seems to be an inequity in the system if you discriminate between him and a judge or a legislator. Maybe this will help.

Twenty years of service multiplied by 3-1/2 percent is 70 percent. A circuit court judge makes \$42,000. If you multiply that by 70 percent, you get \$29,400 a year, plus \$5,000 in annuity every year. This means that after 10 years he would be collecting, roughly, about \$34,000 or \$35,000 a year. A regular public employee would have to wait--I'm talking about the department head now, or a garbage collector, or whatever--until age 55 for his collection. Now, the department head would at 20 years have a salary of \$42,500--and I'll use the Department of Transportation as an example--2 percent times 20 years is 40 percent; \$42,500 times 40 percent is only \$17,000, and that's at retirement--he has to wait until age 55 to collect it. Therefore I ask all of you to seriously consider my proposal. If you don't like the wording, maybe the style committee can fix it up. Thank you.

CHAIRMAN: Thank you, Delegate Wurdeman.

DELEGATE CHANG: Point of information.

CHAIRMAN: Delegate Chang.

DELEGATE CHANG: My head is full of numbers right now. I'm not sure I can keep everything straight. It seems to be an extremely complicated system. How was the retirement system established--the formulas, percentages and whatnot?

CHAIRMAN: Delegate Wurdeman, we will allow you to answer that question if you wish.

DELEGATE WURDEMAN: Act 127 amended Chapter 6 of the revised laws of Hawaii in 1963. So this has been on the books about 15 years. I have all the information if the delegate would like to see it later.

CHAIRMAN: Thank you, Delegate Wurdeman. The question before this body is the motion to amend Article XIV, Section 2.

DELEGATE WURDEMAN: I request a roll call.

CHAIRMAN: May I see ten hands requesting a roll call. There shall be a roll-call vote. The clerk will call the roll.

The motion failed to carry by a vote of 40 ayes, 50 noes and 12 excused; with Delegates Anae, Andrews, Barnes, Blake, Burgess, Cabral, Campbell, Laura Ching, Chong, Chu, Chun, Crozier, DiBianco, Dyer, Eastvold, Ellis, Fujimoto, Funakoshi, Goodenow, Hale, Hanaike, Harris, Hino, Hoe, Hornick, Dennis Ihara, Kimball, Lacy, Rachel Lee, Liu, Marumoto, Miller, Ontai, O'Toole, Peterson, Pulham, Takehara, Tam, Uyehara and Wurdeman voting aye; Delegates Alcon, Barnard, Chang, Calvin Ching, Haunani Ching, de Costa, De Soto, Fukunaga, Fushikoshi, Hagino, Hamilton, Hashimoto, Hayashida, Hirata, Hironaka, Hokama, Ikeda, Ishikawa, Izu, Kaapu, Kaito, Kojima, Ledward, Marion Lee, Lewis, McCall, Nakamura, Nishimoto, Nozaki, Okamura, Paty, Penebacker, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Stone, Taira, Takahashi, Takemoto, Tamayori, Villaverde, Waihee, Weatherwax, Yamashita, Yoshimura and Chairman Les Ihara voting no; and Delegates Barr, Blean, Donald Ching, Chung, Fernandes Salling, Teruo Ihara, Iwamoto, Kono, Odanaka, Sterling, Sutton and Takitani being excused.

CHAIRMAN: The Chair will now entertain a motion for the second amendment. Delegate Pulham.

DELEGATE PULHAM: I move that we amend by adding a new section to Article XIV, and I would ask at this time that a correction be made on the copy. The copy reads: "All governmental writing meant for the public shall be plainly worded, avoiding the use of technical terms." It should read: "...should be plainly worded..." with the word "shall" changed to "should" on all copies at this time. The amendment now reads: "All governmental writing meant for the public should be plainly worded, avoiding the use of technical terms."

CHAIRMAN: Is there a second?

DELEGATE WAIHEE: Second.

CHAIRMAN: Would you speak to your motion?

DELEGATE PULHAM: Thank you, Mr. Chairman. I know we've been here awhile, and I think some of these things take a lot out of the delegates, as they do me. So I won't take very long. However, we did start out this Convention by taking up a similar section in a resolution applying to this Convention. This is not a new concept, nor will it bring great changes. But what it will do is set the tone for government. It will not automatically assure us that we will be able to understand everything put out by the bureaucracy, but it will provide guidelines for them to follow. There are precedents we talked about previously in our resolution. The Oregon experience is in their constitution. It is very similar to this. It states: "Every act and resolution shall be plainly worded, avoiding as far as practicable the use of technical terms." That has been in effect for a long time.

The New York experience, in June of this year, reads: "Every written agreement entered into after June 1, 1978 must be written in nontechnical language in a clear and coherent manner using words with common and everyday meaning." I don't believe we should go that route. The legislature may, I hope, act upon our expression here tonight.

There are other examples. A representative of the Chamber of Commerce of Hawaii, who was here the other day, informed me that the Federal Register now has a requirement of this very same kind. It was also announced recently in the papers that the U.S. Internal Revenue Service would do us the favor of trying to write out their tax forms in this same manner, and I applaud their efforts. I would ask you to consider this as an expression of goodwill on all our parts. I think it's something that we could all agree on and could live with, that will set an example for the people and for the State of Hawaii.

Mr. Chairman, I would like to reserve the right to speak last.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I move to further amend the amendment by inserting after the word "public" the following words: "in whatever language." So, with my proposed amendment, it would now read: "All governmental writing meant for the public, in whatever language, should be plainly worded...."

DELEGATE PULHAM: I second the motion.

CHAIRMAN: The motion has been made and seconded that the amendment be further amended to read: "All governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms."

Are you ready for the question?

DELEGATE WAIHEE: If the mover of the primary motion will simply accept Delegate De Soto's amendment, we won't need to vote on it.

DELEGATE PULHAM: Mr. Chairman, if you will so rule, I will certainly accept it. I am also the seconder of Delegate De Soto's motion.

CHAIRMAN: We'll have a voice vote on Delegate De Soto's amendment.

DELEGATE SOUKI: Point of information, Mr. Chairman.

CHAIRMAN: Delegate Souki.

DELEGATE SOUKI: With all due respect to Delegate De Soto, I question the need to provide "in whatever language," because by the mere fact that you have the words "all governmental writing," it would seem to imply that whatever appropriate language would be used. You don't have to provide any catch phrase in that particular instance. That is my interpretation of this wording.

CHAIRMAN: Thank you, Delegate Souki. Are you ready for the question?

DELEGATE DE SOTO: May I speak to the motion?

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: The reason I feel the need to include these words is so that, where Hawaiian is used in government writing, the words should be left as they are in Hawaiian so the Hawaiian people can understand them. All government writing meant for the public should be plainly worded and technical words avoided. I just want to insure the fact that the Hawaiian words are not stricken and put in English instead.

DELEGATE SOUKI: Again, Mr. Chairman, point of information. I wish to stress very strongly that I don't think that that language is necessary because by the mere fact that you have "writing" in there, it can mean any language.

CHAIRMAN: The Chair rules that the amendment is in order.

DELEGATE WAIHEE: Mr. Chairman; may we have a short recess? We've been in here for some time.

CHAIRMAN: If there are no objections, there will be a short recess.

At 8:23 p. m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 8:29 p. m.

CHAIRMAN: Will the Committee of the Whole please come to order. The movant of the first motion has yielded to the amendment to the amendment. So if there is no objection, we will proceed to debate the motion as amended. Delegate Miller.

DELEGATE MILLER: Mr. Chairman, I rise to speak in favor of the proposed Section 16 of Article XIV. Recently I had to write some letters to the city council pertaining to an ordinance on construction in Honolulu. The ordinance was couched in language that was so difficult to understand that I had to seek help in interpreting it. Also, last Wednesday I heard from two young constituents of mine asking that I do anything I could to get plain language in connection with public documents. One is a University of Hawaii student working at the cannery and the other, his brother, is a law student at Stanford. They feel very strongly about being able to read and understand public documents and the like.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: Mr. Chairman, I need to speak against this amendment, particularly because of the phrase "technical terms." I think we should all be aware that in many of our documents, particularly legal documents dealing with land use, Hawaiian words are often used in a technical sense--words like konohiki and many others. I would hate to see this Convention encourage the legislative body to eliminate these words because they are very useful. If this amendment were amended to eliminate the words "technical terms," I would feel more comfortable. But as long as it is in there, we should be very much aware of the effect that this may have in regard to many Hawaiian words which are used in a technical sense.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I speak in favor of the motion. Prior to starting the Committee of the Whole, everybody talked in plain language. Now that we're here for the record, the words are getting big and long. A lot of times when people are discussing matters, I get confused, and any time I get confused, I vote no. So, it's the same with people out in the street. When they hear something and they get confused, they just reject it. So I say, let's vote this in.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, since a couple of the previous speakers have mentioned things that are close to my own experience in the city council, of course konohiki

would seem very plain to me. I have never personally ever been accused of using plain language. I've spent many years in the military and even more in government. I would like to have it entered into the record--so someday I can point it out to my grandchildren--that in spite of my inability to practice it, at least I voted for it.

CHAIRMAN: Delegate Yamashita.

DELEGATE YAMASHITA: Mr. Chairman, I was hoping that the movant would yield to a question.

CHAIRMAN: State your question.

DELEGATE YAMASHITA: I heard this concern from other delegates--what would be the legal ramifications of "plainly worded"? Who would decide what is plainly worded? I'm wondering if we may run into problems in terms of suits against the State.

CHAIRMAN: Delegate Pulham, do you wish to yield?

DELEGATE PULHAM: Yes, I will attempt to answer that. I would yield, also, to interpretation by the attorney. It's coming from me secondhand, and I'm probably not qualified. I think that like everything that we do here--and this seems to be the opinion--there is a possibility that somebody will try to get a legal definition of "plain language." I think that most of us would probably at this moment be able to give a definition. But whether that's going to satisfy the courts, we don't know. This is why we're using "should" rather than "shall," to eliminate part of the need for that. If you want my definition of that, I would be happy to give it.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, with a heavy heart I rise to speak against this proposed amendment. There are many worthy causes, and none is more worthy, in my mind, than plain speech. Thirty years ago I read Rudolf Flesch's The Art of Plain Talk and then his next book, The Art of Readable Writing. But we are not here to try and solve all the worthy causes or to try and solve all the problems of the world. We're here to write a constitution. I will respectfully submit that a constitution is a document which sets forth the structure of government and its limitations. I think if we try to do too many things, we will weaken it and make it impossible to carry out our main purpose, which is to improve the Constitution of the State.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I just want to say that I abjure obfuscation but approve appropriate delineation of terms.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: I rise to speak against the amendment. Such a provision as plain language has no place in Hawaii's simplistic Constitution. With the exception of the state of Oregon, there is not a single state that makes any reference to a plain language provision in its constitution. Furthermore, Oregon's provision is very conservative in that it applies only to legislative acts and joint resolutions. This amendment covers all governmental writings. May I point out that it says "meant for the public," and we have gone through and are still going through a time in which we are asking that more and more governmental material be open to the public. Obviously, such a broad provision would require incredible amounts of time, money and manpower to constantly review and correct the continuous flow of documents from our state and local government. In addition, Hawaii's diverse cultural background and wide range of educational levels virtually eliminates any hope of establishing a universally plain language. Instead such a mandate would provide that special interest groups have readily available avenues for legal action against whatever laws they deem not plainly worded. The provision would cause a proliferation of public suits, thereby taxing our already overburdened judicial system. It also has serious ramifications on the actions of this Convention. How would it affect the proposals for inclusion of Hawaiian as the official state language? I think maybe this amendment to the amendment might have qualified that. I remind you that just a few nights ago we

did pass in this Convention the inclusion in the Constitution of the state motto only in the Hawaiian language. I also ask you, what kind of responsibilities are we putting on the Committee on Style in evaluating the Convention's recommendations?

Mr. Chairman, in view of the many adverse impacts, I strongly urge this committee to vote down this proposed amendment.

CHAIRMAN: Are you ready for the question? Delegate de Costa.

DELEGATE DE COSTA: I'd like to speak for the motion. I think it's the bestest [sic] one that has come out of here, because if I was charged for all the free advice I got from the lawyers here--you know with all the hydrobological [sic] words they're using. I think this is the best one yet.

CHAIRMAN: Delegate Pulham, do you wish to address your motion?

DELEGATE PULHAM: Thank you, Mr. Chairman. I thank those delegates who spoke for this, particularly because I think we've had some people here tonight speaking in favor of something for the common people, who have not spoken in this Convention. If we have done nothing else, then that's a plus.

I will call your attention to a number of things, and I'll try to be brief. First of all, it was mentioned seconds ago that we have a simplistic Constitution. I say to you that this is certainly a simplistic amendment that will aid the Constitution. A universally plain language for Hawaii's citizens was mentioned. Nowhere do we need this more than for our brothers and our sisters and our children who are coming out of our schools with an inability to read and write at the level they should. Why should we try to snow these people? I'm serious. The Committee on Style has already received a resolution from this Convention--and I believe it was unanimous--to do these very things. This will not affect the Committee on Style. My fellow delegates, two days ago we met here, and one of the matters before us was our state motto. The reason I mention this is to remind you that we need not be pretentious to be effective--I shouldn't use that word, should I--and to remind you that a plain, simple statement often has far greater, far deeper meaning because it reaches more people, it touches more people, and the words and the meaning are retained by more people.

I feel certain the great leader Kamehameha could have used more words, could have chosen different words. But he did not. Was he effective? Did he get his points across? Are they remembered? So eloquent was he in simplicity and plain language that his statement transcends time, survives foreign translation, and we are still struck by the power and meaning. So much so that we include it in our Constitution, not in translation, but as he said it.

I am deeply concerned because some of us seem to have lost sight of our principles. Some of us seem completely to have forgotten the fact that we are representatives of our people. We are delegates: the people have delegated to us the authority to review our Constitution and, further, to make recommendations to them. Will it not be a sad day in our history if they, the people, are not able to understand the results of our labor? Very early in this Convention we decided the people had a right to know that we, as a body, wanted them to know and understand the results of our deliberations. We passed in the style committee and on the floor almost unanimously a resolution to that effect. This amendment is in effect the same. We do not have in Hawaii today leaders with words tempered by their hearts, speaking so all the people might hear and understand and remember. We have instead a bureaucratic monster churning out reams of rules and regulations we admittedly cannot understand. We have politicians who write and speak to impress us with their knowledge and, yes, sometimes even to deceive.

Is it really so strange then that people are turned off by government and politics? We have dedicated ourselves to the principle that the people have a right to know and understand. It is now time for us to say this is true, not only today but forever, in our society. I submit to you, my fellow delegates of the people of the State of Hawaii, it is an inalienable right to know and understand. I would beg each and every one of you at this moment not to give this to me but to give it to the people of the State of Hawaii. Thank you.

CHAIRMAN: Thank you, Delegate Pulham. The question before this body is whether to add a new section to Article XIV, as follows: "All governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms." All those in favor of the motion, raise your hands. All those opposed, same sign. There are 36 ayes, 39 noes. The motion fails. Are there any other amendments to Article XIV?

DELEGATE WURDEMAN: May I call for a division of the house?

CHAIRMAN: Delegate Wurdeman, we just did have a division of the house. There were 36 ayes and 39 noes.

DELEGATE WURDEMAN: I move for a roll-call vote. Would that be in order?

CHAIRMAN: It's out of order. It should be made before the question is put.

DELEGATE WURDEMAN: Thank you.

CHAIRMAN: Are there any other amendments to Article XIV? Delegate Pulham.

DELEGATE PULHAM: Mr. Chairman, point of parliamentary procedure. I would not disagree with our esteemed parliamentarian. However, what we're doing here is that we're changing rules, and it's strange because up to this point a division of the house required a standing vote count. Now, I agree that you have the right to interpret the show of hands as a division of the house. However, this body has not been interpreting it that way, and therefore I would challenge that ruling on the grounds that if we're going to do it one way, we should be consistent throughout.

CHAIRMAN: The Chair rules that there has been a division of the house.

DELEGATE PULHAM: I appeal the ruling of the Chair.

CHAIRMAN: The ruling of the Chair has been appealed.

DELEGATE DiBIANCO: Mr. Chairman, may we have a short recess at this time?

CHAIRMAN: Your request is out of order at this time. The question is whether to sustain the ruling of the Chair. All those wishing to sustain the ruling of the Chair, raise your hands. All those wishing to overturn the ruling of the Chair, raise your hands. The ruling of the Chair has been sustained.

DELEGATE KAAPU: Mr. Chairman, could I know the vote and whether or not a majority of the total membership is required?

CHAIRMAN: Forty delegates voted to sustain the ruling of the Chair; 35 were against.

DELEGATE KAAPU: It may be a little bit late, but does a vote to sustain require a majority of the membership?

CHAIRMAN: The ruling of the Chair--majority votes of those members voting.

DELEGATE PETERSON: May I take the liberty of reading from page 237 from Robert's Rules of Order? I realize that--

CHAIRMAN: State your point, Delegate Peterson.

DELEGATE PETERSON: I realize that the Chair has been sustained, but for the record I would just like to offer a quote. "Whenever a member is in doubt as to the result of a voice vote or vote by show of hands, either because the results appear close or because he doubts that a representative number of the members present has voted, he can call for a division of the assembly, thereby requiring the vote to be taken again by rising. A voice vote retaken by a show of hands is not a division of the assembly since in large assemblies it may be less accurate than a rising vote and since even in a small meeting the rising vote may be more effective by causing a maximum number of members to vote."

CHAIRMAN: Delegate Peterson, your point is very well taken. There shall be a division of the house. Let me repeat the motion. The question is whether to add a new section to Article XIV, as follows: "All governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms." All those in favor of the amendment, please rise. All those opposed, please rise. The motion passes. There are 44 ayes and 41 noes. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to share the information that this is a historic event: Delegate DiBianco and I voted together.

DELEGATE CHU: Mr. Chairman, I rise on a point of parliamentary inquiry. Do not our rules require 52 votes for any matter to pass?

CHAIRMAN: Delegate Chu, in the Committee of the Whole a majority of those voting is all that is needed to pass a motion. Are there any other amendments to Article XIV? If not, the Chair will entertain a motion to adopt Committee Proposal No. 4, section 1.

DELEGATE IZU: Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: I move that we adopt the parts of Article XIV as proposed in section 1 of Committee Proposal No. 4, with the amendments that were just approved.

DELEGATE WAIHEE: Second the motion.

DELEGATE WURDEMAN: Excuse me, Mr. Chairman, could we just take a short recess?

CHAIRMAN: The Chair will allow a short recess in the Committee of the Whole, but it will be after we take this vote.

All those in favor of the motion to adopt section 1 of Committee Proposal No. 4 as amended, please say aye. All opposed, no. The motion passes. There will be a short recess.

At 8:55 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:03 p.m.

CHAIRMAN: Please come to order. The Chair will entertain a motion to the next amendment.

DELEGATE PETERSON: Mr. Chairman.

CHAIRMAN: Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman and fellow delegates, I'm reluctant to ask you to consider my amendment to Article XV, Section 2, because it is essentially related to style. When I read the phrase in Committee Proposal No. 4 which says, "If any ten-year period shall elapse, or if it would elapse if ten days were added to any period less than 10 years..." I wondered if that couldn't be said more simply. I chose these words: "If any period of 9 years and 355 days shall elapse...." Next, I considered--

CHAIRMAN: Delegate Peterson, could you state your motion first?

DELEGATE PETERSON: My motion is to adopt the amendment to Committee Proposal No. 4 to amend Article XV, Section 2, as circulated.

DELEGATE WAIHEE: I'll second it.

DELEGATE PETERSON: Next I considered this amendment before you, which I just moved for. Because we have general elections every 2 years, the same would be accomplished by requiring only 9 years to elapse and the question put to the people

in the 10th year. There is another alternative. If the intention is to have elections every 10 years, that intention could be addressed by a requirement that if any four consecutive general elections shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the next--or fifth--general election. An even more straightforward statement of the intention to periodically consider the question of proposing a constitutional convention would be, simply, the following: "Section 2. At least every ten years, the legislature must submit to the electorate the question, 'Shall there be a convention to propose a revision of or amendments to the Constitution?'" If we were drafting the first constitution, I would argue for that as the simplest, most straightforward and clear language.

However, we are presenting other more substantive changes to the electorate in other sections of the Constitution. A large number of added or deleted words creates uncertainty. The people can clearly see that a substitution of nine for ten years is not an earthshaking change. Since it will accomplish the objective of this section, I ask you to approve this amendment.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Izu.

DELEGATE IZU: I rise to speak in favor of Delegate Peterson's amendment.

CHAIRMAN: You may proceed.

DELEGATE IZU: Mr. Chairman, the amendment that was proposed by Delegate Peterson does exactly the same thing that the committee tried to do with a lot more words and in a more complicated manner. We just went through debate and voted in favor of plain language, and I think we should stick with it. Let me explain why the committee decided to make the amendment it did.

In 1975, the lieutenant governor requested that the attorney general render an opinion with respect to whether such a question should be placed on the ballot of the general election of November 2, 1976. The attorney general ruled that the question need not be placed on that ballot because the date--November 2, 1976--fell a few days short of the requisite 10-year period. However, the legislature, in accordance with its powers under the Constitution, submitted the question to the voters at that general election of November 1976.

In order to avoid a recurrence of the 1975 problem, a time margin of flexibility should be provided. That is why we took this language from one of the proposals, which would have rectified the problem. However, after thinking about Delegate Peterson's amendment today and realizing that it accomplishes the exact same thing your Committee was trying to accomplish, I urge you to vote in favor of it.

CHAIRMAN: Thank you, Delegate Izu. Are you ready for the question? Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, as I walked out of here during the administrative pause which we had earlier, one of the delegates who voted for the previous amendment wondered whether this great idea of plain language would ever be effective. I said to her at that time that it might work because it is in the form of a prayer of restraint. I can see that Delegate Pulham's prayer has been answered.

CHAIRMAN: Are you ready for the question? The motion is to amend Article XV as noted before you. All those in favor of the motion, say aye. All those opposed, say no. The amendment has passed.

We are now on the next amendment. The Chair will entertain a motion concerning the Constitutional Revision Commission.

DELEGATE IZU: Can we take up the amendment under "Election of Delegates"?

CHAIRMAN: Delegate Izu, what we're doing is going by subtitle, and after going through the section of the committee proposals, we will get to the next written amendment.

DELEGATE IZU: I speak in favor of the amendment to Article XV, Section 2, which

is under the subtitle "Election of Delegates." This proposal would require the legislature to provide the number of delegates to a constitutional convention, the areas from which the delegates shall be elected and the manner in which the convention shall convene.

I hope you've read the committee report because it adequately explains what we went through to come out with this decision. The committee considered an amendment to merely change the date at the very end to read "1978" instead of "1968." However, it was brought to the attention of the committee that Niihau was placed in what the residents of Niihau felt to be the wrong electoral district, and therefore we didn't wish to renew that problem at the next constitutional convention if the legislature did not otherwise provide enabling legislation. We realize that conditions change significantly between constitutional conventions, and that previous conventions may not serve as models with respect to election districts. It would be more appropriate to allow the legislature to make such determinations. Furthermore, this Convention had to spend time dealing with the problems encountered in arranging for facilities and equipment. This proposal would mandate the legislature to provide such necessities.

CHAIRMAN: Thank you, Delegate Izu. The next subheading is on meetings, and we have a written amendment just given to the Chair. Delegate Hoe has just submitted a written amendment to the--

DELEGATE HOE: Mr. Chairman, should Delegate Izu present her section first, or should I proceed with the amendment?

CHAIRMAN: Delegate Izu indicates that she will yield to your amendment.

DELEGATE HOE: I would like to offer an amendment to strike and insert, for the Convention's consideration. Because of the frustration and time constraints this Convention has operated under and because of my desire to allow as much leeway as possible in future conventions to study and debate all issues and concerns in depth, I would like to delete the word "five" from line 8 on page 3 of the committee proposal and insert the word "seven." It would now read: "The constitutional convention shall convene not less than seven months prior to the next regularly scheduled general election."

DELEGATE HORNICK: Second the motion.

CHAIRMAN: Motion has been made and seconded. It has been proposed that the paragraph with the subheading "Meeting" be amended by deleting the word "five" and inserting "seven." Are you ready for the question?

DELEGATE IZU: I rise to speak against the amendment. I was trying to make some quick calculations here. If it was seven months prior to the next regularly scheduled election, it would have to be in early April--the convention would have to convene in early April. That means that if the legislature does not pass enabling legislation early in the session, they would have to have passed enabling legislation the year before. I foresee that we'll have a several-year lapse between the time the question is put to the voters in November and the actual convening, after the legislature goes into session the following year and passes the enabling legislation. May I remind you that if we retain our present system of legislative sessions--and the legislators don't like to pass enabling legislation until mid-April, in which case the convention would have to wait--well, the convention could meet that year, but then the question won't be on the ballot until the following year. For that reason, because there will be a several-year lapse, I speak against the amendment.

CHAIRMAN: Delegate Hoe.

DELEGATE HOE: I feel that if the question is to go on a general election ballot--say, for example, that were to happen in 1976--then the following legislative session could enact the legislation necessary to provide for the convention. That would provide, then, a full year for the election, scheduling, etc., to be put together. Although there would be an overlap between the next session and the convention, I think that would not necessarily be a contradiction.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: I rise to speak in favor of this amendment. We have all

experienced, at this point in time, the frustrations of the time constraints that we have to operate under. I think that that is the greatest injustice in this Convention. The time constraints have caused us to make, many times, rash statements, rash judgments. Our fuses are short because we are meeting night and day and trying to absorb information as fast as we can. I think that all of us are living examples of the haste of this Convention. I think that the Constitution deserves more deliberation and time in order to make good decisions for the public.

CHAIRMAN: Are you ready for the question? Delegate Crozier.

DELEGATE CROZIER: I would like to speak against the motion. I'm really for giving the Con Con more time to work, but I see it going right into the legislature. I don't think that would be a good idea because that way the legislators could not participate in the Con Con. They're people too, and they should have the opportunity to participate. So I say no.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Ching.

DELEGATE HAUNANI CHING: I rise to speak against this proposed amendment. I feel that each deliberation in our state government should be equally important. I would not like to see us as a constitutional convention in session at the same time as the legislature. I think each area deserves its own impetus and its own right, and each should be recognized for its own. And to have people coming in to testify from the various state departments that have to go to the legislature and have to run down to Con Con, we would be in conflict and be using the same people for resources. I just think that this is not a very good idea, and I urge all my fellow delegates to vote against this amendment.

CHAIRMAN: Delegate Villaverde.

DELEGATE VILLAVERDE: I would like to speak against the amendment also. If we were to go with that particular amendment of seven months before the next general election, we would be in competition for business, so to speak, from the public and from resource people. I can imagine the chaotic conditions if we didn't have the services, or had to impose upon, LRB, the printshop, etc. Possibly we would need to develop new personnel, new staff--not that I don't want to employ more people, but the point is that we need these resources, and we would be in conflict for these resources which have been sort of on loan to us. I feel that five months should give us sufficient time to deliberate, to research, as well as everything else--including, most importantly, having resources such as LRB, the printshop, and so on. So I encourage the delegation here to vote against this particular amendment.

CHAIRMAN: Delegate Ledward.

DELEGATE LEDWARD: I speak against the motion. If you would look at the committee proposal, at the top of the page above "Meeting," there is a section that says, "The legislature shall also provide for the necessary facilities and equipment for the convention." If the election of the delegates takes place in November, when the legislature goes into session not only do they have to pass enabling legislation, they would also have to provide our facilities. There is no way they could get it done for us by April.

CHAIRMAN: Are we ready for the question? The question is whether to amend Article XV, Section 2, subtitled "Meeting," by changing the word "five" to "seven." All those in favor raise your hands. All those opposed, same sign. The motion fails.

We will now proceed to the next written amendment. Delegate Kimball.

DELEGATE KIMBALL: I move to amend Committee Proposal No. 4 with respect to Article XIV by adding a new section with the title "Constitutional Revision Commission," to read: "The legislature shall provide for a constitutional revision commission which shall undertake a continuous study of the constitution of the state." If this body will indulge me--

CHAIRMAN: Delegate Kimball, we'll need a second on that.

DELEGATE MILLER: Second.

CHAIRMAN: The motion has been made and seconded. Delegate Kimball, would you like to speak to your motion.

KIMBALL: Yes, I would, and I would like to reserve the right to speak last. The amendment I am proposing calls for the establishment of a constitutional revision commission. The revision commission concept received favorable testimony and consideration before your Committee on revision and amendment. Standing Committee Report No. 34 states, and I quote, "Your Committee urges the legislature to consider the establishment of such a commission to provide for continuous study of Hawaii's Constitution."

The committee report states: "...such a commission need not have constitutional status but could be established by statute..." However, it's been my experience and my concern that I have been unable to supply my fellow delegates with the needed documentation and various studies as requested in the deliberations before us. This amendment does not usurp legislative authority to denote how to establish the commission with authority and method of selection of its members. With those decisions left to the legislature, the amendment negates the revision and amendment committee's basic reason for not establishing the revision commission on a constitutional basis.

In addition, a constitutional revision commission should be established in our Constitution, I believe, for the following reasons. The commission would deal with constitutional law; thus its establishment, in concept, should have a constitutional foundation such as our innovative provisions for a constitutional convention. The commission needs recognition by the public as a body committed to the fundamental study of our Constitution. As you read the amendment, you may be concerned as to its effect on a constitutional convention. At first reading, a concern may be voiced which relates to the fear that such a commission would take the place of holding a constitutional convention. This is not the intent of the commission's establishment at all. It should be pointed out, although the present Constitution has provisions giving the legislature authority to pose, or the automatic calling of, the question of a constitutional convention, that provision in no way insures the convening of a convention. This is evidenced by the fact that in 1976 approximately 69,000 voted "no" on the constitutional convention question for this constitution. There is only one state in the union which establishes a constitutional revision commission in its constitution, that being Florida. But I feel, as numerous people have stated on this convention floor, that Hawaii is a unique state and has a model constitution. This amendment offers us the opportunity to enhance that innovative pattern in our Constitution and exemplifies the present merit in conciseness, brevity and delegation of functions.

CHAIRMAN: Delegate Hamilton.

DELEGATE HAMILTON: I rise to speak in favor of the amendment, albeit cautiously. I shall speak only of the need for a constitutional revision commission. How it should come into being I leave to my betters. My interest in such a commission arose from what some educators call a "felt need." Fairly early in the Convention I found myself due at three committee meetings at the same time, not having read hundreds of proposals, trying to write proposals of my own, and all this while answering telephone calls from constituents.

It occurred to me that this was a hell of a way to run a railroad, let alone amend a constitution. And I wondered whether we simply were repeating the activities of the 1968 convention. So I reread the following words written by the historian of the 1968 convention, Dr. Norman Meller. Let me quote them: "In retrospect, it is difficult to conclude other than that, in the main, the approach of the 1968 Convention was superficial, dictated by the practical need to complete its deliberations within an insufficient span of time."

Now I know that we have approved the somewhat extension of the Convention, but it has been my experience that a kind of institutional Parkinson's Law tends to operate, which might be stated, "Events expand to utilize whatever time is allotted for them." Thus I could envisage in 1988 we would have a week of opening festivities, 1,670 proposals and the last-minute discovery that there was a federal law requiring that all proposed amendments had to be translated into the 22 dialects found in Uttar Praedish.

Thus it seemed to me that a constitutional revision commission which could review on a continuing basis, with time for ample analysis and consultation and hearings, the needs for constitutional change and could make recommendations to the legislature and/or a constitutional convention was a good idea. I still think so.

CHAIRMAN: Thank you, Delegate Hamilton. Delegate Villaverde.

DELEGATE VILLAVERDE: I would like to speak against this amendment. We are, if we support this amendment, causing to develop more costs. There is no state other than Florida that has a commission such as is being proposed. But Florida provides for theirs to convene for the first time in 1979 and to discontinue for the next 20 years. I personally do not foresee any need for a continuous type commission, in spite of the fact that Dr. Meller questioned the need for a continuous one. He also admitted that he could not provide any historical proof of a working commission, although the Florida commission would meet in 1979. With these uncertain factors, I feel that we should not approve this particular amendment.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: Mr. Chairman, I rise to speak against the amendment. It was the recommendation of the Committee on Revision, Amendment and Other Provisions that the legislature establish such a commission if they so deem it necessary. Your Committee heard testimony concerning this and considered the establishment of an appointed constitutional revision commission. Alternatives included establishing a commission which would submit constitutional amendments directly to the electorate or one that would merely advise the legislature and subsequent constitutional conventions. The committee agreed that such an appointed body should not have the authority to submit proposals directly to the electorate. Therefore, it was agreed that such a commission need not have constitutional status but could be established by statute as is done in several states such as New Hampshire, South Dakota, Ohio and Texas.

It is for these reasons that your Committee decided not to include the constitutional revision commission in the Constitution because we felt that it need not have constitutional status.

CHAIRMAN: Thank you, Delegate Izu. Delegate Chu.

DELEGATE CHU: I rise to speak in favor of the amendment. As you can see, I had prepared an amendment similar to Delegate Kimball's, but in the interest of simplicity I withdrew mine in favor of Delegate Kimball's. We need a continuous commission to deal with the constitutional problems that are very unique in our state. There have been 38 commissions established in 31 states between the years 1963 and 1972. California established theirs in 1963, and it is now still existing, to the best of my knowledge. I think we need a central place to maintain the proceedings of a constitutional convention, a central source of advice regarding the State Constitution and other activities of other states regarding constitutional revision. We are a very unique state. We have unique constitutional problems, and perhaps some unique constitutional protections are necessary.

The matters that we are dealing with in this constitutional convention may be too complex, and I would hate to see us pack and go home in September with that being the end of any constitutional revision process. The problems that I speak of that are unique to our state are problems dealing with residency, population control, the conversion of leasehold land to fee simple...and all do involve some kind of constitutional question and all are very complex. The Constitution is a living document that moves and grows with the times. The legislature and the courts can make and interpret the laws as times change. And that means we should have a commission that will allow the Constitution to move and change with the changes in our society instead of waiting ten years for a convention to be held.

CHAIRMAN: Thank you, Delegate Chu. Are you ready for the question? Delegate Hirata.

DELEGATE HIRATA: Mr. Chairman, I speak against this amendment. I believe that all of us here in the long hours of attending committee hearings and listening and deliberating on the various issues have taken some time to consider what kind of impact our decisions would have in the future. We believe that the decisions we make today will still apply 10, 15 and maybe even 20 years down the road. I think that a constitution should be a document that outlines and gives a structure to government. By creating

a commission as such, people would tend to think that now changes or additions or amendments should be made. I would hate to see this document, which many states look at as being ideal, become very lengthy and cumbersome. The creation of this commission, as the movant has stated, is to undertake a continuous study and to make changes when changes are necessary. But presently we do have this opportunity, and it is through the legislature that these changes can be made. For this reason I urge my fellow colleagues to vote down this amendment.

CHAIRMAN: Thank you, Delegate Hirata. Delegate Stone.

DELEGATE STONE: Mr. Chairman, I would also like to speak against the motion. By creating a commission, I think we would be doing a great disservice to our society and to our type of government. We need the kind of involvement that there is in a convention. I have enjoyed this, I know it's been challenging. I have seen young blood come in here. I see possible future legislative leaders and officials of the State and counties. But for us to take an important assignment that belongs to the grass roots and give it to a commission, a group supposedly of experts that will hack some things, and then take it back to the citizens, is like taking some pills and having some things in capsule form. We have good cooperation from the press. We have a lot of excitement over this. We've had a lot of surveys and a lot of polls. Please, let's keep it this way.

CHAIRMAN: Thank you, Delegate Stone. Are you ready for the question? Delegate Harris.

DELEGATE HARRIS: Mr. Chairman, just one short comment. I would like to speak in favor of the amendment. It's my understanding that this constitutional revision commission would in no way preclude constitutional conventions. I think it's important that we realize both of them are needed. It is clear that we need a commission to provide continuous study of our Constitution--I think that is even what the committee recommended. The point of contention seems to be, should that commission come under statute or should it have constitutional authority. Since the job of the commission would be to review the Constitution and since the Constitution does delineate the responsibilities and powers of the various branches of government, it's very important that the establishment of this commission come with constitutional mandate, not legislative mandate.

CHAIRMAN: Are you ready for the question? Delegate Kimball, you may speak last to your motion.

DELEGATE KIMBALL: I'll waive my last speech. I would call for a division of the house, though.

CHAIRMAN: The question before this body is to add a new section to Article XIV as circulated. All those in favor of this amendment, please rise. All those opposed, please rise. The motion fails.

We'll have a short recess.

At 9:43 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:47 p.m.

CHAIRMAN: We will now come to order. Are there any other amendments to Articles XIV or XV? We will now take up the Preamble. Delegate Hagino.

DELEGATE HAGINO: I move to amend the present Preamble to read as follows:

"We, the people of Hawaii, grateful for Divine Guidance, mindful of our Hawaiian heritage and uniqueness as an island State, dedicate our efforts to fulfill the philosophy decreed by the Hawaiian motto, Ua mau ke ea o ka 'aina i ka pono.

"We reserve the right to control our destiny; to nurture the integrity of our people and culture; and to preserve the quality of life that we desire.

"We reaffirm our belief in a government of the people, by the people

and for the people, and with an understanding and compassionate heart toward all the peoples of the earth, do hereby ordain and establish this constitution for the State of Hawaii."

DELEGATE DE SOTO: Second.

CHAIRMAN: It has been moved and seconded that the Preamble to the Constitution be amended as read. Delegate Hagino.

DELEGATE HAGINO: I rise to speak in favor of this amendment. Although the Preamble confers no powers to the government, it serves as an introduction that sets the tone and direction of the document following. We recognize that the original Preamble is a beautiful one, but with all humiity I believe that the amended Preamble is also one of beauty.

This amendment reflects our love for Hawaii and the many people that make it what it is. There are five points that we, the introducers, felt needed to be emphasized in the Preamble: one, our Hawaiian heritage; two, Hawaii's uniqueness as an island State; three, the beauty of our land and the importance of treating it with respect; four, the right to control our destiny; and five, the need to nurture our various cultures. We hope that this Preamble will serve as a source of inspiration and guidance to all who read it and especially to those who will rely on it as an aid in writing statutes and in interpreting the Constitution.

CHAIRMAN: Thank you, Delegate Hagino. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak in support of this proposed amendment. I am touched by the sincerity and the simplicity of this proposal. It truly reflects our uniqueness. It truly reflects the love that comes from Hawaii and that is Hawaii. To say that I am not moved would be to lie. Because we are unique, this Preamble will exemplify all the people of Hawaii. For that reason, I strongly urge the adoption of this amendment.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I move to amend the amendment by reinserting the words "the State of" in the first line.

DELEGATE HALE: Second.

CHAIRMAN: It has been moved and seconded that the amendment to the Preamble be amended by reinserting the words "the State of" in the first line. Are you ready for the question? Delegate DiBianco.

DELEGATE DiBIANCO: I see a lot of puzzled looks. I didn't want to make a big deal out of this. I don't know if there is any slight intended by the deletion, but it troubles me that we are taking the words "the State of" out of the Preamble. I'm just not comfortable with taking the words out. We are a state. All the other states are proud of their heritage, too--certainly that's been my experience on the Mainland. I've never heard them refer to themselves as the people of Colorado, or the people of Iowa. They refer to themselves as the people of the state of Colorado, or the people of the state of Iowa. I'm sure everybody here is proud of being part of the State of Hawaii and therefore a part of the United States. If Delegate Hagino can explain to me why those words were deleted, if there is some good explanation, I'll withdraw my motion to amend. Otherwise, I feel we should leave the words "the State of" in.

CHAIRMAN: Delegate Paty.

DELEGATE PATY: Unique as this may be, I'd like to speak in favor of Delegate DiBianco's motion. I do feel that leaving out the word "State" does raise some questions, and inasmuch as we are here to examine the Constitution of the State of Hawaii, it appears to me that it would be appropriate to reinsert those words, and I would vote favorably on the amendment.

CHAIRMAN: Delegate Villaverde.

DELEGATE VILLAVERDE: I too favor this particular amendment. I want it in order to distinguish the island where I come from--the Island of Hawaii--from the State of Hawaii. For this reason I would favor adoption of this particular amendment.

CHAIRMAN: Delegate Hagino.

DELEGATE HAGINO: Mr. Chairman, I rise to speak against the amendment. When we first wrote this we deliberated on this, "the State of." By putting "We, the people of Hawaii," it had a more personal touch to it, whereas when you say "the State" it sort of gives an inanimate object feeling. I felt that "the people of Hawaii" added a personal touch.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: I would also like to speak against the amendment. I note that, at the bottom of the last paragraph, it does mention the State of Hawaii, but it begins with "the people of Hawaii," who then "ordain and establish this constitution for the State of Hawaii." It's very appropriate.

CHAIRMAN: Are you ready for the question? The question before the house is whether to amend the proposed amendment to the Preamble by reinserting the words "the State of" in the first line of the Preamble. All those in favor of the amendment to the amendment, raise your hands. All those opposed, please raise your hands. The noes have it.

DELEGATE HALE: I call for a division.

CHAIRMAN: Division of the house has been requested. You have heard the amendment to the amendment. All those in favor of the amendment, please stand. All those opposed to the amendment, please stand. The count is 37 ayes, 42 noes. The noes have it.

We are back to the amendment. Delegate Dyer.

DELEGATE DYER: Point of information, please. Where it says "...the integrity of our people and culture," I would like to find out if it's singular or plural. Shouldn't it be "cultures"?

DELEGATE PETERSON: Point of order.

CHAIRMAN: Delegate Peterson, state your point.

DELEGATE PETERSON: When I add the count that was taken--37 for, 42 against--I come out with a total of 79. I understand there are 12 who were excused. That would make a total of 91. If there were 12 who did not vote, their vote would be counted in the affirmative, which would change the result of the vote.

DELEGATE TAIRA: Mr. Chairman, just on a point of order. I believe that that would be true only in a roll-call vote. It would not be true in the kind of vote we just took.

CHAIRMAN: Delegate Taira, your point is well taken. The Chair will rule that the noes have it on the previous vote. Delegate Waihee.

DELEGATE WAIHEE: I rise to speak in favor of the Preamble and maybe to amplify upon the second paragraph, specifically on the use of the terms "people" and "culture." I believe it is the intent of the proposers of this Preamble that what we are trying to put across is that all of our various cultures, all of the people of Hawaii equal something unique. They become one people and one culture. We encourage all the diversities we have as people and in so doing, make ourselves, in a sense, unique. One people and one culture. For that reason, I speak in favor of this Preamble as amended.

CHAIRMAN: Delegate Lacy.

DELEGATE LACY: Mr. Chairman, I would request the proposers to please explain one point. In the second paragraph, the first phrase--it bothers me and I'm interpreting it to mean that we're declaring the right to control our destiny as if we were a sovereign nation. I'm sure the proposers didn't mean that. Would one of the proposers please explain

the phrase in the second paragraph that reads: "We reserve the right to control our destiny." The reason I'm asking for an explanation is that we're declaring our sovereignty and that we have the right to control, which we do not in one sense. But I would like to have that clarified.

CHAIRMAN: The proposers may respond to what has been asked. Delegate Hagino.

DELEGATE HAGINO: I'm not sure if I can give an adequate answer to Delegate Lacy, but I'd like to point out in the first paragraph where we declare our uniqueness as an island State--we felt that many of the problems we have in Hawaii are peculiar to us because of our status as an island State. That's why we felt that we wanted to put it: "We reserve the right to control our destiny."

CHAIRMAN: Delegate Tamayori.

DELEGATE TAMAYORI: Let me clarify that. We put that in so that we as the people of the State have some sort of control in the kinds of legislation that we pass.

CHAIRMAN: Thank you, Delegate Tamayori. Delegate Takehara.

DELEGATE TAKEHARA: Mr. Chairman, I would like to make an amendment to the amendment, to retain the word "and" in the second line of the first paragraph and to change the word "destiny" in line 6 to "future."

DELEGATE HALE: Second.

CHAIRMAN: It has been moved and seconded that the proposed amendment be amended to reinsert the word "and" in line 2 and substitute the word "future" for "destiny" in the first line of the second paragraph. Delegate Takehara.

DELEGATE TAKEHARA: Mr. Chairman, I would like to speak to my amendment. I feel the word "and" in line 2 is necessary for grammatical fluency. It's like a conjunction between the two words "grateful" and "mindful," with "of our Hawaiian heritage and uniqueness as an island State" as possessive adjectives to the word "mindful." Going on to "destiny," I looked that up in the dictionary, and the definition given for "destiny" is "... a pre-ordained or inevitable course of events considered as something beyond the power or control of man," which might be contradictory to the intent of this sentence. I proposed "future" instead because it's defined as an "indefinite period of time yet to be... time that is to come."

CHAIRMAN: Thank you, Delegate Takehara. Delegate Shon.

DELEGATE SHON: Yes, I would like to speak against the amendment primarily because I think "destiny" sounds better--a little more noble--and that "future" is just a period of time. I think "destiny" is considerably more meaningful.

CHAIRMAN: Are you ready for the question? Delegate Hale.

DELEGATE HALE: I would like to speak for the amendment. I had an opportunity during the recess to double-check the meaning in the dictionary with Delegate Takehara. I feel that we're really not talking about a "preordained" future. If we are, then it means there is nothing we can do about it. What we really want--and what I'm very happy to see--is that the young people in this Convention are concerned about the future of the State--not the destiny of the State. I think Delegate Takehara has captured the meaning in this amendment. Although "destiny" may sound more noble, the question is--what does it really mean? I think this is the important thing. From the dictionary it obviously means a preordained course of events. If that's what we are talking about, then the young people are going to have no way of controlling that future. We should change that word to reflect what is really meant.

My first reaction was that it was a matter of style. But after I checked the dictionary, it was clear that it's a matter of meaning. I ask you to consider the meaning. If that's what you really mean, all right. But I hope you will consider Delegate Takehara's amendment favorably.

CHAIRMAN: Delegate Ontai.

DELEGATE ONTAI: Seems like we have been taking up a lot of dollar issues tonight, and we've finally dropped down to the nickel and dime issues. I have a choice of two nickels--which nickel do I choose. That's about what it amounts to, whether "destiny" or "future." However, I have to choose, so I choose the nickel called "future." So I'm in favor of the amendment.

CHAIRMAN: Does anyone wish to speak for the first time? Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I think we are talking about dreams, and I think we ought to recognize right off that that's what we're doing. So when we're talking about dreams, let's really dream. Let's dream that we really have the power to change even what may be inevitable.

CHAIRMAN: Delegate Tamayori.

DELEGATE TAMAYORI: Mr. Chairman, I speak against the amendment. I feel that "destiny" has a timeless quality and that it implies the past as well as the future.

CHAIRMAN: Delegate Hagino.

DELEGATE HAGINO: Mr. Chairman, I agree with Delegate Tamayori. I would also like to point out in the first paragraph it says, "grateful for Divine Guidance." Thank you.

CHAIRMAN: Are there any others speaking for the first time? Delegate Takehara.

DELEGATE TAKEHARA: As to the inclusion of the word "and" in the second line, I did check with the legal counsel during recess, and it was his opinion that it was necessary there. Also, in support of my amendment, it's just to show that there is a contradiction in meaning in the dictionary as to what destiny means, that it's "beyond the... control of man," and this contradicts the statement before us, because we're saying we want to control it.

CHAIRMAN: Delegate Silva.

DELEGATE SILVA: Mr. Chairman, I speak against this amendment. Meanings differ with different individuals. When you buy a birthday card, your meaning of the card might be different from somebody else's. I don't think anybody would look into a dictionary to see what the meaning is. This meant something that came from the heart and it should be left that way.

CHAIRMAN: Thank you, Delegate Silva. The question before the house is whether to reinsert the word "and" in the second line of the first paragraph of the amended Preamble--

DELEGATE HAGINO: Mr. Chairman.

CHAIRMAN: Delegate Hagino.

DELEGATE HAGINO: I move to accept the amendment--

CHAIRMAN: Delegate Hagino, you are out of order.

DELEGATE HAGINO: --to reinsert "and" as stated.

CHAIRMAN: If there is no objection, the part of the amendment reinserting the word "and" in line 2 will be part of the main motion to amend. So the question before this committee now is whether to strike the word "destiny" in the--

DELEGATE TAKEHARA: Excuse me, Mr. Chairman, could we have a short recess?

CHAIRMAN: That request is out of order. We'll recess as soon as the vote is taken on this amendment. The question before this committee is whether to strike the word "destiny" in the first line of the second paragraph and insert the word "future." All

those in favor, please raise your hands. All those opposed, same sign. The noes have it. The amendment to the amendment fails. We will take a short recess.

At 10:13 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:17 p.m.

CHAIRMAN: The Committee of the Whole will please come to order.

DELEGATE YAMASHITA: Mr. Chairman.

CHAIRMAN: Delegate Yamashita.

DELEGATE YAMASHITA: Mr. Chairman, as one of the proposers, I'd like to speak in favor of the amendment. The purpose of a constitution is to outline the basic structure of government as well as to exemplify the basic values of society. I believe this motion on the floor addresses the latter. The attempt of the amendment is to outline the basic priorities of the people of Hawaii, and I think we all are aware that in the past decade there has been a rising social awareness to protect, preserve and take pride in the things that make Hawaii unique. I believe, therefore, that it's essential to reflect this in our Preamble.

This amendment establishes certain basic values that are prevalent throughout our Constitution. When you look at the amendment, there is a Hawaiian statement, a geographical statement, an environmental statement, a political and economic statement and a cultural statement. We could be here all night arguing whether to put in "heritage" or "background" or put an "and" here or "future" or "destiny" or "nurture" or "preserve." We should send it to style and into the capable hands of people like Delegate Hamilton to work out the grammatical problems and slight word nuances. I think we agree on the concept of this, and we should pass this.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: I rise, regrettably, to speak against the amendment, just as a means of explaining to the Committee of the Whole why the standing committee failed to report out on an amended Preamble.

The committee had before it seven different proposals relating to the Preamble. It was obvious that all of them had been given much thought and that all of them were presented with very good intentions. Given the time constraints that the entire Convention is under, the committee felt that, since the Preamble has no standing in law, we should move on to bigger and better things. But I would like to commend the authors of this proposed Preamble, though I must speak against it.

CHAIRMAN: Delegate Tamayori.

DELEGATE TAMAYORI: I rise to speak in favor of the proposed amendment to our Preamble. I urge adoption of this amendment not because it gives power to any branch or organization of government, but because it articulates our belief in what is and always has been the basis of our Hawaiian lifestyle.

In 1950 the writers of our Constitution were concerned with the acceptance of Hawaii to the Union. It was to this issue that the Preamble was written. I believe that a preamble should more appropriately address those people for whom the constitutional document was written. I believe also that our Preamble should address those qualities that make Hawaii unique and different from all the other states in the Union.

Hawaii's midoceanic isolation and severely restricted land, not only for cultivation of crops but also as the very land base on which to live, should be vital considerations in the passage of our laws. When our resources become strained and differences among people are magnified, it is with greater urgency that we must strive to live together in accordance with what is just, honorable and free from guilt or wrong. Adaptation to this shifting balance between people and nature is a constant requirement for the survival of our State.

This amendment directly addresses those considerations that we must face each day. I ask your support. Thank you.

CHAIRMAN: Delegate Chang.

DELEGATE CHANG: Mr. Chairman, I rise to speak in favor of the amendment. I am a bit saddened by some of the terms that have been used to describe this particular amendment--references to monetary amounts, allusions to this as a minor amendment as compared to bigger and better things. I think that this is perhaps the most important matter we're going to deal with. In this committee report, it establishes that after all these years, Hawaii is going to assume its rightful place in the nation, and probably in the world, as a national leader and a global leader in many different areas. I fully believe that terms such as "nickel and dime" and "small matters" just reflect the sense of inferiority that this great State of ours has had for so many years, and that we can rightfully cast off now.

Feeling this, I was tempted to recommend that we strike the phrase "with an understanding and compassionate heart toward all the peoples of the earth" because I think perhaps this State has had an understanding heart for too long. Evaluating my experiences in the world, seeing that I am perhaps becoming an old, jaded warrior, I yield to the more inspirational and inspired view of those younger than I and accede to the statement that hope springs eternal. Therefore, in this light I'd like to recommend that the amendment be adopted.

CHAIRMAN: Thank you, Delegate Chang. Delegate Blake.

DELEGATE BLAKE: I speak in favor of the amendment. I really think it exemplifies the State of Hawaii and its people. There are many parts of the world that I truly hope and wish you all could see. The hospitality and kindness exemplified here you can find no place else. I want to congratulate the three gentlemen who proposed this. I ask all of you to support it.

CHAIRMAN: Thank you, Delegate Blake. Delegate Cabral.

DELEGATE CABRAL: I rise to speak against the amendment. My heart wants to adopt this amendment to the Preamble. However, I must speak against it because I think it only represents hypocrisy. When we espouse words that purportedly show feelings and meaning but don't practice them--and we don't practice them, even here in this convention body--that to me represents hypocrisy. For that reason I speak against this. Unless we are truly dedicated to practicing this in our everyday deliberations, then I say it's not worth adopting the changes to the present Preamble.

CHAIRMAN: Thank you, Delegate Cabral. Delegate Stegmaier.

DELEGATE STEGMAIER: I rise in support of this amendment. This proposal could be interpreted as a proposal to turn inward, to reject the outside world. On the other hand, as I interpret it, it means that we can include the entire world, be receptive to the rest of the world and still find our own identity and strength within. Thank you.

CHAIRMAN: Thank you, Delegate Stegmaier. Are you ready for the question?

DELEGATE OKAMURA: Mr. Chairman, roll-call vote, please.

CHAIRMAN: Are there ten people requesting a roll-call vote? There shall be a roll-call vote. Will the clerk please call the roll.

The motion was carried by a vote of 76 ayes, 14 noes and 12 excused; with Delegates Alcon, Anae, Barnard, Barnes, Blake, Campbell, Chang, Calvin Ching, Laura Ching, Haunani Ching, Chong, Chu, Crozier, de Costa, De Soto, Dyer, Fernandes Salling, Fujimoto, Fukunaga, Funakoshi, Fushikoshi, Goodenow, Hagino, Hale, Hamilton, Hanaike, Harris, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hoe, Hokama, Hornick, Dennis Ihara, Ishikawa, Iwamoto, Izu, Kaapu, Kaito, Kimball, Kojima, Lacy, Lewis, Liu, Marumoto, McCall, Miller, Nishimoto, Nozaki, Okamura, Ontai, Paty, Penebacker, Pulham, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Stone, Taira, Takahashi, Takehara, Takemoto, Tam, Tamayori, Villaverde, Waihee, Weatherwax, Wurdeman, Yamashita and

Chairman Les Ihara voting aye; Delegates Andrews, Barr, Burgess, Cabral, DiBianco, Eastvold, Ellis, Ikeda, Ledward, Marion Lee, Rachel Lee, O'Toole, Peterson and Yoshimura voting no; and Delegates Blean, Donald Ching, Chun, Chung, Teruo Ihara, Kono, Nakamura, Odanaka, Sterling, Sutton, Takitani and Uyehara being excused.

CHAIRMAN: The vote is 76 ayes, 14 naves and 12 excused. The motion passes. Are there any other amendments to the Preamble? Otherwise the Chair will entertain a motion to rise and report.

DELEGATE IZU: Mr. Chairman, I move that we recommend the approval of Committee Proposal No. 4 as amended by the Committee of the Whole and that we rise and report to the Convention.

DELEGATE WAIHEE: Second the motion.

DELEGATE WURDEMAN: Point of information.

CHAIRMAN: State your point.

DELEGATE WURDEMAN: May I make another amendment?

CHAIRMAN: No, not until the vote. Short recess.

At 10:33 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:34 p.m.

CHAIRMAN: Please come to order. Delegate Wurdeman.

DELEGATE WURDEMAN: I move to amend Article XV, Section 2, under the paragraph "Organization; Procedure" to insert after the first sentence: "The Convention will be held at the State Capitol."

DELEGATE HALE: Second.

CHAIRMAN: The Chair wishes to make a statement. Delegate Wurdeman, we will accept this motion. But I wish to remind you that we did discuss and vote on Article XV. I asked if there were any other amendments to Article XV, and since there were no replies we went on to the Preamble. I wanted to remind you about that, but we will take up the amendment.

DELEGATE WURDEMAN: Thank you very much. I would hate to do it on the next reading.

CHAIRMAN: The amendment is to include, after the first sentence under "Organization; Procedure" on page 3 of Committee Proposal No. 4, the sentence: "The Convention will be held at the State Capitol." Delegate Wurdeman, would you like to speak first for your amendment?

DELEGATE WURDEMAN: My reason for this amendment is that in the past legislators were unwilling to share what belongs to all the people of Hawaii. As a result, the governor of this State had to find an alternative site for this Constitutional Convention. There has also been inconvenience in the facilities set up and, most important of all, we might not have had to use up to \$2.5 million. Thank you.

CHAIRMAN: Delegate Hamilton.

DELEGATE HAMILTON: Mr. Chairman, I rise to speak against the amendment. This proposal was made in the revision and amendment committee, and I proposed an amendment that, should we overlap with the legislature, they can meet in the old Federal Building. I don't think we should try to predict what ought to be done in 1988. Omnipotence without omniscience is not very good. I don't think that trying to prescribe what ought to happen in 1988 is really that sound.

CHAIRMAN: Thank you, Delegate Hamilton. Delegate Izu.

DELEGATE IZU: Mr. Chairman, I also rise to speak against the amendment. I'd like to remind you that we elect our legislators not for sessions but for terms. We elect house members for 2-year terms, and we elect senate members to 4-year terms. Not for two sessions or four sessions. Also, the committee did consider the problems that this Convention had in obtaining facilities, and as a result we did propose an amendment to the present Constitution requiring that the legislature provide the necessary facilities.

CHAIRMAN: Any more discussion? Delegate Ching.

DELEGATE HAUNANI CHING: Mr. Chairman, I rise to speak against this proposed amendment. Some of you may be familiar with the workings of the legislature; the legislature may be in session from January to mid-April, but they also meet throughout the year for interim work. As one whose full-time job revolves around the legislature and county governments, I spend at least 1 to 3 weeks May through December at the State Capitol attending hearings, doing interim work; and I cannot see how we and a constitutional convention can both possibly be there at the same time. Also, facilities at the State Capitol are not adequate for 102 delegates, in either chamber. There are 51 seats in the house of representatives. Which of you delegates would sit at a desk and which on the side? The offices are rather small, although some are big and possibly could be split up. But the facilities are really not that adequate at the Capitol, and I speak against this proposed amendment.

CHAIRMAN: Thank you, Delegate Ching. Delegate Campbell.

DELEGATE CAMPBELL: I'd like to speak in favor of the amendment. I can't think of any more historic event than a constitutional convention, and I cannot see why we were not, in time, permitted to use the facility of the State Capitol. A youth constitutional convention was held there, and I do think the bona fide Convention should be permitted also. Whatever facilities there are that are not adequate in either of the houses, I think we could still be accommodated. And I believe that if we do not put it in the Constitution, my small knowledge tells me that when the next convention comes around, it will probably be housed somewhere else, like a high school. So I speak in favor of the motion.

CHAIRMAN: Thank you, Delegate Campbell. Delegate Okamura.

DELEGATE OKAMURA: I rise to speak against the amendment, especially since it's not clear. As I read this, it could mean the state capital, which means it could be held anywhere in Honolulu. For that reason I don't think we should pass this.

CHAIRMAN: Delegate Chong.

DELEGATE CHONG: Mr. Chairman, I rise to speak against the amendment. As Delegate Izu said, we must not forget that we have a full-time legislature. They may be in session for only the 3 months--however, on Delegate Campbell's statement, I believe the facilities there were open to us. We could use the auditorium, we could use the conference rooms, but the offices are used continually since the staffs are there. Some of them are there for 2 days, some for 3. And some are there permanently. Therefore, the offices would be closed to us. But even if we were to try to use the facilities there--the halls, the conference rooms, the senate or house floor--they could not handle all of us. Besides, we would be traveling from here to there for plenary sessions. The facilities we have here today are more satisfactory than in 1968. For these reasons, I would say no to this amendment.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I would like to speak for the amendment. I would just like to point out a little history: In 1950 we met in an old armory; in 1968 they used McKinley High School. To inconvenience a high school--which may be the only solution 10 years from now because there may not be a nice empty old Federal Building--to inconvenience a high school is far more detrimental to the work of the school than to inconvenience a legislature that is not in session. Also, facilities are much less convenient at a high school; teachers have been assigned to classrooms, and they'll have those classes over the summer vacation. Going into a facility such as that, or a community college or some other large building, we are bound to inconvenience someone. And I think that if we inconvenience anyone, it ought to be the legislature.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I speak against the motion. I don't think we should have any fears about where the next constitutional convention will meet, because we have 30 delegates running for office, and I know they are all going to be elected. They'll have the constitutional convention in their hearts and protect it.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I just want to point out one thing. Since we agreed by amendment to start the constitutional convention at least 5 months prior to the next general election, I doubt if we'll be able to use the schools since they will all be occupied. I also want to point out that if we go unicameral, we'll have one whole empty chamber that we could use.

CHAIRMAN: Are you ready for the question? Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I wish to speak for the amendment. Since the next convention is not going to be for 10 years, I believe the state legislature can make provisions for that convention. If possible, they can enlarge the Capitol.

CHAIRMAN: Are we ready for the question? Delegate Barnes.

DELEGATE BARNES: Mr. Chairman, I speak in favor of the motion. As long as we continue to have the constitutional convention system, I think it should meet in the State Capitol. I think 3 or 4 months out of the year can be worked into the system easily, and the Capitol should be its home. We've seen what happens when there is no advance planning--we're looking at it right now.

CHAIRMAN: Delegate Barr.

DELEGATE BARR: I'd like to speak against the amendment. I would like to suggest that we consider very seriously having the next constitutional convention on Maui.

DELEGATE IZU: Point of information, Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: Since I don't have the written amendment on my desk, can you tell me whether the word "capitol" is spelled with an "o" or with an "a"?

CHAIRMAN: It looks like an "o." Can the mover of the motion advise us whether it's an "o" or an "a."

DELEGATE WURDEMAN: Since you can't read my writing, I do have an "o" there. What's the problem?

CHAIRMAN: It could be either an "o" or an "a." We just wanted it verified.

DELEGATE WURDEMAN: It is an "o."

CHAIRMAN: Delegate Izu, in answer to your question it is an "o." Delegate Blake.

DELEGATE BLAKE: In light of the tax situation this year, it is really amazing to hear the comments from the Kauai people as to why the Convention is not being held at the State Capitol. I've even heard many comments here. I see no reason why we had to pay in excess of \$200,000 to get this building ready. If the State has this kind of money, let them pass it over to Kauai, Maui or Hawaii. We'll gladly use it. I encourage all of you to include this in the amendment.

CHAIRMAN: Delegate Ching.

DELEGATE LAURA CHING: I'd like to speak in favor of this amendment. I feel that the elected officials to this Convention and to the one in 1988, who are going to be reviewing the State's highest document, should be entitled to operate out of a state

building. I for one sat on the ad hoc budget committee, and I cannot see paying \$45,000 a month--correct me if I'm wrong, Delegate Ledward--for the rental of this building. I urge my fellow delegates to approve this amendment.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak against this amendment. I think, as Delegate Hamilton said, nobody can predict what is going to happen in 10 years. In 1968 there were around 80 delegates; there are 102 now. There may be 150 in 1988, maybe 200. It could even go up--like New Hampshire's did--to 400. I don't think we ought to be designating the place at this point in time.

CHAIRMAN: Are you ready for the question? We're on our second round now. Delegate Hale.

DELEGATE HALE: I'd like to speak for the amendment. I think we just passed an amendment that leaves it to the legislature to determine the number of delegates, and the districts. If at the same time we mandate them to hold the convention in the Capitol, they are going to have to use common sense. So I would urge you to vote for the amendment.

CHAIRMAN: Delegate Wurdeman.

DELEGATE WURDEMAN: Just a point of clarification, in case there is any problem. I forwarded my amendment to the Chair showing that the letter in question was an "o." The difference is that a capital is "a town or city that is the official seat of government in a state, nation or political entity," and a capitol is "the building in which a state legislature assembles."

CHAIRMAN: Thank you very much, Delegate Wurdeman. Are you ready for the question?

DELEGATE HALE: Roll call, please.

CHAIRMAN: Are there ten delegates? We shall have a roll call. The question before this body is whether to insert in the paragraph subtitled "Organization; Procedure," after the first sentence, the following: "The Convention will be held at the State Capitol." Clerk, please call the roll.

The motion failed to carry by a vote of 23 ayes, 66 noes and 13 excused; with Delegates Alcon, Barnes, Blake, Burgess, Campbell, Laura Ching, Chu, DiBianco, Dyer, Eastvold, Ellis, Fujimoto, Hale, Hanaike, Hornick, Rachel Lee, Miller, Nozaki, Ontai, Souki, Takehara, Tam and Wurdeman voting aye; Delegates Anae, Andrews, Barnard, Barr, Cabral, Chang, Calvin Ching, Haunani Ching, Chong, Crozier, de Costa, De Soto, Fernandes Salling, Fukunaga, Funakoshi, Fushikoshi, Goodenow, Hagino, Hamilton, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hoe, Hokama, Dennis Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaapu, Kaito, Kimball, Kojima, Lacy, Ledward, Marion Lee, Lewis, Liu, Marumoto, McCall, Nishimoto, Okamura, O'Toole, Paty, Penebacker, Peterson, Pulham, Sakima, Sasaki, Shinno, Shon, Silva, Stegmaier, Stone, Taira, Takahashi, Takemoto, Tamayori, Villaverde, Waihee, Weatherwax, Yamashita, Yoshimura and Chairman Les Ihara voting no; and Delegates Blean, Donald Ching, Chun, Chung, Harris, Teruo Ihara, Kono, Nakamura, Odanaka, Sterling, Sutton, Takitani and Uyehara being excused.

CHAIRMAN: The motion fails. At this time the Chair will entertain a motion to rise and report.

DELEGATE IZU: I move that we recommend approval of Committee Proposal No. 4 as amended by the Committee of the Whole, and that we rise and report same to the Convention.

DELEGATE SILVA: I second the motion.

CHAIRMAN: It has been moved and seconded that the committee rise and report. All those in favor say aye. Opposed, no. The motion is carried.

At 10:55 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on PUBLIC HEALTH AND WELFARE; LABOR AND INDUSTRY

Committee Proposal No. 5

(Articles IX [VIII] and XIII [XII])

Chairman: DELEGATE LARRY UYEHARA

Monday, August 21, 1978 • Evening Session

The Committee of the Whole was called to order at 9:57 p.m.

Delegate Larry Uyehara presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The Committee of the Whole will consider Committee Proposal No. 5 from the Committee on Public Health and Welfare; Labor and Industry. To facilitate an orderly procedure, we will observe the following guidelines tonight: the motions for bringing the question, for tabling, for deferring and for referring to a committee are all out of order; recesses will be kept to a minimum. I hope you are ready for a long night of work.

I would like to call your attention to the amendments that have been placed on your desks. Amendment No. 1 is by Delegate Sasaki on public health; Amendment No. 2, by Delegate Harris, also on public health; Amendment No. 3 is Delegate Chang's on preservation of a healthful environment; Amendment No. 4 is by Delegate DiBianco; Amendment No. 5, also by Delegate Harris, on management of the state population growth; Amendment No. 6 by Delegate Hale is also on management of the population growth; Amendment No. 7 by Delegate Fukunaga is on cultural resources; Amendment No. 8 by Delegate Harris on cultural resources; Amendment No. 9 by Delegate Souki on economic security of the elderly; Amendment No. 10 by Delegate Laura Ching; Amendment No. 11 by Delegate Cabral on the right to continuity of public service; Amendment No. 12 also by Delegate Cabral on labor and industry and Amendment No. 13 by Delegate Ellis.

I realize it is going to be a long night, but please try to stay with the substance of the amendment. Stay with the topic. The question before the Committee of the Whole is the adoption of Committee Proposal No. 5. The Chair recognizes Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: Mr. Chairman, I rise to speak in favor of the general concept of Committee Proposal No. 5. Your Committee sought to accomplish the following things. First of all, we wanted to address the concerns of our people by providing policy guidelines to the legislature so that it has some direction as to what kinds of programs should be provided. We sought to avoid the actual establishment of programs within the Constitution, for it is the committee's belief that the legislature is the appropriate body to establish and implement these programs. We also avoided the establishment of specific programs because it was felt that some latitude is needed by the legislature, especially when it is trying to work within tight fiscal restraints.

Also, if we established specific programs it must be remembered that we will be tied to these programs, even if unwanted, for a period of at least 10 years. The second major concern was trying to clean up Articles VIII and XII so that the provisions which overlap other articles of the Constitution are removed. Thirdly, we sought to make Article VIII consistent with present practices of the Department of Health and the Department of Social Services and Housing. It should be noted that, in striving for this consistency, we in no way sought to limit the establishment of new programs by the legislature. In the proposed changes in Section 2 of Article VIII, specific types of handicaps and domiciliary care are eliminated. It was decided that it was important to eliminate specific types of handicaps so that all types could be covered and the legislature would not be constrained in its actions.

Your Committee also decided to eliminate the term "domiciliary care" because this is included under the definition of treatment and rehabilitation. Committee Proposal No. 5 seeks to amend Section 3 of Article VIII so that the State will have power to provide medical assistance, financial assistance and social services to those who meet the standards established by the legislature. These three categories of assistance reflect the present practices of the Department of Social Services and Housing. Thus, these changes would update the Constitution and are flexible enough to include programs needed in the future.

Your Committee decided to change the language describing those who will receive assistance because, as a practical matter, the legislature and federal government now set the qualifications for all types of assistance. The Department of Social Services and Housing through oral and written testimony expressed concern about the terms "decency" and "health" because these terms are vague and might allow lawsuits against the State. Moreover, the committee felt the new language would allow the legislature to develop precise definitions of eligibility. Section 5 of Article VIII, which relates to public sightliness and good order, was amended by removing the words "conserve and develop its natural beauty, objects and places of historic or cultural interest." The portion referring to natural beauty was removed to prevent the overlap that now exists between Article VIII and Article X. The portion that refers to "objects and places of historic or cultural interest" will be included in a new section to Article VIII entitled "Cultural Resources." This last change was made so that Section 5 reflects just one general concept, which is public sightliness and good order.

Your Committee also amended Article VIII by adding several new sections. The first of these is entitled "Preservation of a Healthful Environment." The committee recommends inclusion of this new section because promotion of a healthful environment is nowhere mentioned in Article VIII even though it directly relates to public health. At first glance it may seem that the preservation of a healthful environment is a direct concern of Article X and that by its inclusion in Article VIII, we have created an overlap. Although valid, its inclusion in Article X is not necessary. For after deliberation with the chairperson of the Committee on Environment, Agriculture, Conservation and Land, it was decided that the term "healthful environment" encompasses more than the concerns that are addressed by that committee.

Mr. Chairman, at this time I would like to clarify an editorial mistake in Standing Committee Report No. 36. This mistake is on page 6 and concerns the matter of standing to sue. The right of standing to sue was neither conferred or denied. In fact, the committee did not deliberate on this issue. What was meant was that the State's duty to promote and maintain a healthful environment was denied because the committee members wanted to allow the legislature discretion in formulating specific programs. Due to the limited resources and the need for fiscal restraints, your Committee felt that a mandate should not be placed on the State.

The second new section is entitled "Management of State Population Growth." It requires the State to plan and manage the growth of its population. Hawaii is an island community with limited land and an ever-increasing population. Your Committee is aware of the concern that all residents of this State feel over the rapid increase in our population, and it is for this reason the committee decided that planning and managing this growth should receive top priority in the State's activities. To insure that this concern receives top priority, your Committee placed a mandate upon the State.

Another grave concern of the people involves our rapidly increasing crime rate, notwithstanding existing statutes in law enforcement bodies. Thus a new section entitled "Public Safety" was created to address this concern on the constitutional level. It was placed in a separate, new section to show that this is an area that deserves special and increased recognition.

The final two new sections to Article VIII relate to cultural resources and the economic security of the elderly. The section entitled "Cultural Resources" resulted when Section 5 was amended to include only public sightliness and good order. The committee decided that this new section incorporating the cultural and traditional arts of the State's ethnic groups would be a more appropriate place to include the objects and places of historic or cultural interest. The final new section, "Economic Security of the Elderly," is a policy statement that seeks to encourage the legislature to grant a higher priority in the allocation of the State's fiscal resources to services for the elderly. Your Committee recognizes

that the elderly as a group contribute substantially to our State and society, and therefore deserve more than what they are presently receiving. Also, your Committee recognizes the adverse effects of the high inflation rate upon the fixed incomes of the elderly.

Mr. Chairman, by leaving Article XII, which pertains to collective bargaining, as it is presently worded, your Committee reaffirms its commitment to reflect the will of the people. The committee conducted extensive hearings on this article, and an overwhelming majority of the people testified that the present provisions should be left as they are. The committee concluded that the right to strike by public employees will be restricted, if needed in the future, in such manner as determined by the legislature. As to the issue of strike restrictions for public employees who perform vital services, your Committee concluded that such a restriction is premature and thus unnecessary. The legislature recently passed a statute that prohibits firemen from striking, and provides instead for binding arbitration. It was felt that public employee action or actions as a result of this statute should be observed before a blanket strike provision is adopted.

Mr. Chairman, these are the major issues which have been raised before the Committee on Public Health and Welfare; Labor and Industry, and the results of the committee's deliberations are reflected in Committee Proposal No. 5. For all of the previously stated reasons, I recommend that Committee Proposal No. 5 be seriously considered by this Committee of the Whole.

CHAIRMAN: Thank you very much, Delegate Fushikoshi. You have heard the report of the Committee on Public Health and Welfare; Labor and Industry. The question before the Committee of the Whole is Committee Proposal No. 5. We have before us the amendments to be debated, section by section. Delegate Chang.

DELEGATE CHANG: Mr. Chairman, in order to facilitate discussion on the proposed amendments, I wish to corroborate Chairman Fushikoshi's description of the interaction between the public health and environment committees. I was consulted on the day of decision-making, and I stated at that time that, while we considered the concept of the right to a healthful environment and standing to sue a public health matter, that if the public health committee imposed a duty on the State, then our environment committee would deal with the entire concept, including standing to sue, through the process of public hearing, discussion and decision-making. So this committee report does not foreclose in any way discussion of that concept by this Convention.

CHAIRMAN: Thank you very much. At this time I would like to go to Amendment No. 1 which has been submitted by Delegate Sasaki. Delegate Sasaki.

DELEGATE SASAKI: I move to amend Section 1 of Article VIII by deleting the words "have power to."

DELEGATE SILVA: Second, Mr. Chairman.

CHAIRMAN: It has been moved and seconded that Section 1 be amended by deleting the words "have power to." At this time I should like to recognize Delegate Sasaki, the mover of the motion.

DELEGATE SASAKI: Mr. Chairman and fellow delegates, Standing Committee Report No. 36 recommends that Article VIII, Section 1, be amended to read: "The State shall have power to provide for the protection and promotion of the public health." Such an amendment would weaken the State's obligation in this area. This amendment will remove the mandate placed upon the State to provide legislation in an area which is very important to the well-being of Hawaii's citizens. By giving the legislature full discretionary power in allocating the State's fiscal resources, the amendment would remove the mandate on the legislature to fund all public health programs. The legislature could enact laws that would seriously reduce the number of services provided the public--such as State-funded health, mental health and outpatient clinics, and other areas that are fully funded and could be reduced. Individual citizens, as well as community groups, will not be able to prevent such cutbacks--a waste of court time, because the amendment gives the legislature the choice to provide and promote the public health.

In conclusion, language that mandates the State to perform in certain areas is a substantially stronger policy statement than language that only grants power. A stronger

policy statement is needed to emphasize the State's obligation in an area that is very important and affects everyone--namely, the general health of the public. I urge your support for this amendment.

CHAIRMAN: Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: Mr. Chairman, I concur with the sentiment expressed by the introducer of this amendment. Basically, it was said that putting in the words "have power to" really takes the power away. From what I understand, back in 1950 they really struggled to get this original statement. We would like to go back to the original, so the State "shall provide"--meaning the State will be responsible for taking care of all the kinds of programs that need to be implemented in this area.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I would like to speak in favor of the amendment. I can't understand why the committee report says that this was taken out because funding for public health requires legislative appropriation, and they were afraid that maybe the State wouldn't have the money. If that really is a fear, I think it's all the more important that it be put in and kept in. I would like to call your attention to other sections of the Constitution--on public education, where it says the State shall provide for establishment of education, and so forth. Under conservation and development of resources: "The legislature shall promote the conservation, development and utilization of agricultural resources..." and so forth.

Therefore, I feel very strongly that we should continue to leave the language as it is: "The State shall provide for the protection and promotion of the public health." I'm very surprised and saddened to think the committee would come out with even a recommendation in this area, that the State does not have a major obligation. I urge you to vote for this amendment.

CHAIRMAN: Thank you. Is there further discussion? Delegate Villaverde.

DELEGATE VILLAVERDE: I speak against this amendment. We are trying to mandate unknown costs. When the maker of this particular amendment talks about the weakening of the State, I shudder to think how weakened the State would be with the inclusion of such an amendment. We're also talking about private enterprise trying to provide for and alleviate the health situation in the State. We're trying to say, also, that the taxpayer should be penalized in providing a system such as this, whereas it is private enterprise that is attempting to alleviate the problems of taxpayers. People are joining programs to provide for individual or family-type public health. I therefore speak against this particular amendment.

CHAIRMAN: Thank you very much. Is there further discussion? Delegate Goodenow.

DELEGATE GOODENOW: Mr. Chairman, point of inquiry.

CHAIRMAN: State your point.

DELEGATE GOODENOW: Is this in any way mandating the State to promote a medical insurance policy for all people?

CHAIRMAN: May I ask the mover of that amendment to reply to Delegate Goodenow's question?

DELEGATE SASAKI: Mr. Chairman, this is for the protection and promotion of the public health. I do not know if, under the definition of public health, full-coverage insurance would be covered.

CHAIRMAN: Thank you. Further discussion? Delegate Shinno.

DELEGATE SHINNO: Point of inquiry.

CHAIRMAN: State your point.

DELEGATE SHINNO: I'm confused about the language. If you refer to Article VIII

in the Constitution, Section 1 does not have the words "have power to," while Section 2, "Care of Handicapped," reads, "The State shall have power to...." It's inconsistent, and I would like to know how we can correct that.

CHAIRMAN: I would like to recognize Delegate Waihee.

DELEGATE WAIHEE: I rise to speak in favor of the amendment. What we have here, as Delegate Hale has pointed out, are fundamental services which past constitutional conventions have mandated that the State provide. In the other provisions, where it says "have power to," what you're doing is making policy statements or broad guidance for the legislature to look into and do something about. What this statement says, as it was written in the Constitution in 1950 and in 1968, is that this is one type of service that the people of Hawaii would want to see under any circumstances.

Furthermore, Delegate Sasaki's amendment is not changing anything. This particular provision does not mandate statewide insurance, or anything like that. In other words, we are just keeping things as they are now. If we were to change the language, we would be regressing rather than keeping it as it is.

CHAIRMAN: I recognize Delegate Villaverde.

DELEGATE VILLAVERDE: It's 10:30, and it has been a long day. I have to admit that I did misconstrue this particular section. I hereby withdraw my statement, for the record. This is one of those errors that does develop, particularly with the debates as late as we have been having them. I feel better speaking out at this time.

CHAIRMAN: Thank you. Is there further discussion? At this time I will read the amendment. It has been moved and seconded that Section 1 be amended by deleting the words "have power to." All those in favor signify by raising your right hands. All those opposed will signify by raising your right hands. The ayes have it.

We shall move on to Amendment No. 2. At this time I recognize Delegate Harris.

DELEGATE HARRIS: Thank you, Mr. Chairman. I move that Section 1 be amended by adding a new sentence to read as follows: "More than an absence of disease, health is a state of mental, social, environmental and physical well being."

DELEGATE CHU: Second.

CHAIRMAN: It has been moved and seconded that Section 1 of Article VIII be amended by adding a new sentence as follows: "More than an absence of disease, health is a state of mental, social, environmental and physical well being." The Chair recognizes Delegate Harris.

DELEGATE HARRIS: I recommend adding this statement by way of definition of the term "public health." Today we're beginning, in both a scientific and a legal context, to recognize health as a holistic state affected by more than just the presence or absence of disease in a body. This definition that I offer is the definition of public health that has been adopted by the World Health Organization. Such wording in the Constitution will direct the legislature toward the goal of developing and maintaining a Hawaii where mental, social, environmental and physical well-being are a way of life.

I urge the delegation to adopt the amendment. Mahalo.

CHAIRMAN: Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: I would like to speak against this amendment. This new definition of public health imposes an all-inclusive function so that, particularly, no activity would escape coverage under it. Thus, if this comprehensive provision is to be fully implemented, it may result in an inequitable allocation of public funds so that other worthy public programs may have to be reduced.

My second objection is that this amendment fails to recognize that the individual is equally responsible for the promotion of his or her total well-being. It is unfair to impose an unlimited duty on the State for an individual's health status, because carrying

out this function must be balanced with an individual's personal and moral responsibility.

In summary, spending more money, alone, is not necessarily the way to achieve better health for the public. Also, the definition of public health should be included in a statute and not a constitutional amendment. When the legislature establishes definitions, it can adjust this one if need be. The Constitution, on the other hand, cannot be as easily amended.

CHAIRMAN: Is there further discussion? I see no further discussion. I will read the amendment to Article VIII, Section 1, which adds a new sentence as follows: "More than an absence of disease, health is a state of mental, social, environmental and physical well being." All those in favor will signify by raising your right hands. All those opposed raise your right hands. The noes have it. The amendment is defeated.

We now go to Amendment No. 3. The Chair recognizes Delegate Chang.

DELEGATE CHANG: Mr. Chairman, I move to amend Committee Proposal No. 5, page 2, lines 14 through 18, to read as follows: "The State shall have the power to promote and maintain a healthful environment, including the prevention of any excessive demands upon the environment and the State's resources."

DELEGATE WAIHEE: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded to amend Committee Proposal No. 5 by substituting the following: "The State shall have the power to promote and maintain a healthful environment, including the prevention of any excessive demands upon the environment and the State's resources." Is there any discussion? The Chair recognizes Delegate Chang.

DELEGATE CHANG: Mr. Chairman, as the chairman of the Committee on Public Health and Welfare; Labor and Industry pointed out, the committee did much work to correct the overlapping language that existed with regard to the different concerns of Article X and Article VIII. With this particular provision, it came to our attention that the language contained in Committee Proposal No. 5 may establish two different powers--the first power being to promote and maintain a healthful environment and the second being the power to prevent any excessive demands upon the environment and the State's resources.

In that statement, it might be construed that the prevention of excessive demands upon the environment and the State's resources was independent of the concern for a healthful environment and might relate more to the concerns contained in Article X. To avoid that problem, it was determined that the language should be changed to state that the prevention of excessive demands upon the environment and state resources would be a part of the power to maintain and promote a healthful environment. That is the purpose of this somewhat minor change, although it is one that we feel is necessary.

CHAIRMAN: Delegate Hashimoto, the Chair recognizes you.

DELEGATE HASHIMOTO: I would like to speak in favor of the amendment, but first I'd like to state a point of clarification. Under "Preservation of a Healthful Environment," the amendment reads, "The State shall have the power to promote and maintain a healthful environment..." The words that were deleted were "and to prevent" and in their place the words "including the prevention of" were inserted. It then continues "...any excessive demands upon the environment and the State's resources."

I would like to speak in favor of this amendment. This language would conceptually link the right to a healthful environment with the management of the State's environment and resources. The intent in adding the second clause to this amendment is to articulate the idea that any excessive demands upon the environment and the State's resources would result in an unhealthy environment. This clause is necessary to further clarify public policy regarding the preservation of a healthful environment.

CHAIRMAN: The Chair recognizes Delegate Shon.

DELEGATE SHON: I would speak in favor of this with one small reservation, which

was amply voiced approximately 2,500 years ago by Lao-tzu who said: "Is not the space between heaven and earth like a bellows?" The shape changes but not the form. The more it moves, the more it yields. More words count less. "[H]old fast to the [center]."

CHAIRMAN: Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: I concur with the sentiments of those speakers who spoke before me. We had this hashed out with Delegate Chang, and I think we have resolved it. I would like to urge the Committee of the Whole to vote for this amendment.

CHAIRMAN: Delegate Ellis.

DELEGATE ELLIS: Point of inquiry of the maker.

CHAIRMAN: State your point.

DELEGATE ELLIS: I'm concerned about the fact that under the environment heading, we could then handle problems with the State's resources. Does this mean we can control mining, thermal energy, lumbering, fishing? I'm questioning this, and I need an answer before I vote. The way I read it here is that, under "Preservation of a Healthful Environment," the State "shall have the power to promote and maintain a healthful environment, including the prevention of any excessive demands upon the environment and the State's resources." The State's resources are defined in the Constitution as including everything. I'm concerned and confused.

CHAIRMAN: Thank you for your concern. Is there any discussion? Delegate Chang.

DELEGATE CHANG: I want to point out that my amendment is one of language to clarify matters. As to the concept itself, the delegate is free to think any way he wishes. What I'm pointing out is that the change would link the prevention of excessive demands upon the environment and State's resources to a healthful environment. If you go with the language in the committee proposal, there are two independent powers who would have to deal with it anyway.

DELEGATE ELLIS: Thank you.

DELEGATE HALE: Point of information.

CHAIRMAN: State your point, Delegate Hale.

DELEGATE HALE: I'm confused too, and maybe Delegate Chang could tell us his rationale for withdrawing the other amendment, which seems a little simpler.

CHAIRMAN: Would the mover care to respond?

DELEGATE CHANG: I merely wished to avoid any language in Article VIII that would deal with the regulation and management of resources, which is dealt with in Article X. That has been the problem with the existing language in Section 5 of Article VIII with regard to conservation and natural beauty, which we fully intend to deal with in Article X. So to avoid the continuing problem of language overlap, I merely suggested that we do what was intended with the language in the first place, which was to structure the prevention of excessive demands upon the environment and State's resources as it pertains to a healthful environment and avoid any overlap with the pure powers of legislation and management of resources in Article X.

DELEGATE HALE: I would like to offer a motion to substitute the one that was withdrawn for this one.

CHAIRMAN: There is a motion on the floor.

DELEGATE HALE: Could I amend that motion?

CHAIRMAN: You may amend the motion.

DELEGATE HALE: By substitution? The other proposal by Delegate Chang is a simple statement: "The State shall have power to promote and maintain a healthful environment." May I substitute that for the other language? I'm just asking.

DELEGATE CHANG: Point of order, Mr. Chairman. No offense, Delegate Hale, I merely wish to point out that what the delegate proposes to do is amend the amendment to the amendment. This is a tertiary matter and cannot be done at this time.

DELEGATE HALE: Well, if that is true, then I would like to speak against this amendment as it's worded, for this reason. I can foresee some very serious administrative problems on the state level with this language. It seems to me we are mixing up control of resources and environment, which technically belong in another department of the State--with public health. I think we can cause great difficulty in the State in determining whose responsibility it's going to be to control or manage the environment. In the process--

DELEGATE CHANG: Point of order, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE CHANG: No offense to the delegate, I'm merely pointing out that she's voicing objection to the total concept. If my amendment to the amendment is voted down, the delegate will still have to deal with language that covers both management of resources and a healthful environment. What I would suggest to the delegate is that she wait until after the amendment to the amendment is voted upon and then argue against the total concept.

CHAIRMAN: Thank you for your point. I'll ask the delegate to continue her--

DELEGATE HALE: I would like to speak against the amendment as it is stated here. I think my comments are pertinent. What I am doing is asking the delegates to vote down this amendment and pointing out to them that there is another amendment that we could vote on that perhaps would treat these concerns. I am concerned with the problem of administrative responsibility in two separate areas. For instance, the department to finally handle the land and environment and resource problems of our State will, maybe, not be able to determine that this is their responsibility if it's also under the Department of Health.

It seems to me that mixing up two things that shouldn't be mixed is going to make it very difficult. Though I'm for this concept, and I want to see both things handled on the state level, I just feel that this amendment is not the way to do it.

CHAIRMAN: Is there further discussion? I will recognize Delegate Odanaka.

DELEGATE ODANAKA: Point of inquiry.

CHAIRMAN: State your point.

DELEGATE ODANAKA: Point of inquiry to the maker of the motion. If I should vote for this amendment, am I approving the committee's rationale as stated in the committee report?

CHAIRMAN: Will the maker answer the question?

DELEGATE CHANG: Mr. Chairman, it's an amendment of clarification. If this amendment is approved, the amendment to the Constitution would still have to be discussed and adopted or rejected by this body. I believe the clarification is not inconsistent with the committee report.

DELEGATE ODANAKA: Could I ask Delegate Chang to go over one more time the intent of his amendment?

CHAIRMAN: Delegate Chang, will you yield?

DELEGATE CHANG: It's to avoid any overlap between the considerations in Article X and the considerations in Article VIII. That work has been done with regard to another

section in Article VIII, and we are merely trying to avoid that problem for the next ten years with regard to this particular provision.

The intent is to avoid overlap between two articles of the Constitution.

CHAIRMAN: Is there further discussion? The Chair recognizes Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak in favor of the amendment. I feel that the amendment would clarify the language, as indicated by Delegate Chang. I disagree with the delegate from the Big Island who indicated that this would create a constitutional problem as to responsibilities between departments. I think it would be a help rather than a hindrance.

CHAIRMAN: The Chair recognizes Delegate Hokama.

DELEGATE HOKAMA: May we have a short recess? I think there is a problem that can be cleared up.

CHAIRMAN: There will be a short recess.

At 10:43 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:46 p.m.

CHAIRMAN: Will the committee come to order.

DELEGATE STERLING: Mr. Chairman, I would like to speak in favor of the amendment.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: As I read it, the State is mandated to do this. I can only speak from experience on our Island. We have an underwater park at Kealahou Bay, which is administered by the Department of Land and Natural Resources. There is pollution, which is supposed to be under the control of the board of health. We have unauthorized ships that nobody wants to touch; everybody just points the finger at everybody else. And consequently there are 30 unauthorized ships in there polluting the waters of an underwater park. Nobody seems to care about pollution control on the beaches. This amendment mandates the State to do it and to take care of the environment, including prevention of any excessive demands upon that environment and resources. I urge adoption of the amendment.

CHAIRMAN: Is there further discussion? Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, I wish to speak in opposition to this amendment. This section has two parts. The first addresses the subject of a healthful environment by saying, "The State shall have the power to promote and maintain a healthful environment. . . ." In my mind, the State already has this power in Section 1, which states: "The State shall provide for the protection and promotion of the public health." The second part of the section states, ". . . including the prevention of any excessive demands upon the environment and the State's resources." Statutes are in effect which prevent specific abuses of the environment and the State's resources. If this needs to be addressed in the Convention, however, I believe it would more appropriately fit in Article X, which is entitled "Conservation and Development of Resources." In order to eliminate the redundant first part and to place the second part in Article X where it belongs, I urge you to vote against this proposed amendment.

CHAIRMAN: Is there further discussion? Delegate Barnes.

DELEGATE BARNES: I rise to speak in favor of the amendment. I believe that the language does not cause any problems in terms of conflicts between existing agencies but merely highlights the fragile nature of Hawaii's environment and resources. Even if it does slightly duplicate another section, that's all right. I believe both committee chairmen have put in a lot of hard work and we should support the amendment.

CHAIRMAN: Thank you. Is there any further discussion? Delegate Shinno.

DELEGATE SHINNO: I speak in favor of this amendment. However, the second part should be included in the article on conservation of land as it is related to the State's natural resources. However, I do support this amendment in concept.

CHAIRMAN: Further discussion? No further discussion. It has been moved and seconded that the section entitled "Preservation of a Healthful Environment" be amended to read: "The State shall have the power to promote and maintain a healthful environment, including the prevention of any excessive demands upon the environment and the State's resources." All those in favor signify by raising your right hands. All those opposed signify by the same sign. The ayes have it.

We shall now move on to Amendment No. 4. The Chair recognizes Delegate DiBianco.

DELEGATE DiBIANCO: I move to amend Committee Proposal No. 5 by deleting in its entirety the section under item 6, entitled "Management of State Population Growth." It reads: "The State shall plan and manage the growth of its population to protect and preserve the public health and welfare."

DELEGATE WURDEMAN: Second.

CHAIRMAN: It has been moved and seconded to amend Committee Proposal No. 5 by deleting in its entirety the section under item 6, entitled "Management of State Population Growth." The Chair recognizes Delegate DiBianco.

DELEGATE DiBIANCO: Thank you. I would like to speak first and last. It's one thing to state in our Constitution that the State of Hawaii will maintain a healthful environment--in fact, that it has a duty to maintain a healthful environment. It's quite another thing to say that the State will limit population growth. This can be interpreted in a number of ways; one is that the State will somehow limit in-migration. I would oppose that not only because it's contrary to everything that I stand for, but also it's contrary to the very federalistic principles upon which this country has been built. More practically speaking, it is impossible for this State to limit in-migration, and the committee report itself discussed this matter in pointing out that Act 211 of the 1977 Session Laws of Hawaii--in which the State attempted to limit in-migration, or tried to discourage it, by requiring that anyone who applied for public employment be a resident of the State for at least one year--was declared unconstitutional almost as soon as it went into effect. That law couldn't have been on the books more than a week or two before it was declared unconstitutional by a local federal court.

Any attempt to limit in-migration is going to meet that same kind of fate. What this proposal does is--it doesn't say, "The State shall have the power to manage its resources." It doesn't even say, "The State shall have the power to limit its population." It says, "The State shall...manage...its population" growth. Now we know that the State cannot limit the ingress and egress of its population. People are free to travel from state to state; that's one of our fundamental federal constitutional rights. All that leaves us, then, is the kind of 1984-ish situation where the State might try to limit birthrates, or where the State might try to force certain islands to set population beyond their desires, or--another example, the State in its management of population may attempt to put the state prison on Molokai or Lanai, and the people of Molokai or Lanai would have no right to object. These are the kinds of things that I can foresee, and that's why I feel this particular proposal is very dangerous.

More important is this: whenever you try to limit population growth--through zoning, for example, which is how I understand most people want to limit it, or, as mentioned in the committee report attached to this proposal, similar plans, such as limiting the number and accessibility of water meters, limiting the number and accessibility of house lots, have proven effective in other areas--if you try that, try to limit population growth, in the State of Hawaii, you are going to drive the poor people out. The rich will always find a way to get a water meter or a house lot. If you try to manage population growth, you are not going to drive the rich out, you are only going to be driving out the poor. This particular section is poorly thought out, and I think people who are maliciously motivated are going to use it to the destruction of the kind of population--

DELEGATE LES IHARA: Point of order.

CHAIRMAN: State your point, Delegate Ihara.

DELEGATE LES IHARA: Robert's Rules states that the motives of any of the delegates in this Convention should not be attacked.

DELEGATE DiBIANCO: I'm not talking about the motives of the people in this Convention. I'm talking about legislators in future years. This constitutional provision mandates the legislature to go on with further acts--zoning laws and things of that sort--and no matter how you try to limit population, you will be driving the poor out of the State. The only places where this has been tried on the mainland--in California--are upper-middle-class communities. The reason they are upper-middle-class is because only the people who can afford the water meters, or afford the house lots, who can get the rich lawyers to get around this, are the rich. You'd better be careful of what you're doing. Thank you.

CHAIRMAN: Is there further discussion? Delegate Harris.

DELEGATE HARRIS: I wish to speak against the motion. I believe Hawaii is truly in the throes of a population explosion. With the present trend of the United States population migrating to the "sun-belt" states, Hawaii is experiencing an annual growth rate of about 2.3 percent--about twice that of the nation as a whole. This phenomenal growth rate, greater in fact than the world average, will result in Hawaii's population doubling in the next 34 years--if it's allowed to continue.

In the past this rapid growth rate was often heralded as progress and a prize to be sought after. To be sure, it has brought us many benefits here in Hawaii in the form of economic expansion, wider mobility and a broader range of opportunities. But these benefits have not been without their costs. We have paid dearly for our growth, and the currency has been the deterioration of our environment, loss of our prime agricultural and beachfront lands, increased costs and problems of providing facilities and social services, and depletion of our limited natural resources. It should be apparent to all that there are limits to growth here in Hawaii. Our State has a finite amount of resources such as land, water and recreational areas. These resources can only support a limited number of people.

The central debate over the growth management issue seems to be, not: "Is there an upper limit to the number of people that can live here in Hawaii?" but rather: "Should the State attempt to manage our growth, or should we continue to grow haphazardly?" I believe we have no choice but to manage our growth. To ignore the problem at this critical juncture and to assume a laissez-faire attitude can only result in the ultimate destruction of the Hawaii we all know. I think we can agree that life in Hawaii with a high density population at its physical carrying-capacity limit would not be very pleasant. We must, therefore, take subjective matters into consideration in determining our optimum carrying capacity. Factors such as the quality of our recreational experiences, mental health, aesthetics, environmental health and stability, and the quality of life must all be considered in our carrying-capacity determination.

As Governor Ariyoshi said in his 1977 state of the state address: "The problem of excessive population seems to be central to nearly every problem in our State.

"Too many people means too few jobs and too much competition for them; too many people means too little land for agriculture and parks and scenic vistas; too many people means too much crime and too much erosion of possibly our single most important commodity, the Aloha Spirit; too many people means too much pressure on all our governmental and private institutions.

"In short, too many people can spell disaster for this State."

The question is, then, is population control and growth management a constitutional issue? I contend it is. A further question, is this proposal under consideration constitutional under the U.S. Constitution? It most certainly is.

CHAIRMAN: Is there further discussion? Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: I would also agree with Delegate Harris. I rise to speak in opposition to the proposed amendment. The committee strongly recommends inclusion of this new section because size of the population is related to public health and welfare. We can no longer ignore this. The enjoyment of the people who live in this State is of concern and the committee is also aware of the concern that all residents of this State feel over its rapidly increasing population. Thus, your Committee determined that planning and managing this population growth should be a top priority in state activities.

Committee members have expressed concern that restraints in the growth of the population would be unconstitutional. It should be noted, however, that while some specific methods of implementing population control have been struck down by the courts, other methods have been upheld. For example, regulations affecting the use of land and the availability of housing and water meters have been upheld. Moreover, there are other indirect controls on growth that can reduce the impact of population growth and deter growth by controlling expansion. Thus, the legislature has many options available for implementation of this mandate.

CHAIRMAN: The Chair recognizes Delegate Hashimoto.

DELEGATE HASHIMOTO: Mr. Chairman, I would like to speak against the amendment. It is inherent in Americans' attitudes toward their constitutional system that when a sufficient number of them care deeply enough about a problem, they seek to give it constitutional dimension.

Since statehood, Hawaii's population growth rate has been about twice that of the nation as a whole, and approximately 94 percent of the new residents have located on Oahu. Reiterating Delegate Harris' argument, Hawaii's recent rapid growth has brought with it a higher standard of living, less poverty, increased availability of jobs, a higher percentage of homeowners and increased government services. However, these improvements have occurred at the cost of deterioration in other areas, such as increased air, water and noise pollution; urbanization of agricultural, conservation and beachfront lands; high housing costs; increased traffic congestion and higher accident rates; higher crime rates and increased social stress.

In recent years, people have begun to question the value of continued rapid growth. This shift in attitude reflects a concern that the costs of rapid growth may outweigh the benefits and a belief that a more moderate growth policy that would achieve a reasonable balance between the benefits and the problems should be developed. The public's concern for a quality future has been formally promulgated by the Ninth State Legislature during this past 1978 session. With the passage and enactment of Act 100, the legislature established a statewide planning process as a means toward setting a quality future for the State of Hawaii. This act is popularly called the Hawaii State Plan. Popular support for methods of growth management has grown considerably since public awakening to the fact that uncontrolled growth cannot exist concurrently with a policy of preserving environmental quality.

The outcome of future constitutional challenges to state-imposed control methods is somewhat speculative since the courts must use a complex case-by-case analysis of balancing individual rights and competing state interests, rather than apply a precise set of legal principles and definitions. In any case, this provision is a broad mandate which would allow various methods to be implemented and tested. We are all aware that there is much concern over the rapid increase in Hawaii's population. Many feel that it is important now to gain constitutional recognition for the planning and management of Hawaii's population growth.

CHAIRMAN: Thank you. Delegate Pulham, the Chair recognizes you at this time.

DELEGATE PULHAM: Mr. Chairman, while overall this committee report is very good, and I can understand the delegates' concern, I will have to speak in favor of this particular amendment. I feel that I could see in this article, in this section, some effort at management of population growth. However, this particular section says, "The State shall plan and manage . . ." In other words, what you are saying to me--or what this section is saying to me, or what some people in government have already said--is that what is no longer welcome on Oahu will be spread out to the neighbor islands.

I very much regret that some delegates would feel that we should constitutionalize

discrimination against minorities by saying that those who are in the populous areas now will tell you what you will do with your counties. It is very plain to me that when you say, "The State shall plan and manage..." you are saying that the State shall decide where the population is going to go. I would certainly urge the delegates from the neighbor islands and those of you on Oahu with good consciences to vote in favor of striking this, as the amendment suggests.

CHAIRMAN: Is there further discussion? Delegate Shon.

DELEGATE SHON: Mr. Chairman, I speak against this. The average population per square mile in the United States is approximately 60 people. The average population per square mile in our State is about 150 people. The average population per square mile on this Island is approximately 1,200 people. And if we go to the more dense urban areas, it rises to somewhere in the vicinity of 50,000 people per square mile.

Mr. Chairman, I think that this is a direct cause of instances where the prices of housing--the prices of what we need to live and work in Hawaii--are growing way beyond the means of the average person and beyond the means of the poor. The committee on environment heard testimony yesterday indicating that condominiums that were selling a couple of years ago for \$40,000 are now selling for \$80,000. Those selling for \$60,000 are now selling for \$120,000. And those selling for \$150,000 are now \$300,000. I think that this is a direct result of the State's lack of will to plan and manage growth. We're now at a stage when the State does have the will and is going to assert the initiative in this regard. It is because of the lack of planning and lack of management up to this point that housing and other services mentioned earlier are already beyond the reach of the poor and the middle class. It is because I cannot afford a house, Mr. Chairman, that I am against this amendment.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: I'd like to speak against the amendment. The other evening, I made a statement before the taxation committee that there was a ceiling--the debt ceiling. There was a flaw. Only 4 percent of the total land area of our State is zoned urban, which includes residential, industrial and commercial. We are very conscious of conservation areas in our State. But where else are you going to put--with only 4 percent of the land--unless we have what the report says: "The State shall plan and manage the growth of its population..." We need these general plans. We need plans at the county level.

I invite your attention to this, and also to the fact that only 1 percent is privately owned land and zoned urban. This is the flaw, this is what we're talking about--the amount of land available to our people, to the people born and raised here, is going to have to be managed.

CHAIRMAN: Delegate Tam.

DELEGATE TAM: Mr. Chairman, I would like to speak against this amendment. I would like to thank Delegate Pulham for his concern about the possibility that someone might intentionally spread the population to the outer islands against the wishes of those of us who live there. This is a real concern of ours, as evidenced by a number of instances of groups in our county on the Island of Maui expressing their gravest concern on this issue. However, the reason I speak against this amendment is we have looked over the amendments yet to come and noted another amendment that would allow the political subdivisions as well as the State to take part and share in this planning and management. So, in fact, there would not be this diversion of population to the outer islands against the wishes of the residents. For that reason, I speak against this amendment.

CHAIRMAN: Thank you. Delegate Barr.

DELEGATE BARR: Mr. Chairman, I rise to speak in favor of the amendment. Listening to my fellow delegates speak against this amendment, I heard a common theme--that we need to limit our population--and I share that deep concern, that our population is indeed too dense and growing too rapidly. I call my fellow delegates' attention to the wording of this proposal: in no way does it mean necessarily that the State will limit the population growth; it says the State will plan and manage that growth. This implies that we shall have that growth and that its management should be directed to preserving the public health and welfare.

I interpret that to mean it must necessarily--if we are right that it is too dense on Oahu--mean spreading that population to the neighbor islands. I would like to have you look at that very carefully before we do that to this state. As a representative of Maui, I would fail my people if I tolerated or voted for a provision like this one. I support the amendment to delete it.

CHAIRMAN: The Chair recognizes Delegate Chu.

DELEGATE CHU: I have just two points of inquiry. As I understand--and I believe Delegate Hashimoto addressed the consideration given to this problem by the courts--that the courts have balanced compelling state interest with personal rights. Would it help in this section to add the words "compelling state interest"?

Secondly, I hear a lot of talk about problems of land prices, housing prices and the population boom. I would like to know specifically what the proponents of this provision foresee that the legislature can do in planning and managing the growth of this state. What specific plans?

CHAIRMAN: Your inquiry has been noted. The Chair recognizes Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to speak against the amendment. It is my belief that because of the strong constitutional prescription against preventing citizens from freely moving from state to state, that our State is challenged for unique and unusual methods of overcoming this problem, if indeed committed to preserving our precious resources. I believe if it is set forth as policy in the Constitution, our State will be mandated to come up with new and resourceful ideas, perhaps using other states' methods as points of departure. Thank you.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: As a representative from a neighbor island--the Island of Kauai--I would like to make it clear that it is my belief that in no way does this amendment suggest the State is going to transfer the population load from Oahu to the neighbor islands. It's my opinion that that argument is specious.

DELEGATE WURDEMAN: State of legal inquiry.

CHAIRMAN: State your inquiry.

DELEGATE WURDEMAN: I'm having problems with the title, "Management of State Population Growth," and I'm wondering if it's against the Bill of Rights, sections 2, 4 and 6 in Article I. Just for example, Section 6 reads: "No citizen shall be disfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land." If it's unconstitutional according to the U.S. Constitution, I wonder if we have the right to put something like this in our Constitution. May I have legal counsel?

DELEGATE WAIHEE: Point of order, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE WAIHEE: I don't think it's right to ask legal counsel for an opinion now. This provision was on our desks for four days. I don't think it's fair to ask legal counsel to render an opinion. In our arguments, we have been saying over and over--or at least the majority of the committee believes--this is not unconstitutional. That majority opinion was evidently checked by the committee's attorney. So, at least in two opinions, this particular provision is not unconstitutional. It would be redundant as well as unfair to ask legal counsel for an opinion now.

CHAIRMAN: Thank you very much, your point has been heard. I would like to hear from Delegate Burgess.

DELEGATE BURGESS: Thank you, Mr. Chairman. I speak in favor of the amendment. I too favor doing something about the population growth. I would remind the delegation that we are here to revise the Constitution. We are not legislators. The language we put in this document cannot be changed easily, like a legislative act. Once it is done, it

is cast in concrete for somewhere in the area of ten years, perhaps even longer. It's difficult for me, since I think we should approach any change to our Constitution with caution. During the debate, I have been trying to imagine what power this gives any state agency that the State does not already have. I can't think of a single one. Certainly, it does not give the State the power to control in-migration, because we all know that that is prohibited in the U.S. Constitution, which we have specifically adopted in the second paragraph of our Constitution. We know it does not in any way give the State that power. What does it give the State?

The right to regulate zoning? The right to control land use? The State already has that power. The right to control building permits? The right to authorize water use? Those powers are already held by the State. Does it give the right to tax by giving exemptions for dependents? The State already has that right. I can't think of a single right or power that would be added to the State by this provision. I would respectfully submit that it is not an appropriate provision for the Constitution. Not only should it not be included, there is also the danger that if this language--"The State shall plan and manage the growth of its population..."--is adopted, it could well be construed as meaning that the counties are prohibited from managing their growth and population. Although I concur with the intent, I would vote against the provision.

CHAIRMAN: Are you satisfied with Delegate Burgess' answer?

DELEGATE WURDEMAN: Yes, I was. Other than this, I will concur with the motion.

CHAIRMAN: Delegate Blake.

DELEGATE BLAKE: I'm speaking against the amendment. The reason I say this is that by the delegate from Maui, about the words, "The State shall plan..." From the remarks I've heard so far from the people of Hawaii, they are expecting newcomers to move to the neighbor islands. Consequently, there should be something here reading: "The State and counties shall plan..." I don't think, constitutionally; you can stop anybody from coming to Hawaii.

I would like to relate a little experience that happened a year or two ago. One particular state had good hunting areas. The people in the community wanted to keep a sister state from hunting there. They tried every way to enact laws through statute but were not successful. Another thing they did was raise the rates for out-of-state hunters: in-state hunters would pay \$5, while the out-of-state hunters would pay \$150. But the hunters still came. As I look at this, I have been very interested in getting a good definition of "controlled state growth." To this day, I still don't have a good definition. There are so many ramifications from the standpoint of the Constitution; moreover, the counties are not even considered here. Neighbor island people are very concerned about this.

CHAIRMAN: Thank you. Delegate McCall.

DELEGATE McCALL: I speak for the proposal, primarily because I do not believe there is any way that the State can control the population growth without transferring population to the outside islands. I believe if you mandate the State to do this, any other action that we take, such as zoning, building restrictions, etc., will only hurt the poor. Therefore, the only thing that can be done is to push to the outside islands. I recommend we support this proposal.

CHAIRMAN: The Chair recognizes Delegate Chang.

DELEGATE CHANG: I just want to comment on the law conclusions voiced earlier by various attorneys, which seem to conflict with the opinion expressed by Delegate Chu. I would like to concur with the opinion of Delegate Chu, which in essence is that the supreme court has recognized that freedom to travel from state to state may be regulated where there is a compelling state interest. The statements tonight by our brothers and sisters from Kauai, Maui, the Big Island and Oahu demonstrate that this is a statewide concern. I think these statements reach for the future, envisioned in the proposed amendment to the Preamble of the Hawaii State Constitution which we discussed a few evenings ago. Those dreams that were discussed a couple of evenings ago call for the kinds of solutions that are committed by the United States supreme court.

These solutions are Hawaii's solutions for Hawaii's problems. Thank you.

CHAIRMAN: The Chair recognizes Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, I speak in favor of this amendment and in opposition to state control and management of population growth, as a new section in our Constitution. I admit that any reasonable government will estimate population growth and plan for it. That is prudent. Considerable planning is already being done by the State, including the recent adoption of the Hawaii State Plan. Thus a constitutional requirement to plan is unnecessary.

The meaning of population management is less clear, and its ramifications more objectionable. In the first place, I favor population to be managed by the choices of individual citizens rather than by laws and limits adopted by government. I prefer a free and open market where the law of supply and demand allocates population. As Delegate Shon has aptly pointed out, the high price of housing tends to limit the growth of population. The only other method of allocation is by government-granted privilege or restriction. In this type of state-managed system, rather than looking in the want ads to find a home, one must apply to a board, get on a waiting list and wait until housing is available and assigned, as is presently the case with Hawaiian homesteads.

Who can say whether this provision would be interpreted to allow the State to require visas for all incoming persons, or work permits for persons seeking employment. Although this hasn't been the case in Hawaii, I am aware of a period when people were not allowed to travel to Alaska unless they had proof that they had employment there. Who is to say whether some time the State would require approval by some state body prior to any transfer or sale of real estate or residence. If you look at the words, "The State shall plan and manage the growth of its population to protect and preserve the public health and welfare," could this not be interpreted broadly to restrict family size or impose more rather than less taxes based upon the number of children in the family? Could this planning and management of population be construed to require mandatory birth control or abortion?

What if the State decided it was in the interest of the public welfare to increase or decrease the proportion of Caucasians, or any other race, in the population. Such manipulation of races might not be constitutional under federal law, but low-income housing, neighborhood redevelopment projects and housing areas restricted by race provide some noteworthy precedents. Who will stop the State from managing population by requiring or encouraging all future growth in the State to be concentrated on Maui or Kauai?

In committee, I raised the objection to this section that it transfers to the State the duty to manage activities which are now governed by zoning laws. It is a transfer to the State of a power that is presently exercised by the counties. The Chief Planning Officer of the City and County of Honolulu, Ramon Duran, spoke with the city's First Deputy Corporation Counsel, who said that the meaning of this section is not clear. It could be construed to mean that the State will have the requirement to manage incoming population and welfare residency. It may also affect zoning and subdivision regulation. Should the attorney general rule that zoning be done by the State, the counties would have little recourse.

Because of the difficulty in precisely defining the intent or the terms of this proposed section, and because I believe government should intrude less into my personal life, and because I object to having government plan and manage that part of the population which is represented by me and my family, I urge you to vote in favor of this amendment.

DELEGATE HARRIS: Point of information.

CHAIRMAN: Delegate Harris, you've already spoken twice.

DELEGATE HARRIS: Point of information.

CHAIRMAN: State your point.

DELEGATE HARRIS: The honorable delegate raised a point as to what powers does this give the State. I would like to say that it is not my understanding--that it doesn't give the State any powers. It is a mandate to the State to handle the problem.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against this proposed amendment, precisely for the reason Delegate Harris was about to mention. What this proposal does is merely mandate the State to deal with a particular problem that we are facing in Hawaii. It does not increase any powers that the State now has. Obviously the State cannot do what is unlawful, it cannot do something that would be unconstitutional. This provision merely says that it is an expression by the people of Hawaii mandating the State to plan for and manage the growth of the future population. The specific devices that this mandate would be implemented by would be left to the legislature. The legislature would have to pass laws on how to do it. The legislature would pass laws to implement a state plan. The legislature would pass laws on what role the counties would play, or could play. In doing that, I'm sure the legislature could not then violate the constitutional provisions guarding the integrity of the counties. Therefore I think we are talking about a lot of red herrings tonight. All we're doing by passing this provision is establishing a priority concern for our legislature to deal with.

As far as whether this provision in and of itself mandates the population be spread to the neighbor islands, I think that's another red herring. It could very well be that, in the interests of good population planning, that the future growth and urbanization of this State be limited to Oahu where it now stands. There are planners and plans that would advocate that. All agricultural lands would be preserved--that would be a way of controlling the population growth. I don't think any good planner would tell you that the way to plan and control population growth would be to disperse everybody all over the place. If you're going to have open space, you need to protect it. If you're going to have a rural environment on Maui or Kauai or Hawaii, you ought to protect it. This is the kind of priority the provision would establish.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I would like to speak for the amendment. I realize I'm wasting my time speaking after Delegate Waihee, but I would like to bring up a few points that were not brought up. Many of the things I was going to say have already been said. The argument that Delegate Waihee made is really the argument I would have used for voting for the amendment. The State already has the power, and if we keep the language recommended by the committee we are mandating a power. I notice in many sections of the committee's report they did not mandate, they did not use the word "shall." Even in the very fundamental section, we had to amend the committee's report to get the words "shall provide for...public health" back. And in all other sections of the committee report they have said, "...shall have power to..." when they already have the power to do all these things. One of the concerns of the committee that is repeated over and over again--

DELEGATE SOUKI: Point of order, Mr. Chairman. I believe--

DELEGATE HALE: I am speaking. I don't think I'm out of order. I'm speaking for the amendment.

CHAIRMAN: Just a moment. Delegate Souki, state your point.

DELEGATE SOUKI: I believe Delegate Hale is speaking on her proposed amendment.

DELEGATE HALE: I am speaking on the amendment proposed by Delegate DiBianco.

CHAIRMAN: Continue.

DELEGATE HALE: Thank you. If this fails I have another one, but I'm not speaking on that one yet. What I am saying is that in the public health committee there is constant reference to giving the authority to sue if you do not do some of these things. I'm questioning whether a mandate would give the power to sue. The committee report does not address it in this section, but it does address it in the section on public safety, and in others.

The other thing I would like to point out is that I'm a member of the Committee on Local Government. And that committee has before you for first reading--and you haven't had time to look at it yet--we have recommended a change for land use, in which we are suggesting that reclassification of land use to urban shall be subject to approval by the county in which the land exists. I would respectfully ask you to consider whether

we are not doing two separate and different things--that by giving the State the mandate to manage population control, which as other delegates have pointed out is a matter mainly of how our urban areas are going to develop--whether we are not, at the same time, contradicting the suggestion that local government has come up with.

I maintain that the counties and the State have been planning for many years. Population increases on our island, population decreases on Oahu are problems that local people have been very concerned with. We do have plans--we are planning. It is the stated objective of our governor to manage state population. Why do we want to mandate this to the legislature, which might give a citizen a chance to go to the State with limited resources and say that he is going to take the State to court because he doesn't think the State is managing the population growth. There are many questions that we have not answered. We should be very careful about adding things to the Constitution that don't give additional powers but might create additional problems.

CHAIRMAN: Thank you very much. The Chair recognizes Delegate Hokama.

DELEGATE HOKAMA: Thank you, Mr. Chairman. I would like to speak against this amendment introduced by Delegate DiBianco. I for one am a strong proponent of state management of population. Delegates Harris and Waihee have expressed my feelings very adequately. I see in the future--whether near or far--that Hawaii is looked upon as a state which does initiate programs and policies that are beneficial to the citizenship and beneficial to those who visit the State. I for one feel very strongly, Mr. Chairman and fellow members, that should the State, by constitutional mandate, not carry out this policy, there will be a time when governments of the state or country or other nations in the world will have to impose drastic means to come to grips with the limited resources available.

There may be a time when you will find a nation imposing automatic death at age 55. You may see a time when families, after one or two children, will be faced with automatic sterilization. There may be a time when children will not be a tax-deductible item, but a tax-incurred item. If we are to plan for the future, let us plan wisely. I feel as the policy statement, as Committee Proposal No. 5 states, that we must come to grips with this problem immediately and impose those programs that will not force any government agency to have to impose such strict and unreasonable regulations. For these reasons, I recommend that you vote this amendment down.

CHAIRMAN: Delegates, I would like to caution you that it is nearing midnight. If you have any other discussion, keep it short. I would like to see this amendment acted upon. Anyone else who would like to speak? Delegate DiBianco, I'll ask you to be the last speaker for this amendment.

DELEGATE DIBIANCO: Thank you. I was going to thank those delegates who remained in their seats, but then I noticed that the only reason they were staying was because they were asleep. This won't be as much a speech as just touching on some points in rebuttal to what various delegates have said. Some of you may have been discerning enough to notice that I haven't gotten too much support for my amendment--many of the speakers have spoken against it. Contrary to what one of the delegates said, I would caution you in thinking that just because many of you got up and said you represented parts of the State that somehow you've proven that this State has a compelling state interest in limiting its population growth. The U.S. supreme court would not say that Hawaii can limit people's right to travel. If that argument were valid, there's an awful lot of places on the mainland that would have limited their population a long time ago. The right to travel is so sacred to our federalist principles that you will never find the U.S. supreme court upholding any laws that deal with it.

I also want to caution you against expressions you've heard that all we're doing here is establishing a priority, or mandating the State to please give attention to the question of population growth. What you are actually doing here is starting out with a wholly new constitutional concept and giving the legislature a mandate to limit population growth in ways that we can only surmise. I think Delegate Hokama, in speaking against my motion, brought forth some of the very probable ways in which the State may be forced to deal with population growth if it is ordered by this Constitutional Convention to deal with it. It may have to limit family size and things of that sort, which is not what I think the people in this room intended. The outer island delegates--I beg to differ with them,

I think they are wrong; this provision can clearly be interpreted to mean that the State will manage its population growth by sending various segments of the population to the other islands by encouraging the growth of industry on those islands. I beg to differ with anybody who says that is not true. Even if you put language in here that says, "The State and its political subdivisions shall manage the population growth..." if the State should decide to move people to the outer islands, there is nothing a county could do about it because the State is the supreme law of the land. What the State says, even if contradicted by the counties, is still law.

Just one or two more points. What you're doing if you limit population growth-- you're not going to keep people out. As this place becomes more expensive, it still hasn't kept people out. What you're going to do is increase competition for land, increase competition for water meters, and in that kind of competition it's the rich who always win out. If you limit the amount of urban land by making a lot of land agricultural, and ruling that it will always be agricultural, you just make the urban land that much more expensive. You are going to turn Hawaii into a playground for the rich. I thank you for your patience and the debate on this particular matter.

CHAIRMAN: Thank you, Delegate DiBianco.

DELEGATE BARR: Mr. Chairman, I call for a roll-call vote.

CHAIRMAN: There has been a request for a roll-call vote. Those wishing a roll-call vote, please stand. A roll-call vote is ordered.

DELEGATE TAIRA: Mr. Chairman, point of order.

CHAIRMAN: State your point.

DELEGATE TAIRA: Mr. Chairman, how many delegates are present?

CHAIRMAN: Mr. Clerk?

CLERK: It's difficult to say at this time, Mr. Chairman.

CHAIRMAN: Thank you. The motion is to amend by deleting the entire section entitled "Management of State Population Growth." Roll call will--

DELEGATE DONALD CHING: Mr. Chairman, would you ask that the delegates speak loudly when voting, since we know a lot of them are not around.

CHAIRMAN: Will the delegates all speak loudly, please, and use your mike when voting.

DELEGATE STEGMAIER: Mr. Chairman, could you repeat the exact motion? There has been a little confusion about that.

CHAIRMAN: The motion is to amend by deleting the entire section entitled "Management of State Population Growth." You must be seated in order to vote. Mr. Clerk, will you begin.

Roll call having been ordered, the motion to amend Committee Proposal No. 5 failed to carry by a vote of 24 ayes, 73 noes and 5 excused; with Delegates Alcon, Anae, Andrews, Barr, Blake, Blean, Burgess, DiBianco, Dyer, Eastvold, Ellis, Fernandes Salling, Goodenow, Hale, Hanaïke, Kono, Lacy, Rachel Lee, McCall, Miller, Peterson, Pulham, Takitani and Wurdeman voting aye; Delegates Barnard, Barnes, Cabral, Campbell, Chang, Calvin Ching, Donald Ching, Haunani Ching, Chong, Chu, Chun, Chung, Crozier, de Costa, Fujimoto, Fukunaga, Funakoshi, Fushikoshi, Hagino, Harris, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hoe, Hokama, Hornick, Dennis Ihara, Les Ihara, Teruo Ihara, Ishikawa, Iwamoto, Izu, Kaapu, Kaito, Kimball, Kojima, Ledward, Marion Lee, Lewis, Liu, Marumoto, Nakamura, Nishimoto, Nozaki, Odanaka, Okamura, Ontai, O'Toole, Paty, Sákima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Sterling, Stone, Sutton, Taira, Takahashi, Takehara, Takemoto, Tam, Tamayori, Villaverde, Waihee, Weatherwax, Yamashita, Yoshimura and Chairman Uyehara voting no; and Delegates Laura Ching, De Soto, Hamilton, Ikeda and Penebacker being excused.

CHAIRMAN: The motion is defeated. Delegate Hale.

DELEGATE HALE: I move that we rise and report that we are making progress on Committee Proposal No. 5 and ask leave of the assembly to continue our Committee of the Whole discussion at a later time.

DELEGATE SUTTON: I second.

CHAIRMAN: It has been moved and seconded that we rise and report to the Convention that more time is required for consideration of Committee Proposal No. 5. All those in favor signify by raising your right hands. All those opposed use the same sign. The motion is carried.

At 11:52 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Tuesday, August 22, 1978 • Evening Session

The Committee of the Whole was called to order at 7:18 p.m.

Delegate Uyehara presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The first business in order on Committee Proposal No. 5 at this time is to consider Amendment No. 5, which has been substituted with the revised amendment before you. At this time the Chair will recognize Delegate Harris.

DELEGATE HARRIS: Thank you, Mr. Chairman. I move we amend Committee Proposal No. 5, the section under item 6, to read: "The State and its political subdivisions, as provided by general law, shall plan and manage the growth of the population to protect and preserve the public health and welfare, except that each political subdivision, as provided by general law, may plan and manage the growth of its population in a more restrictive manner than the State."

DELEGATE WAIHEE: Mr. Chairman, I second the motion.

CHAIRMAN: The motion has been moved and seconded to amend Committee Proposal No. 5 by inserting after the word "State" the words "and its political subdivisions, as provided by general law," and after the word "welfare" the following: "except that each political subdivision, as provided by general law, may plan and manage the growth of its population in a more restrictive manner than the State." The Chair recognizes Delegate Harris.

DELEGATE HARRIS: I believe this amendment solves the problems that were raised last evening concerning this section. I believe that this entire section mandating the State to plan and manage the growth of its population is of vital importance to the people of Hawaii. I agree the State must have the ultimate authority and responsibility to manage its growth, but not with total disregard for each county's rights and responsibilities to manage its growth.

This provision would allow the State to develop a framework for growth management, while providing the counties the power and the mandate to manage their growth within the state framework. Uncontrolled growth creates problems at all levels of government; as a result, all levels of government must have a clear mandate to deal with it. I urge the delegation to approve this amendment.

CHAIRMAN: Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: Mr. Chairman, I concur with the amendment proposed by Delegate Harris. I feel this amendment adequately addresses the concerns of the counties and places this concern in the Constitution.

CHAIRMAN: Thank you. Is there further discussion? Delegate DiBianco.

DELEGATE DiBIANCO: I was wondering if the maker of the motion would yield to a question.

CHAIRMAN: Delegate Harris, will you yield?

DELEGATE HARRIS: I yield.

CHAIRMAN: All right. You may speak, Delegate DiBianco.

DELEGATE DiBIANCO: I just wanted to know whether this section would permit each county to pass laws directing, for example, that in the interest of population growth there will be no state prisons erected within the borders of that particular county. If all four counties passed ordinances to that effect, where would we put the state prison? What if each county in the interest of population management allowed only a 1-percent increase in their county population each year, when we know the increase for the State is 2 percent? Where would the other 1 percent go? Would people have to send their children off island to be nurtured and raised?

DELEGATE HARRIS: The delegate from the windward side raises some very interesting questions. I don't believe at all that these are possibilities. Certainly this does not cause constitutional problems. This in no way empowers the State or counties to pass laws or engage in activities that are contrary to the Constitution. It's also clear that existing state statutes take precedence over any county regulation. So, not knowing very much about the prison system, I won't go into anything in greater detail. I don't, however, believe your fears are well founded, delegate.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Mr. Chairman, I have a problem that maybe you could help me with. I have an amendment to Committee Proposal No. 5 that covers this same area, and I feel that maybe it should be discussed at the same time. I wonder if it would be proper procedure if I could just put an amendment with this--combining the idea of my amendment--and amend this, and we could vote on my idea and clear that up. Then we won't have the problem of taking up my amendment later.

CHAIRMAN: You may make your amendment.

DELEGATE HALE: Then I would like to amend Committee Proposal No. 5 by adding the words "have the power to" after the word "shall" in the first sentence, second line of Delegate Harris' amendment. In other words, it would now read: "The State and its political subdivisions...shall have the power to plan and manage...."

CHAIRMAN: Thank you. Is there a second?

DELEGATE DiBIANCO: I second the motion.

CHAIRMAN: It has been moved and seconded to amend the amendment by inserting the words "have the power to" after the word "shall" in the first sentence.

DELEGATE HALE: I would like to speak for my amendment.

CHAIRMAN: Does this mean we'll disregard the other?

DELEGATE HALE: That's right. It would be out of order. I feel the best way is to make it an amendment to this.

The reason I would like to add those words is to be consistent with the rest of the committee proposal, which did give powers to the State in these same words--under Article VIII, Section 5, where it reads: "The State shall have the power to...provide for public sightliness..." and in the same article, the new section reads: "The State shall have the power to promote and maintain a healthful environment..." And under "Cultural Resources," it states: "The State shall have the power to..." All three of the amendments on the last page use those words.

I feel that by adding these words we are perhaps saving the State from the expense of litigation, as indicated in the committee report where it points out that by basically giving the State the power to do something rather than mandating their doing it, we are not putting the State in a position that would make it more liable to suits for not carrying out a mandate. Whereas giving a power--that power is something that they probably already have in all of these areas. But we're putting it into the Constitution as a policy that this group has decided might be desirable if the people should approve it.

I would like to point out that some of the problems we have when we mandate the State to do this--these problems were adequately pointed out last night, and I don't want to belabor them--but I would just like to remind you that we might be doing something to individual family planning if it comes to the point where the population is growing too large. We might be violating the Constitution if we go too deeply into areas by telling people where they can travel. But, beyond that a more immediate problem we face is that we might be undermining our presently largest, most important industry--the visitor industry.

By giving visitors the impression that our State does not welcome them, how then are we going to provide the services our people want, particularly in these fields of health and welfare, environmental control, and cultural resources and development? Where are we going to find the money to do these things if we're going to undermine the industry that now provides us this money? The wording we use will get national attention. As has been said many times, Hawaii's Constitution is a model for other states, and this could, I feel, do us a disservice that we really didn't intend.

I would also like to point out that the 1950 convention--I remember that our State in the 1950s was facing a very different kind of problem than we have now. We're talking about population control now. My Island is much like the State of Hawaii was in the 1950s. We were looking for development. We were looking for growth. We were looking for ways in which we would not be 100 percent dependent on such things as sugar and pineapple and the military. The problem then was that our young people were all going off to the mainland; at that time they were leaving the State in droves, not coming in. It could be that someday we will face this problem again, and it might be in the not-too-distant future. I would like to warn you about the use of words and ask you to seriously consider adding these words to this provision. It would then be consistent with the rest of the committee proposal, with the other sections in Article VIII, in giving the power needed and giving the State the direction needed, but it would not tie us down to something we wouldn't want in a few years.

CHAIRMAN: The Chair recognizes Delegate Souki.

DELEGATE SOUKI: Thank you, Mr. Chairman. Mr. Chairman and fellow delegates, it pains me to speak against this motion. It attempts to meet most of the concerns of the neighbor islanders and the respective counties of the State; however, I see a major flaw in it. The flaw is in this word "restrictive." Who can tell how the respective counties will fare in the future or that the respective counties will need more economic--

DELEGATE HALE: Mr. Chairman, point of order. He's not speaking on my amendment.

DELEGATE SOUKI: Yes, Mr. Chairman, I would agree.

CHAIRMAN: I recognize Delegate Harris.

DELEGATE HARRIS: I would like to speak against the amendment to the amendment. First of all, it isn't just a question of a few words or softening the force of the article. To add the words "shall have the power to" totally changes the meaning and the intent of the entire section. By adding these words, it makes the section mean that we are giving the State power. That isn't the intent of the section at all. The intent of the section is not to give the State power, it in no way gives the State power. It tells the State that this is a problem, work on it. That's the intent of my amendment. To add the word "power" totally changes the intent, to the point that it is inconsistent with the rest of this section.

I'll remind the delegates that just last evening we reversed Section 1 and put it back the way it was originally, so that it would read: "The State shall provide for the protection and promotion of the public health." We did that for a very good reason.

As it read before, "have the power to" was not our intention. The State already has the power to provide for public health. Our intention for changing that last night was to give the State a clear mandate to provide for public health. This is exactly what we're trying to do with this problem of population growth. So, if we're looking at other sections in the article, we'll see that this is consistent with Section 1. Some of the other sections, I agree, do read "shall have the power to," and it's because the intent of those sections is to empower the State. This section does.

CHAIRMAN: Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: Mr. Chairman, I rise to speak against the proposed amendment. The committee placed a mandate on the State to insure that the State will implement and carry out this program, which is planned to control the growth of our population.

Due to our limited land area and our ever-increasing population, the concerns addressed in the section under item 6 of Committee Proposal No. 5 should be of top priority in the State's activities. Thus, I recommend that the mandate not be removed, as is proposed by Delegate Hale.

CHAIRMAN: Is there further discussion? There being none--

DELEGATE HALE: Mr. Chairman, may I speak one more time?

CHAIRMAN: You may speak one more time.

DELEGATE HALE: Thank you. I would just like to point out to the delegates that in Section 1 we did not change anything. We just went back to the original Constitution. From the very beginning of our State, it was felt that the government had a responsibility in the field of public health. The committee report had changed the responsibility in this field to just having the power. I'm sure they realized that that was probably what they had intended and agreed to the amendment to change it back to what it had been. But the change we made there was just putting it back the way it had always been in our Constitution.

This is a new change, this is a new idea that we're considering. I just urge you to please give it serious consideration. It will change the meaning, I agree. It will not make it a mandate, it will make it a guide and a direction. At this stage, until we really know what we're getting into, that is what this Convention should do.

CHAIRMAN: Is there further discussion? The question on the floor is to amend the amendment to insert the words "have the power to" between "shall" and "plan."

DELEGATE HALE: I would like to ask for a roll call.

CHAIRMAN: Roll-call vote has been called for. Are there ten seconds? There aren't enough seconds. All those in favor will signify by raising their right hands. All those opposed? The noes have it. The amendment to the amendment is lost.

At this time, we will go back to the original amendment. Is there any discussion on the original amendment? Delegate Waihee.

DELEGATE WAIHEE: I rise to speak in favor of this amendment. I believe it takes care of some of the concerns that were voiced last night by the neighbor island delegates. What this amendment does is simply to mandate the counties as well as the State to deal with the problem of population--to deal with these problems within the context of the present power allocation to the counties and State.

Now, as far as the last statement is concerned--where it says they may do it in a more restrictive manner--that is a discretionary power that could be granted to the counties by the State, allowing them to take firmer control of their land area if they so desire. If they do not wish to do this, they are not being compelled to. For this reason, I would support this mandate.

CHAIRMAN: Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, I speak in favor of the amendment on the table now. Last night there were a few remarks passed along and I don't know whether I was classified as a red herring, but I'm a silver-blue akule today. I thank you all.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I rise to speak against the proposed amendment. We should read this language very carefully, because where it does give the option to the counties to be more restrictive than the State--that's the whole problem. If each of the counties exercises its option and makes ordinances and regulations that are more restrictive than the State has provided for, you may have a situation in which each county is trying to push its population off onto the county next to it. You cannot put into a Constitution a situation whereby the various counties have more power than the State itself. That's what you are doing with the last part of the sentence. It was okay the way it was yesterday--the language, that is. When you say that the counties shall have the right to create more restrictive powers than the State, you are giving them power that is going to cause a lot of intercounty rivalry and disputation. You're giving them a constitutional mandate to go ahead and have all these problems. You'd better reread this language.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: I rise to speak in favor of this. I think the previous speaker had better read it much more closely because it sounds exactly the opposite. In fact, the language that was submitted last night would have raised the question of counties perhaps acting in a coequal manner in planning and managing population growth.

The language in there now, if it is read carefully, stipulates, "... as provided by general law . . ." In two places it is stipulated, "... as provided by general law . . ." With these provisions, in no way could all of the counties acting independently prevent the placement of a prison or anything else. This language does in fact reconcile the priorities of state planning with the needs of the counties. This language was worked on very diligently all day long, having had consultations with many different attorneys, many different opinions, and it is totally the opposite of what was noted by the previous speaker. I would urge you all to support this amendment.

CHAIRMAN: Delegate Souki.

DELEGATE SOUKI: I would like to go on record that I yield to the eloquence of the speakers who are speaking for the amendment.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I don't intend to belabor the point, but I do just want it known, for the record, that I tried to offer what I thought was a compromise. I tried to be reasonable. I was with Delegate DiBianco on his original proposal to delete it, and I felt that since it was the will of the majority to go along with it, I would try to get something that was workable. But, since we're not willing to go along, I want the record to state that I very much oppose this. It's very dangerous. It's leading us along a path that is going we really don't know where.

CHAIRMAN: Is there further discussion? Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman and fellow delegates, I really think we should get back to basics. We should start out with the basic assumption of what we're doing here. This is a Con--

DELEGATE VILLAVERDE: Mr. Chairman, point of order. Is he speaking for or against?

CHAIRMAN: Excuse me, Delegate Burgess, are you speaking for or against the motion?

DELEGATE BURGESS: I speak against the amendment. I think we should remember that we're here to deal with the Constitution. A constitution is a basic document. It sets forth the structure of government. It sets forth what the government limitations

are. That's basically all that a constitution does and all it's supposed to do. We are not legislators. We are not super-legislators. If we try to set ourselves up as legislators, we will dilute our purpose.

Now, it was agreed when we discussed this last night that this provision does not give the State or any agency of the State any power that it does not have already. During the debate it became clear that the purpose of this--and the only purpose--was to mandate the legislature to take certain action relating to population growth. I submit to you, ladies and gentlemen, that it is not our purpose to mandate the legislature on what it should or should not do on specific issues of policy or legislation. If we do this, then the barn door is open. Why don't we then decide whether or not we should mandate the legislature to do any variety of things.

For example, why don't we take a position on abortion and tell the legislature what it should or should not do. Why don't we say what our opinion is on the death penalty. While we're at it, let's talk about fluoridation of water, and antivivisection--that used to be a hot issue. Why don't we instruct the City and County of Honolulu to take action or not take action on rapid transit. Ladies and gentlemen, we're getting out of our kuleana. I urge you to seriously consider what we're doing and to vote against this amendment.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: I'm speaking in favor of the amendment. The language seems quite clear to me. What this intends to do is focus the legislature's attention on the problem. Speaking as a former chairman of the Hawaii county planning commission, it's going to put it right in their lap, as it is intended.

In the planning practices between the county and the State, one of the great problems we've had in this Convention has been because so much of the precedent is established by appointed committees, such as the state Land Use Commission and the Department of Land and Natural Resources. It's very difficult, when you have a case, to go before these boards. They are not elected, yet they have so much power.

This proposal puts it squarely where it belongs--in the hands of the legislature. We have a preponderance of precedent invested in the hands and authority of appointed commissions. Thank you.

CHAIRMAN: Thank you. Is there further discussion? Delegate Hokama.

DELEGATE HOKAMA: Thank you, Mr. Chairman. I speak against this amendment. This says nothing that the original statement doesn't say; it says the political subdivision will plan and manage its growth, as provided by general law. If the legislature does not want to include any legislation to provide for the subdivisions to carry out such programs, the counties will be in the same position they are in under the original proposition.

CHAIRMAN: I recognize Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I speak again on this amendment. I would like to use an argument that I have heard so often in the Convention. This amendment is not really our mandate to the legislature, all we are offering here is an opportunity for the people of Hawaii to vote on whether they would like to mandate the legislature to do this. Thank you.

CHAIRMAN: Is there anyone else who would like to speak for the second time? Delegate Wurdeman.

DELEGATE WURDEMAN: I would like to speak against the amendment. The reason I speak against it is because I'm finding that the legislature is having problems with the application of general law, especially in the case of the City and County of Honolulu. In several instances they have based this general law on a classification system, and it has always applied to those counties that have a population of 100,000 or more. If that is a factor, then I really don't think that it is the general law. Under the circumstances I have to vote against this.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: Mr. Chairman, I rise to speak in favor of the amendment, for the following reason--I am an advocate of home rule. I think the counties ought to have more power. In a way, this amendment does provide for and acknowledge home rule for the counties. That's good, so therefore I speak in favor of it.

CHAIRMAN: Is there further discussion? Delegate DiBianco.

DELEGATE DIBIANCO: Mr. Chairman, in deference to the delegate who spoke immediately after me the first time, I went back and reread the section and I'm still convinced that the language is in error. Careful reading will indicate that if the legislature, through general law, authorizes the counties to restrict or limit population growth in any way and all the counties were to act upon the authority given to them by general law, disputes are going to arise between counties.

The question then arises--where are all the people going to go that each county is trying to shove off on the county next to it? It is true, as Delegate Waihee has pointed out, that we are not making laws here and that we are making proposals for the people to decide upon. I, for one, certainly urge that we err on the side of giving proposals to the people, despite that it may make for a lengthy ballot. However, we do have to give them proposals that are consistent with the federal Constitution, and this particular proposal raises a lot of equal protection problems, when you consider that one county may provide water meters for \$10 a house and another county may provide them for \$10,000 a house and make 1-year waiting lists the rule. You are not going to have the same kind of equal treatment within the confines and boundaries of the State. You've got equal protection and due process problems under the Fourteenth Amendment of the United States Constitution. We should not be putting this sort of thing on the ballot.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Mr. Chairman, I would like to ask the Chair if it would put a question, please, to Delegate Waihee for me. I'm now in a real quandary after what Delegate Waihee said. If he has really changed his philosophy and he believes in putting things on the ballot--

DELEGATE DE SOTO: Point of order, Mr. Chairman.

DELEGATE HALE: I'm serious. I want to know how to vote. I ask you, Mr. Chairman, if you will ask Delegate Waihee. If he wants to answer, that's his prerogative.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE WAIHEE: It was merely a plea for those delegates who espouse that philosophy to--

DELEGATE HALE: It's not your philosophy then. Thank you.

CHAIRMAN: Is there further discussion? Delegate Tam.

DELEGATE TAM: Mr. Chairman, I would like to speak in favor of this amendment. I would like to thank the people who have offered this and the spirit of compromise in which it was offered. I thank them for the concern that was expressed last night. Though we on the neighbor islands may not have as much of a voice in government as the people on Oahu have, we are able to find a plan that might be used to spread out the population to the outer islands. I note that it does say that the State and its political subdivisions will plan and manage. This indicates to me that there shall be a cooperative effort between the State and the counties.

I also note that it uses the words "to protect and preserve the public health and welfare." I interpret that to mean that, in fact, this is not just the public health and welfare of Oahu, but the public health and welfare of the counties of Kauai, Niihau, Maui and the Big Island. I look at this as recognition that those of us on the neighbor islands should have a say in planning and managing the growth of the population because, in fact, it's the people who live out there who know best what the problems are.

Finally, I speak again in favor of this in that it recognizes that whatever the growth

or management of population is, it will be looked on as a whole and will not be contrary to the will of the 'ohana or other groups in our islands and not meant to destroy our lifestyle.

CHAIRMAN: Thank you. Would the delegates keep it short if you have no new materials to provide. The Chair recognizes Delegate Wurdeman.

DELEGATE WURDEMAN: Point of inquiry.

CHAIRMAN: State your point.

DELEGATE WURDEMAN: Thank you, Mr. Chairman. I would like legal information on what the definition of "general law" is. It has been interpreted in many different ways, and I really have a problem trying to vote for this right now.

CHAIRMAN: The proposal was laid on the table this afternoon and you had time to research that.

DELEGATE WURDEMAN: I have had time to look at it. I'm still having a problem with the definition. I understand that the legislature is also finding a problem with the definition. I would like a legal opinion on it, Mr. Chairman.

CHAIRMAN: If there is no objection, I will call a short recess.

At 7:55 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 7:58 p.m.

CHAIRMAN: Delegates, please take your seats. Legal opinion has been given. The Chair recognizes Delegate Wurdeman.

DELEGATE WURDEMAN: Thank you, Mr. Chairman. I would again like to speak against this motion. I have found out through experience that the legislature is having problems in the definition of "general law." I would like to use an example here.

A bond dealer--automobile dealer--would have to put up, by definition of general law, \$10,000 more than someone in an area with a population of less than 200,000. This was in Act 92 that was passed in 1978. The legislature has done this in several other instances, and because of this I'm having problems with the wording. I think that all other people should consider something like this, as it would affect all of you.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: Point of personal privilege.

CHAIRMAN: State your point.

DELEGATE HARRIS: I would like to request that I be allowed to address my amendment last.

CHAIRMAN: If there are no other speakers, I will recognize Delegate Harris.

DELEGATE HARRIS: Thank you, Mr. Chairman. It seems that some of the main arguments offered against this amendment by the delegate from the windward side are that it is unconstitutional and the counties and the State would go off doing unconstitutional things such as charging \$10,000 for a water meter here and \$10 there.

I want to make it clear. This proposal does not read: "The State and its political subdivisions shall use unconstitutional means to plan and manage the growth of its population." All it says is that they shall do it. Of course, they must use constitutional and legal means to do it. If they violate the law, as if anybody violates the law, they will be called to answer for it. This in no way is unconstitutional. It mandates them to do it, and of course they have to do it within the context of the law--within the context of the United States Constitution. So the argument that it's unconstitutional and that unconstitutional things will result is, I believe, a red herring.

The other argument is concerning general law--we worked for many hours with the LRB attorneys today, and I will just share with the delegation that I am totally satisfied that there is no confusion and no question about the meaning. I urge all the delegates to support this amendment.

CHAIRMAN: Thank you. The question before the house is to amend and insert the words "and its political subdivisions, as provided by general law," after the word "State" in the sixth section of Committee Proposal No. 5 and the words "except that each political subdivision, as provided by general law, may plan and manage the growth of its population in a more restrictive manner than the State," after the word "welfare."

DELEGATE HALE: May we have a roll call?

CHAIRMAN: Did you call for a roll-call vote?

DELEGATE HALE: Yes, point of information. When is the proper time to take a roll call?

CHAIRMAN: After I finish reading the amendment. Are there ten seconds? There are ten seconds. Mr. Clerk, read the roll, please.

Roll call having been ordered, Delegate Harris' motion to amend Committee Proposal No. 5 carried by a vote of 76 ayes, 24 noes and 2 excused; with Delegates Alcon, Andrews, Barnard, Barnes, Blake, Blean, Cabral, Campbell, Chang, Calvin Ching, Donald Ching, Laura Ching, Chong, Chu, Chun, Chung, de Costa, De Soto, Eastvold, Fernandes Salling, Fujimoto, Fukunaga, Funakoshi, Fushikoshi, Goodenow, Hagino, Harris, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hoe, Hornick, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Kaapu, Kimball, Kojima, Lacy, Ledward, Marion Lee, Rachel Lee, Liu, McCall, Odanaka, Okamura, Ontai, O'Toole, Paty, Penebacker, Pulham, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Sterling, Stone, Sutton, Taira, Takahashi, Takemoto, Tam, Tamayori, Villaverde, Waihee, Yamashita, Yoshimura and Chairman Uyehara voting aye; Delegates Anae, Barr, Burgess, Haunani Ching, Crozier, DiBianco, Dyer, Ellis, Hale, Hamilton, Hanaike, Hokama, Izu, Kaito, Kono, Marumoto, Miller, Nishimoto, Nozaki, Peterson, Takehara, Takitani, Weatherwax and Wurdeman voting no; and Delegates Lewis and Nakamura being excused.

CHAIRMAN: The ayes have it. The amendment passes.

At this time I would like you to withdraw Delegate Hale's amendment, by request. We shall now move on to No. 7--we'll consider this as Amendment No. 7. The Chair recognizes the maker of this amendment, Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I move to amend Committee Proposal No. 5, page 3, line 5, to insert the word "creative" following the word "cultural." This is in the new section entitled "Cultural Resources" in Article VIII.

DELEGATE CHANG: I second the motion.

CHAIRMAN: It has been moved and seconded that this section be amended by inserting the word "creative" after the word "cultural" in the second line of the new section entitled "Cultural Resources." Is there any discussion? Delegate Fukunaga.

DELEGATE FUKUNAGA: During the committee's deliberations on this particular section, the committee discussed giving the State power to preserve and develop the cultural, creative and traditional arts. I believe the word "creative" was inadvertently left out of the committee proposal when it was typed up with the committee report.

CHAIRMAN: Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: I agree with the delegate who introduced this amendment. Our committee did make an error by not inserting the word "creative." I urge the members to vote for this amendment.

CHAIRMAN: This is an editorial change, a minor change. Is there a move for the

question? Further discussion? Being none, it has been moved and seconded that the word "creative" be inserted in this section, to read: "The State shall have the power to preserve and develop the cultural, creative, and traditional arts, and historical places and objects of its various ethnic groups." All those in favor signify by saying aye. Opposed, no. The ayes have it. The amendment is carried.

Amendment No. 8 has been withdrawn at Delegate Harris' request. At this time, the Chair recognizes the maker of Amendment No. 9, Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I wish to amend Article VIII by inserting new language in the section on security of the elderly. After the words "to provide for the," the new language would read, "security of the elderly by establishing and promoting programs to assure their economic and social well-being."

DELEGATE HOKAMA: Second.

CHAIRMAN: It has been moved and seconded to amend the new section in Article VIII to read: "The State shall have the power to provide for the security of the elderly by establishing and promoting programs to assure their economic and social well-being." Delegate Souki, you may be the first to speak.

DELEGATE SOUKI: I wish to speak for the amendment. The reason for the change is to note the distinction between the elderly who have retired and those who have not, and to avoid the use of language that could be construed as vague. The language questioned was "... assure retirement in health, honor and dignity." We felt we might have some problems in attempting to evaluate those particular words.

CHAIRMAN: Is there further discussion? Delegate Ching.

DELEGATE HAUNANI CHING: Thank you, Mr. Chairman. I rise to speak in favor of the new section relating to the elderly, as proposed in Standing Committee Report No. 36. The committee recommends passage of this new section because such a policy statement will demonstrate the importance of this area and will encourage the legislature to grant a higher priority in the allocation of the State's fiscal resources for services to both the present and future generations of Hawaii's elderly.

In 1974, the legislature enacted Act 225 in response to public testimony and concern about the growing demands and serious gaps in activities and programs for Hawaii's elderly. This piece of legislation mandated the commission on aging to develop a comprehensive master plan for the elderly. The study, and its conclusions and recommendations, broke new ground for the development of programs to meet the basic physical, social, economic, health, educational and communal development needs of Hawaii's elderly. In 1976, the legislature enacted Act 217, creating an executive office on aging. The office's responsibility was directed toward the continuous development and implementation of the comprehensive master plan for the elderly, to establish a state policy for senior citizens. This was the catalyst in the development of coordinated programs on both a statewide and a local basis.

In our recent public hearing on Maui, a senior citizen, Mr. James Ohashi, addressed the body and expressed his personal views on the subject of the elderly. The feeling was that the elderly have almost been forgotten in our society and that there was a need to reevaluate the status and the problems of the elderly in Hawaii. His closing remarks were directed to the Constitutional Convention--that in our deliberations we keep the senior citizens in mind, because they would be around for only a little while longer.

In conclusion I would like to say that, by adding this section, we will recognize the problems of the elderly in Hawaii and will instill in our minds that we have got to do better. Thank you.

CHAIRMAN: The Chair recognizes Delegate Ellis.

DELEGATE ELLIS: I would like to rise, along with Delegate McCall, to declare a conflict of interest, in being elderly.

CHAIRMAN: Your point is well taken. Delegate Ihara.

DELEGATE DENNIS IHARA: I speak for the amendment. I hope that my fellow delegates will bear with me and dig up the bar graphs that were circulated. Fellow delegates, you will find in front of you on page 1 population pyramids showing in chart form the growth of the elderly population from 1901 through 1961. Those of you familiar with bar graphs will notice that the pyramid for 1961 shows a steady growth in the elderly population. If you will turn to page 2, you'll see a rundown of the elderly populations in all the states and the present estimate of Hawaii's 60+ population--95,698 people. On page 3 you can see that elderly population projections for 1985 and 2000 show steady increases. As you can also see on page 3, you women are greatly affected because you will outlive the men. Nationally, the elderly population increased in size from 4.9 million in 1900 to nearly 7 times that number in 1977--that's 32.8 million. While the population under 60 years of age increased at only 1/4 this rate, the current census bureau projections indicate that the post-World War II baby boom will continue to inflate the aging population.

If you look at the brochure put out by the state executive office on aging, you will find that Hawaii is one of six states with more than 30-percent increase in the over-65 age group since 1970. I direct you back to the bar graphs--to page 4. You will see that the outer islands are heavily affected. While most of the elderly, in terms of numbers, are located on Oahu, the proportion of elderly in the total population on the neighbor islands is nearly double that on Oahu. Thus, while Oahu has 71.1 percent of the total population, an island--for example, Kauai has a heavy concentration at 14.2 percent.

Mr. Andrew Chang of DSSH has repeatedly stated that social security benefits take care of the elderly. But, according to the 1974 comprehensive master plan, which was mentioned by a previous speaker, nearly 1 out of every 5 elderly persons in Hawaii has an income that places him at or below the official U.S. poverty level. The study further says that part of this is traceable to the inadequacies of basic social security benefits.

This proposal is to make a greater commitment by the State. In the same 1974 comprehensive master plan report, the Department of Health estimates that 1 in every 3 elderly persons in Hawaii requires some form of mental health service. One in every 9 elderly persons suffers from mental disorders requiring treatment and therapy, mainly due to the major social and economic adjustments following retirement and increasing isolation resulting from the loss of social contacts with family, relatives and friends. Sooner or later we will all reach the twilight of our years. It is unfortunate that most of us try not to consider this topic, but it is a real and pressing problem. Like good wine, if we want to get better with age, we had better start considering something now. Thank you.

DELEGATE BARR: Point of order, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE BARR: In deference to the last two speakers I did not interrupt, but the issue before us should be the amendment wording versus the other wording and not whether or not we should adopt the concept.

CHAIRMAN: I thank you. Your point is well taken. Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: Mr. Chairman, as chairman of this committee I would like to ask the delegates of this Convention to go along with this amendment because it is a good one, and I would like you to vote for this amendment. Thank you.

CHAIRMAN: The Chair recognizes Delegate Lee.

DELEGATE RACHEL LEE: Mr. Chairman, on behalf of the senior citizens, may I speak?

CHAIRMAN: You may.

DELEGATE RACHEL LEE: Thank you. The previous two delegates have spoken well. However, I would like to speak on the newspaper article which appeared Sunday. I will confine my remarks to the areas of medical and health care. I quoted the figure on low income--1 in every 5 persons [over age 60] has an income that places him below the poverty level. The newspaper article went on: "If you're old, don't get sick." Doctors

give this advice, and you and I know that it is true. Thousands of Hawaii's elderly are being hit with a medical emergency for which there is no miracle drug--it's called inflation.

If you have read the human interest story of Kenji and his wife Gladys, please bear with me, as its implication is the essence of my testimony. We all look forward to and count the years and then days when we can retire and enjoy doing all the things we've always wanted to do--to travel, to take up hobbies we had no time for because we were so busy caring for our children's physical and emotional needs, and later their educational needs. Years later, after the children leave, you are fortunate if you have saved \$10,000. But all it will take is one or two major illnesses and your savings will be wiped out.

Unfortunately, our existing health and medical insurance is not sufficient to take care of long illness, nor does it pay for dental work, eye glasses, hearing aids, immunizations, foot care or routine checkups--all of which are related to the elderly. Unless you are institutionalized, medicare allows only \$250 a year for treatment of psychiatric disorders, of which many elderly become victims. These elderly people were once hardworking, contributing members in society; now that they are no longer serving in this capacity, are we going to abandon them?

Those of you who oppose this proposal for reasons of cost and what it will do to the economy of the State, please do not forget that there are some values and virtues which cannot be measured in terms of dollars and cents. Let's know our priorities. Let's cut off some unnecessary programs in their entirety, or take steps to reduce frills in the operating costs in other programs. To ignore the elderly is a form of discrimination. Job opportunities are available for the young who are poor but willing, whereas for the elderly the doors are closed.

In closing, may I add that for some of you, the day is just around the corner when you will be considered elderly, while for others it will come sooner than you expect--as in my case. Fellow delegates, please vote for this amendment to Committee Proposal No. 5. Mahalo.

CHAIRMAN: Thank you. Is there further discussion?

DELEGATE CHANG: Point of information.

CHAIRMAN: State your point.

DELEGATE CHANG: Just to make sure I don't misunderstand--Amendment No. 9 is being offered as a substitute for the language contained in Committee Proposal No. 5, page 3, lines 10 through 13. Is that correct?

CHAIRMAN: Under the section titled "Economic Security of the Elderly," the changes are found in lines 12 and 13.

The question before the house is to amend the section, "Economic Security of the Elderly," to read as follows: "The State shall have the power to provide for the security of the elderly by establishing and promoting programs to assure their economic and social well-being." All those in favor signify by saying aye. All those opposed say no. The ayes have it. The amendment is carried.

We now move on to Amendment No. 10, which has been introduced by Delegate Laura Ching. At this time, I would recognize Delegate Ching.

DELEGATE LAURA CHING: Mr. Chairman, I move to amend Committee Proposal No. 5 by adding a new section to Article VIII, to read:

"There shall be a mandatory comprehensive health plan providing coverage of comprehensive health care at minimal cost for all persons residing in the State, including protection against excessive health care costs. Under the plan, no person shall pay more than [a certain] percent of the gross income of that person or that person's family for medical care coverage. All persons residing in the State as provided by law shall participate in the plan;

provided that other health plans may provide supplemental coverage. The plan shall be financed through government financing as provided by law and through contributions from employers and employees and other beneficiaries of the plan. The legislature shall establish the comprehensive health plan which shall be maintained by a board of trustees as provided by law. The board of trustees shall recommend to the legislature legislation to reduce medical care costs throughout the State."

DELEGATE NOZAKI: I second the motion.

CHAIRMAN: It is moved and seconded to include in Article VIII a new section called "Mandatory Comprehensive Health Plan." You have it before you. At this time, I will not read the whole section. Is there any discussion? Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, I rise on a point of inquiry. Would the movant yield to a series of questions?

CHAIRMAN: Delegate Ching, will you yield?

DELEGATE LAURA CHING: Yes.

DELEGATE DONALD CHING: Mr. Chairman, my question is simply this: is this an attempt to put into the Constitution what we now have in our state statutes?

CHAIRMAN: Delegate Ching?

DELEGATE LAURA CHING: My intent was to put it into the Constitution--to make it mandatory.

DELEGATE DONALD CHING: In our state statutes? Mr. Chairman, may we have a recess, please?

CHAIRMAN: If there are no objections, we'll take a short recess.

At 8:32 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 8:38 p.m.

CHAIRMAN: Please come to order. The question before the house is Delegate Laura Ching's amendment. Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, during the recess I consulted the movant and found that it was her intention to put into the Constitution--to codify--what we now have in our state statutes. However, examination of the proposal will show that this is really not the truth; between her request to LRB and what was drafted, her intentions were not carried out. I would like to point out that the proposal calls for a mandatory comprehensive health plan which will be state-financed. In our statute books right now, we have a prepaid health act which says that each employer shall provide health insurance to employees in his employ comparable to the best plan that Kaiser or HMSA offers. That is a standard setup in the statute itself. The insurance is paid for by the employer and employee splitting the cost, except that the employee has a maximum amount that he can pay as far as premiums are concerned--I think it's 1 percent of his monthly salary.

I think the intentions, as good as they are by the proponent, are going to be very difficult to administer. It's going to be costly to the State of Hawaii. And another point, the prepaid health care act found in our law books is now in court, having been declared null and void in contravention of the federal statute known as IRISA, which has preempted this in retirement and employee benefits. The State of Hawaii is now appealing the case. If that appeal fails, our congressional delegation already has an amendment to the federal IRISA act to see if we can be exempted from that federal statute.

CHAIRMAN: Thank you very much. Is there further discussion? I recognize Delegate Ching.

DELEGATE LAURA CHING: May I speak to my amendment? Modernization and urbanization have created complex structures and situations in every facet of society, especially with respect to the role of the family. Contemporary society has seen the breakdown of the extended family structure. Functions once handled by family members, such as care and supervision of the very young and the elderly and/or infirm, are now routinely entrusted to professional institutions and organizations. Many spouses must work in order to augment the family income and keep up with spiraling costs of goods and services, particularly in the health care field.

Health care is in a state of genuine crisis. According to the Sunday Star-Bulletin & Advertiser (July 23, 1978), health care costs are nearly doubling every five years. In addition, the costs for health care aren't fully understood by the average person because so many factors are involved--lab tests, medical insurance, hospitalization, drugs and medication, to name a few. Health services and facilities also vary from area to area: rural clinics and hospitals often cannot adequately meet the needs of the communities they serve; in some areas, such as Mokuleia, residents must go to other communities for emergency medical services.

The middle-income sector is hardest hit by such costs. It bears the brunt of the tax burden for services to the State, yet often cannot qualify for financial aid. Serious accidents or illnesses are a drain on family finances. Elderly persons must often sign away or sell titles to holdings in order to finance adequate medical care or to qualify for medical assistance. The health care spiral has alarmed the federal administration, and attempts are being made to lower health costs via federal controls. However, such efforts have so far met stiff resistance from the legislature and medical groups. A recent medical conference on Molokai, attended by representatives from almost every sector of the health care system, came up with some long-term ideas for restructuring the health care system. Conference participants felt that if the various health care institutions operated in a spirit of cooperation rather than competition, the following things could be accomplished: sharing of various facilities and services; eliminating duplication and overlapping services; lowering medical costs. Eventually individual facilities could be converted into one cooperative entity.

Unfortunately, the above-mentioned ideas are just that--ideas. No specific concrete plan for change was formulated at the conference. Thus there will undoubtedly be no change in the existing health care system in the near future. However, some sort of innovation is needed now, not in five to ten years when the cost of a hospital room alone could reach a thousand dollars. A uniform statewide health plan could provide adequate medical services at a reasonable cost. I strongly feel that, if the State provides for medical care, discrimination can be limited and quality health services can be made available to everyone, regardless of race, age, sex or income level. The latest in medical knowledge and equipment can be offered to the public in general, not just the "moneyed few." This is an opportunity for the State to provide for all a fair and comprehensive health plan and uniformly high quality health care services in rural as well as urban areas, for low income people as well as the affluent on all the islands of the State of Hawaii.

Adequate medical care should be a right, not a privilege. I'm sure many of you have read the numerous alarming articles in the newspapers recently regarding spiraling health care costs. I hope that all of you will consider this amendment. Thank you.

CHAIRMAN: Is there further discussion? Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: Mr. Chairman, I rise to speak against the proposed amendment for several reasons. First of all, the proposal is too specific to be included within the Constitution. It is my view that constitutions that are long and complex are less effective than concise constitutions that concern themselves with fundamental laws. Constitutions which contain specific statutory material needlessly complicate the constitutional structure, hamstringing the majority rule and do not allow government to react with sufficient flexibility in times of crisis. My second objection is based on the following: essentially the state government is financing health care through its medical assistance program under the public welfare division and through various programs under the auspices of the Department of Health. In addition, employers and employees are currently required to contribute to a prepaid health care plan under the provisions of Chapter 393, Hawaii Revised Statutes, which Delegate Ching mentioned.

This proposal, however, suggests expanding the coverage to encompass all persons residing in the State. It infers extending a comprehensive health care plan to everyone, insuring supplemental payment assistance beyond a yet undetermined percentage of the individual's or family's gross income regardless of liquid assets. The concept of incurring only minimal cost for health care services is extremely attractive. However, some must pay the piper. It is feared that, with medicaid costs running in excess of \$108 million the State will be unable to afford this program.

This proposed amendment appears to primarily address itself to avoidance of catastrophic medical expenses by the average family. Congress is presently confronting this problem with legislation aimed at catastrophic medical bills, as part of a national health insurance package. Measures of this sort can only be dealt with adequately at that level because of the immense cost of such a plan. It is for these reasons, Mr. Chairman, that I do not concur with the proposed amendment.

CHAIRMAN: Delegate McCall.

DELEGATE McCALL: Mr. Chairman, although I hesitate to speak against a beautiful idea, I would like to mention a couple of points that don't seem to have been covered by the other speakers. This appears to be a government-operated plan which, I would assume, would drive HMSA and Kaiser out of business. I just do not believe that the government can ever operate a plan as cheaply or as efficiently as a private operation.

CHAIRMAN: Thank you. Delegate Sutton.

DELEGATE SUTTON: Mr. Chairman, I rise to speak against the amendment. First of all, there is the possibility that our taxes, to the limits established here at the Constitutional Convention, may rise very quickly if this is adopted. Socialism is growing more popular with such ideas as welfare and unemployment. In a socialistic democracy such as Denmark, the lowest tax bracket is 40 percent of the lowest paid worker in that country--and everyone there is covered by a health plan. We are not a socialist state, but a capitalistic country. I hope that free enterprise will reign, in this instance. I urge you to vote against this.

DELEGATE WAIHEE: May we have a short recess?

CHAIRMAN: If there are no objections, there will be a short recess.

DELEGATE HALE: There is an objection, Mr. Chairman. May I speak to the motion?

CHAIRMAN: You may speak.

DELEGATE HALE: Thank you. Mr. Chairman, I rise to speak against this amendment but for the idea, and at the end of my speech I have a suggestion. I would like to say that I agree with the--I'm speaking against the amendment. I don't think that the language as written here is proper constitutional material, nor do I think we can adequately do this because we have no idea of the cost. I do congratulate Delegate Ching for proposing an idea that I have long been for. I do feel that mandatory health coverage is a government responsibility and it should be done. But my proposal is that--I'm afraid that this is going to get voted down this way--I would like to move that we refer this back to the public health committee to come out with a resolution supporting President Carter's or some other national health plan by this Convention and put this on a national level, requesting that some action be taken in this area.

CHAIRMAN: I will rule you out of order--the motion to refer is not in order at this time.

DELEGATE WAIHEE: May we have a short recess, Mr. Chairman?

CHAIRMAN: There will be a short recess.

At 8:52 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 8:54 p.m.

CHAIRMAN: Come to order. The Chair recognizes Delegate Laura Ching.

DELEGATE LAURA CHING: Mr. Chairman, I move that I be allowed to withdraw my amendment.

DELEGATE TAIRA: Mr. Chairman, I second the motion.

CHAIRMAN: If there are no objections, the Chair would now remove Delegate Ching's amendment. We are now moving to Amendment No. 11, entitled "Right to Continuity of Public Services," which has been introduced by Delegate Cabral. At this time, the Chair will recognize Delegate Cabral.

DELEGATE CABRAL: Mr. Chairman, I move that the following amendment be adopted, adding a new section to Committee Proposal No. 5, Article VIII of the present Constitution, to read: "The right of the people to receive uninterrupted public service as performed by public employees or through contract for provision of public services, including, but not limited to, those services relating to public health, safety and the general welfare, shall not be violated."

DELEGATE ELLIS: I second the motion.

CHAIRMAN: It has been moved and seconded that a new section be added to Article VIII entitled "Right to Continuity of Public Services." I shall read the section: "The right of the people to receive uninterrupted public service as performed by public employees or through contract for provision of public services, including, but not limited to, those services relating to public health, safety and the general welfare, shall not be violated."

Delegate Cabral, would you like to speak to your motion.

DELEGATE CABRAL: Mr. Chairman, a minority of the Committee on Public Health and Welfare; Labor and Industry did not concur with that part of Standing Committee Report No. 36 which recommended the rejection of delegate Proposal No. 333, providing that the right of the people to uninterrupted public service shall not be violated.

I will express the following arguments: Presently the State Constitution does not provide any language that addresses the entitlement of the people to receive uninterrupted public services. I don't think I need to express or define public services for anyone here. Section 2 of Article XII provides for the right of public employees to organize for the purpose of collective bargaining as prescribed by law. But it is silent on the subject of the entitlement of the people to receive such public services. While the majority report argues, in rejecting such a provision, that the right to strike by public employees will be restricted by this provision and that the present system is successful as such a limitation is unnecessary, and that if restriction of the right of public employees to strike becomes necessary in the future, the manner and extent of such a restriction could and should be determined by the legislature.

The minority of the committee urges the delegates to further deliberate and come forth with a constitutional amendment providing for the right of the people to continuity of public services. This should be done in the Committee of the Whole so that all delegates here tonight may participate in deliberations on this very important issue. Failure to consider this subject, I believe, deprives the people of Hawaii, acting through this Convention, of the opportunity to have continuity of important governmental services. This is a topic and issue of genuine concern.

The majority report viewed delegate Proposal No. 333 as a restriction on the public employees' statutory right to strike. This is neither the purpose nor effect of this amendment to Committee Proposal No. 5. For the following reasons the minority of this committee feels that the people have a right to receive continuity of public services: (1) Many government services are monopolistic, mandated by law and supported by tax revenue. The people cannot refuse to buy or pay for such services and certainly cannot lawfully refuse to pay taxes even where such services are interrupted for one reason or another. This may include, of course, a public strike, but may also include other sources of interruption throughout the public service system. (2) In the American system, sovereignty is inherent in the people. The people delegate it to a government which they create and operate

by law. They give to that government the power and authority to perform certain duties and furnish certain services for the public good. The government thus created and empowered must employ people as its agents to carry on its task and provide such public services as the public employees may exercise as part of that sovereignty. The public employee serves the public welfare, not a private purpose. (3) The sovereign, whether absolute or representative, acts for the entire political system and performs functions and governmental tasks which need to be discharged on behalf of the whole society.

To make it short, I feel that this particular right of the people is being violated at this particular time. I feel that the right of the majority of the people must prevail over that which is a particular special group or minority factions which represents that portion of government. In short, as has been espoused throughout this Convention and by speakers tonight--the majority have it. They rule. They dictate the wants and the demands. Therefore, this simple logic also applies readily in this situation. I'm asking all of you to search your consciences, to examine them very deeply. Do you want to deprive the majority of the people, a majority of the people, of this basic right and entitlement? Therefore, I urge your support and the inclusion of this proposed amendment in the Constitution. What it does is, it will require and demand that our legislators, our chief executives, do all in their power to insure that the people's basic rights and entitlements are not violated. Thank you.

CHAIRMAN: Thank you. Delegate Hokama.

DELEGATE HOKAMA: Mr. Chairman and members, I rise to speak against this amendment, and any amendment of this nature. However, before I start, I'd like to state that my statements tonight are meant in no way to discredit or penalize any individual or organization. My statements will merely provide an illustration to prove my point.

Members, I believe that this amendment will clearly restrict the bargaining rights of our public employees and subject them to undue discrimination as workers engaged in public service. There already exist strong and effective laws that restrict the collective bargaining rights of the public employee. An example of this is the recent law passed by the state legislature to subject firefighters to binding arbitration in the event of an impasse in labor negotiations. The laws, in Chapter 89 of the Hawaii Revised Statutes, provide fair and effective means for labor negotiations that balance the concern for continuation of public services in the event of an impasse and respect the right of the public employee to equitable treatment in negotiations.

Mr. Chairman, as stated in Minority Report No. 4, page 2: "Many government services are monopolistic. . . ." It also states that ". . . the people have a right to the continuity of the public services, especially where such services are often essential to daily needs of the community." Mr. Chairman and members, I believe that there are equal if not more vital services provided by private industry, and that by adopting this amendment we will be discriminating against the public employee without due regard to insuring the continuation of vital services provided by private industry. I can think of no better example of a monopolistic entity than Hawaiian Electric Company. Here we have a private industry that provides a service that is "essential to daily needs of the community." Although this private utility company is subject to regulation by the Public Utilities Commission, the collective bargaining rights of their employees are governed by the labor and industrial relations laws of Chapter 377, Hawaii Revised Statutes.

Under these statutes, employees of Hawaiian Electric have the right to organize for the purpose of collective bargaining and to exercise the right to strike. There are no provisions governing strike notification by these employees, yet public employees must participate in a bargaining system that is at least 90 days long.

Mr. Chairman and members, I do not think anyone here will disagree with me when I say that the provision of electricity to the community is a vital service--but I will not pursue this argument any further. However, the point that I wish to make is--how can we impose a constitutional mandate such as the proposed amendment upon the public sector and at the same time allow the vital service of providing electricity to the community to remain a discretionary matter for a small group of profit-minded people to decide. If we are to adopt this amendment, let us be uniform about this whole matter and bring about central and vital public services under the same legislation and constitutional mandate.

This amendment does not realistically address itself to the continuity of all essential services to the people. I wish to reiterate that it is highly and unjustly discriminatory toward our public employees. For the reasons I have stated, I urge all my fellow delegates to vote down this amendment. Thank you.

CHAIRMAN: Further discussion? Delegate de Costa.

DELEGATE DE COSTA: I would like to speak against the motion. Without the right to strike, what good would it be to bargain?

CHAIRMAN: Delegate Ellis.

DELEGATE ELLIS: Mr. Chairman, in response to the argument that was raised by my very esteemed colleague on my right, I might point out to you that there is a significant difference in terms of public employees striking. Garbage collectors striking means there is no garbage collection. The electric company--Delegate Lewis, please, if you will respond--still provides electricity when its employees strike, as it has in the last several real threats of strike. As a matter of fact, at one point when they were striking, the electricity still stayed on. So it isn't the same as was proposed by my esteemed colleague.

CHAIRMAN: Delegate Hokama.

DELEGATE HOKAMA: Mr. Chairman--if Delegate Lewis would like to correct my statement--continuation of service by Hawaiian Electric through the regulations of the Public Utilities Commission, when there is a strike by an impasse in negotiations, will be limited. Priority as to who will receive such limited service will be decided by the company itself.

CHAIRMAN: Delegate Villaverde.

DELEGATE VILLAVERDE: Mr. Chairman, I'm doing this extemporaneously--that's a big word, but I'm going to use plain language hereinafter. I realize there are a lot of people here who are sort of reluctant to stand up because they are involved in situations such as this. Others may rise and say they're in conflict of interest. But I am not in conflict of interest, because I am employed by a private firm. I have experienced in my life being employed in one particular job--I have had many jobs, I have been an independent businessman many times. For the record, I have been involved in situations whereby--even in the private sector, which is no different from the public sector--here you're involving employers, and you are involving workers. There is no difference between public sector management and private sector management. We are talking about employers not providing for--or refusing to provide for--not only the welfare but also the economic well-being of their employees.

I have been in situations whereby I could only dream and sometimes become slightly outspoken in a whispering tone, and I was fired because of a situation such as this. Not too long ago, I occupied a position in a managerial situation, but because my name was involved as a candidate for delegate to this Con Con--I was manager of a national concern and I was endorsed by a labor organization--this employer said to get rid of me because I was endorsed by labor unions. They said I was no good and I would be a troublemaker. He'll compromise. And yet I had promised his representative that, because I was management I would stay within the realm of bargaining aspects and the contract. But nevertheless I quit this particular job.

Now, we're talking here about an important issue. I agree with the delegate who said it was important and I question the "do-gooder" concept, that the public should not experience something such as this. But--is this equal rights? is this the right of the worker? is this the right of workers--not to be able to express their reluctance to work and provide service? In essence, what we have here is a situation where the employer will flagrantly, when contracts come up, say that public employees service the public and that they don't have the right to have better pay, better benefits. This is asinine; these are unequal rights we're talking about. To me, the public sector should not be penalized. I think employers should come to the table and negotiate--and, if the employer in the public sector cannot negotiate, walk out.

CHAIRMAN: Thank you very much. Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: Mr. Chairman, I rise to speak against the proposed amendment. Although the amendment does not specifically address itself to the right to strike by public employees, that issue is implicit within the phraseology of the amendment. The right to strike by public employees will be restricted, if needed in the future, in such a manner as will be determined by the legislature. At the present time, there is no reason to limit the right to strike by public employees, and if such a need should arise, the legislature could appropriately determine which bargaining unit, if any, such a restriction should be placed on. The same conclusion was reached by an overwhelming majority of the people who testified at our public hearings.

CHAIRMAN: Delegate Kojima.

DELEGATE KOJIMA: I'm not too sure how to speak to this amendment. I agree the public should have a right to continuity of services, but I find that this amendment--the best way is for the government to meet all the demands of the union. Then there will be a guarantee that there will be continuity of services.

CHAIRMAN: Thank you. Is there further discussion? The question before the house is to insert a new section under Article VIII entitled "Right to Continuity of Public Services," as proposed by Delegate Cabral.

DELEGATE CABRAL: I would move for a roll-call vote.

CHAIRMAN: A roll-call vote has been called for. There are ten seconds. Mr. Clerk, will you please call the roll.

Roll call having been ordered, the motion to amend Article VIII by adding a new section failed to carry by a vote of 6 ayes, 90 noes and 6 excused; with Delegates Cabral, Dyer, Ellis, Rachel Lee, Miller and Peterson voting aye; Delegates Alcon, Anae, Andrews, Barnard, Barnes, Barr, Blake, Blean, Burgess, Campbell, Chang, Donald Ching, Laura Ching, Haunani Ching, Chong, Chu, Chun, Chung, Crozier, de Costa, DiBianco, Eastvoid, Fernandes Salling, Fujimoto, Fukunaga, Funakoshi, Fushikoshi, Goodenow, Hagino, Hale, Hamilton, Hanaike, Harris, Hashimoto, Hayashida, Hirata, Hironaka, Hoe, Hokama, Hornick, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaapu, Kaito, Kimball, Kojima, Kono, Lacy, Ledward, Lewis, Liu, Marumoto, McCall, Nozaki, Odanaka, Okamura, Ontai, O'Toole, Paty, Penebacker, Pulham, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Sterling, Stone, Sutton, Taira, Takahashi, Takehara, Takemoto, Takitani, Tam, Tamayori, Villaverde, Waihee, Weatherwax, Wurdeman, Yamashita, Yoshimura and Chairman Uyehara voting no; and Delegates Calvin Ching, De Soto, Hino, Marion Lee, Nakamura and Nishimoto being excused.

CHAIRMAN: The noes have it. The amendment is defeated.

I would now like to move on to Amendment No. 12. The Chair recognizes the maker of the motion, Delegate Cabral.

DELEGATE CABRAL: Mr. Chairman, I move for the adoption of this amendment to Committee Proposal No. 5--

CHAIRMAN: Excuse me, Delegate Cabral. If there are no objections, we will take a short administrative recess. Don't move.

At 9: 25 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9: 32 p.m.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: I move for the adoption of this amendment--identified as Amendment No. 12--to Committee Proposal No. 5. For the sake of expediency, since it has been printed and distributed to all delegates, I would like not to read it verbatim.

DELEGATE ELLIS: Second.

CHAIRMAN: It has been moved and seconded that Article XII, Section 2, be amended, to be entitled "Public Employees; Binding Arbitration," and the following added: "...provided that all disputes concerning any initial agreement, the renewal of any agreement or the interpretation or application of any existing agreement between a public employer and an employee organization, which have reached an impasse, shall be settled by an arbitration procedure as provided by law, which shall result in a final and binding decision." Delegate Cabral.

DELEGATE CABRAL: Mr. Chairman, I will speak very briefly to my motion. However, I would reserve the right to speak last to close the debate on this motion.

Basically, this proposed amendment puts into constitutional language what is already contained in Hawaii's statutes. It just goes a little bit further by demanding a provision that is not provided for in the statutes. It mandates that the disputed parties get together for arbitration, and agree to a final binding decision.

CHAIRMAN: Delegate Ellis.

DELEGATE ELLIS: It seems to me, again, that my earlier request to the President is very pertinent at the moment. I submitted a resolution in which I, in effect, challenged the delegates who are public employees to a conflict of interest, and now I think it most appropriate that we get some sort of answer from the chairman of the ethics committee. They have had the problem from 2-1/2 to 3 weeks. This is very pertinent. The public employees here will be voting on a proposal which has very definite impact on each one of them, individually and personally. I myself hopefully have some feeling for ethics, and I just feel that this is a question--

DELEGATE LES IHARA: Mr. Chairman, point of order.

CHAIRMAN: State your point.

DELEGATE LES IHARA: Point of parliamentary procedure, I guess. What is the motion on the floor?

CHAIRMAN: The motion on the floor is to amend Section 2 of Article XII on public employees and binding arbitration.

DELEGATE LES IHARA: Is the speaker speaking to that motion?

CHAIRMAN: Is the speaker on the motion?

DELEGATE ELLIS: On the question of ethics, then, and since each delegate who is a public employee is involved in this question of ethics, in voting on something which affects him personally, it would seem to me that Delegate Okamura, who is chairman of the ethics committee, might respond. Remember, I mentioned several times that the decision will help you and the President in resolving this question. They've had sufficient time to work on it, and it might help the President when he decides on the question. So if you would, would you ask the chairman if he has some report?

CHAIRMAN: Chairman of the ethics committee, will you yield?

DELEGATE OKAMURA: I will.

CHAIRMAN: Would you respond to Delegate Ellis' question?

DELEGATE OKAMURA: The committee had a hearing on that particular resolution, and it was filed. The introducer of the resolution was at the committee hearing. I would like to state that according to our own ethics code, members of the public employees union are not in conflict. May I read from the code: "The chairman of the committee of which the delegate is a member or the presiding officer of the convention may excuse the delegate from taking part in the action or decision in question only if the effect on that delegate is greater than on other members of his business classification, profession or occupation." So therefore this does not apply on this amendment.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: Would Delegate Okamura yield to another question?

DELEGATE OKAMURA: I will.

DELEGATE DONALD CHING: Delegate Okamura, the inquirer was at the meeting and knew the results of that committee meeting action. My question is, did you say that the introducer of the resolution was at the committee hearing and knows the result of that committee hearing?

DELEGATE OKAMURA: He was at the meeting--in fact, he testified. But we decided to file it because a motion was made that we would file any type of resolution which appeared prior to that in proposal form.

CHAIRMAN: Is there further discussion?

DELEGATE ELLIS: Mr. Chairman, again a point of personal privilege, if I may. I did testify and I did, as a matter of fact, think it inappropriate to hold a public hearing--

DELEGATE DONALD CHING: Point of order, Mr. Chairman. Would he state his point of personal privilege? I don't know of any personal privilege having been raised yet.

DELEGATE ELLIS: Yes, I did. There was an inference from the delegate that maybe I had heard the decision and was raising something--

DELEGATE DONALD CHING: He made no inference--

CHAIRMAN: Delegate Ching, would you mind? I would like to hear from Delegate Ellis. State your point.

DELEGATE ELLIS: At the hearing it was very nice because the chairman had extended me the courtesy of appearing, and I told him at the time that I felt it was inappropriate to hold a public hearing on something which, by our rules, is an internal matter of discipline. However, since he had called a public hearing on something internal, I was pleased to appear. He accorded me all the courtesies and I appreciated that very much, and then I left. Subsequent to that, I guess they filed it.

CHAIRMAN: Is there further discussion? Delegate Okamura.

DELEGATE OKAMURA: I would just like to state that at the time the delegate did testify, we did make it clear to him what was written in the code and that the members of the public employees union would not be in conflict.

CHAIRMAN: Thank you. Is there further discussion on this amendment? Delegate Lacy.

DELEGATE LACY: I would like to comment in favor of the motion. On the previous one I voted no because I do not think that the previous amendment on this subject is proper. I feel from my experience that binding arbitration--not only for public employees but throughout the nation--would do the nation a lot of good. In years to come--even though some of you do not believe so, we have made great strides in the employer-employee relationship--the day will come when it will be normal to have binding arbitration so that both sides get a fair deal after the collective bargaining process has been carried out to that point.

I think that public employees and those of us who have worked for the State feel a responsibility to our State. It degrades some personnel, as seen possibly by young people, as I have explained to some of my friends in the teaching profession. I hate to see teachers having to strike to get something that they deserve. This makes a conflict such that children seeing this conflict may lose some respect for that teacher. It becomes a conflict of people fighting each other. I feel the same about the police force. I think it's possibly more dangerous for our police to be on strike. I have a great respect for the police, and I think, here again, it brings the community in conflict with those who feel they must strike.

Our country was made great because many men and women did strike; they forced

conditions to become more equal. In almost every major strike the worker has come out on the short end financially, but the thought is to make things better for the future. I think that that's one of the principles of a strike--that we work together to make something better. What we need to do is to make our government work harder for an arbitration system that will provide this. That is the only way we may be able to contribute, so that our legislature will work that much harder to get something that our State can lead the way in--in getting a fair arbitration system.

CHAIRMAN: Is there further discussion? Delegate Silva.

DELEGATE SILVA: Mr. Chairman, I speak against this motion. I feel it shouldn't set a precedent that public employees have binding arbitration. This should be left up to the bargaining of each individual employee. I speak against this because, being in public service and here as a citizen delegate, I am for binding arbitration because we accepted it. But it should be left up to the individuals in the collective bargaining to decide if they would like to go into binding arbitration. Thank you.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I rise to speak against the motion. I agree with Delegate Lacy. I think the future holds binding arbitration as the better solution to striking, for both employers and employees, when we have perfected a system of arbitration that everybody has faith in. But I think, at this point in time, all we would be doing by putting this in is to negate the principle of collective bargaining for those in public employment. I don't think it should be in our Constitution.

CHAIRMAN: Thank you. Delegate Villaverde.

DELEGATE VILLAVERDE: I speak against the amendment. If we are trying to impose or, in fact, practice flexibility and allow for it, in essence this particular amendment inflicts a straitjacket on both parties. I disagree with the delegate from the other side, Delegate Lacy, but I recall the teachers striking a while back. Some of them were friends of mine, and I was a parent and really concerned. I don't think they lost any respect; in fact, I think our children gained more respect for them standing up for their rights. My children came to me and said, "Hey, Dad, the teachers are really something." Of course, they didn't stand up to me. We shouldn't impose a straitjacket on either party.

CHAIRMAN: The Chair recognizes Delegate Goodenow.

DELEGATE GOODENOW: Mr. Chairman, I would like to speak against the amendment. I will speak extemporaneously as a teacher who did strike during that 1972 strike. I found the main thing that came to my mind when I had to make the decision was--what is my right as a human? What are the human rights involved here? The things we were striking for were for the benefit of our students. They were all very aware of that, and we meant it. There were certain things that they didn't have and needed. So, the teachers did go out, and I have never regretted the moment that I did make that rather fatal decision, as it did go against my basic philosophy. But I discovered a great deal more about myself, and I felt that I took part in something that benefitted the educational system of the State. Thank you.

CHAIRMAN: Is there further discussion?

DELEGATE TAKITANI: Point of personal privilege.

CHAIRMAN: State your point.

DELEGATE TAKITANI: I would just like to say, in my own case, I was a student who was affected by the teachers' strike. And I didn't think very highly of the teachers at the time.

CHAIRMAN: Your point is well taken. Delegate Miller.

DELEGATE MILLER: Mr. Chairman, I have been a teacher in private school. Unfortunately or fortunately, I didn't have to face that situation. But I sure gave it a lot of thought. Also, when I was on the mainland going to UCLA, there was a very serious

strike in the Los Angeles area that went on for a long time. There were schools where the teachers did not go out on strike. Others were seriously handicapped, especially the seniors, who were trying to graduate and had a very difficult time and even had to make up work. There was vandalism because of the strike. I speak against it because of the havoc it wreaked with the students, their graduation requirements and their education.

CHAIRMAN: Thank you. Delegate Lee.

DELEGATE RACHEL LEE: Mr. Chairman, I rise to speak for the amendment. I am representing a family of teachers; I have a son, a daughter and a daughter-in-law and none of them went on strike. I have come to learn that teachers sometimes do not take the children's welfare into consideration. When the children are denied learning during the period, it causes hardships for the family. It also gives children a very bad impression of teachers. I hate to say this, because I have many friends who are teachers, but I think sometimes the gains they get from strikes do not go directly to the children. Much of what they gain is spent on personnel. Therefore, I do not believe that a strike always warrants the cause.

CHAIRMAN: Delegate de Costa.

DELEGATE DE COSTA: I would like to speak against the motion. After hearing the schoolteachers say that children should not be allowed to see the fight going on and all that--don't you think, by going on strike, you're not benefitting yourself, that it's for the kids who are coming up. You may lose what you had in a lot of strikes, but in the years to come the benefits will be for your kids. Thank you.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, I wish to speak against the amendment. I wanted to keep quiet, but I think we're getting off of the principle of arbitration which is before us--not the schoolteachers. As a former negotiator for the Hawaii Employers Council, I can tell you that employers don't like the principle of binding arbitration. If you are going to go into negotiation with the idea of being forced into binding arbitration, the entire process is very different from when it is handled without binding arbitration hanging over your head. We are talking about binding arbitration and nothing else. I speak against the proposal.

CHAIRMAN: Is there further discussion on binding arbitration? Delegate Cabral, you may speak last.

DELEGATE CABRAL: I pointed out earlier that the proposed amendment puts in constitutional language what is already contained in the statutory provisions. The appropriate statute is in Chapter 89 of the Hawaii Revised Statutes. In that statute it does provide and recognize that a fact-finding board, if it determines on its own motion--and I quote verbatim: "If the board determines on its own motion that an impasse exists, it may render assistance by notifying both parties to the dispute of its intent.

"The board shall render assistance to resolve the impasse according to the following schedule: (1) Mediation.... (2) Fact-finding.... (3) Arbitration...."

In the subparagraph on arbitration, it reads: "If the dispute continues thirty days after the date of the impasse, the parties may mutually agree to submit the remaining differences to arbitration, which shall result in a final and binding decision." The only change in my proposal is that it mandates that they shall get together and talk and decide utilizing an arbiter to work out a final and binding decision. I'm taking no rights in this proposal.

AFL-CIO President George Meany, while expressing some very strong reactions about the use of arbitration in the private sector for resolving bargaining impasses, suggested that the use of binding arbitration in some circumstances in the public sector is best. The procedure for binding arbitration of contract terms under the postal corporation act was endorsed by the AFL-CIO. Mr. Meany, in support of the postal corporation act, stated that any procedure which preserves the workers' rights without strike is acceptable.

Arbitration is not and was not intended as an alternative to or substitute for good-faith negotiations. Rather, it is a procedure of last resort in impasse situations, when efforts of the parties themselves to reach agreement through negotiations and conciliation have been fully exhausted. Mr. Jerry Wurf, president of a national labor organization, stated: "I used to feel that arbitration couldn't meet the needs of either management or the workers. Well, that turns out not to be true. The results have always been great. So, we have found that arbitration has frequently been able to deal with problems that might have been very difficult to deal with at the bargaining table."

Arbiters look at the ability to pay--not that a republican or a democrat should look good at the next election. Arbiters look at the needs of the workers, the fairness of the demands, substantiation of the demands, refutation by the employer, the substantiation of the refutation, and the employer's ability to pay, whether the employer is making a good-faith effort to raise taxes to pay for those things.

One of the delegates made a comment that this would set a dangerous precedent. I submit to you that this is not a precedent-setting proposal. Many states already have and provide for compulsory binding arbitration. I say to you now that those of you who would turn your backs from favorable consideration of this proposal are not doing justice to yourselves or to the people of Hawaii. I therefore urge all of you to vote favorably for this proposal. In essence, it possibly entails amendment of the statutory provisions in Chapter 89 of the Hawaii Revised Statutes, because that particular statute also addresses strike rights and prohibitions. And while it does acknowledge and does recognize that a public employee can strike, it doesn't [recognize] that he has the right to strike. It just states that it will not be lawful for any public employee who is included in an appropriate bargaining unit--

CHAIRMAN: Your 5 minutes are coming to a close. Will you finish your statement?

DELEGATE CABRAL: I quit.

CHAIRMAN: Thank you. The question before the house is to amend Article XII, Section 2, under the heading "Public Employees; Binding Arbitration."

DELEGATE CABRAL: Mr. Chairman, I move for a roll-call vote.

CHAIRMAN: Roll-call vote has been called for. Are there ten seconds? There are only six. All those in favor, signify by raising your right hands. All those opposed, signify by raising your right hands. The noes have it. The amendment is defeated.

We shall now move on to Amendment No. 13, relating to public health and welfare, under Article XII, Section 2. I will recognize the maker of the amendment, Delegate Ellis.

DELEGATE ELLIS: Thank you, Mr. Chairman. I move for adoption of the proposed amendment before you. I think it's self-explanatory, and I move for its adoption.

CHAIRMAN: Is there a second?

DELEGATE DiBIANCO: Second the motion.

CHAIRMAN: It has been moved and seconded that Article XII, Section 2, be amended to read--and I'll just read the inserted words--as follows: "The chief negotiator representing the public employer in negotiations with an employee organization shall be a representative of the state legislature and the legislative bodies of the various political subdivisions. All negotiations between a public employer and an employee organization relating to wages, hours and other terms and conditions of employment shall be open to the public."

At this time, the Chair would like to recognize Delegate Ellis as the first speaker.

DELEGATE ELLIS: Thank you, Mr. Chairman. You will note that I signed the committee report. Basically, I was in agreement with the entire report, and I was very impressed with our chairman's production of that report. I neglected to say that I signed it "with reservations"; however, that doesn't preclude me from making the amendment which I am discussing tonight. It has two thrusts, by the way, one of which has to do with the "sunshine" aspect of collective bargaining, and the second with the aspect of

the legislature and councils being agents; in effect. I would like to address the "sunshine" aspect first. By the way, Mr. Chairman, I don't propose to talk last on the subject--I propose to talk about it now.

Let me give you a frame of reference and set somewhat of a picture for you when we talk about the "sunshine" law. Starting with the '75 session, and then going into Act 1 of '77, let me tell you that a total of \$80 million--let me repeat that for you--\$80 million was appropriated for employee increases. Now, this is not questioning the value of the \$80 million and the increases. What I am trying to do is set the scene for you as to how much money we are talking about, and that it's negotiated in private--literally and truly in private. In all my experience with the legislature, which goes back to 1949, we have been working like heck to get the legislature to open its meetings, to open its hearings, to open its discussions when they are talking about expenditures of public money. And we've succeeded to a great extent, as you know. We've been able to move the legislature even to the point, by the way, of opening up some of their conference committee meetings. It has been quite an achievement--not to say that the backroom business still doesn't go on--but the important point is that we've opened up the legislature in terms of its discussions. And here we have now, in our public employees' bargaining, a situation in which we are spending money at the rate of \$80 million in three years, and it's done privately.

The potential for corruption is immense--not that it has occurred. Frankly, I'm thankful that we have a governor like George Ariyoshi and his negotiators, so that the integrity of the process is maintained. But think of the potential for corruption, when you think about our government generally and its operations. We are looking at a sum such as \$80 million. Just the '77 act alone appropriated \$26 million, and that was done in private. My feeling is that one of the ways that we can really look at this whole problem--and if nothing else keep it a little honest--is to open it up to the public. Now, this is not a new concept. This is something not only attempted but accomplished in several jurisdictions, which have actually opened up negotiations to public view. The comment made that this would allow for grandstanding by individuals who are a part of the process is rather stupid in one sense, because we are talking about spending and appropriating excessive sums of money--great sums of money. It is well that we should open it up and bring it into view. The whole process of collective bargaining is not a matter where we have to worry about secrecy. In the private sector there is very good reason for secrecy in collective bargaining; the individuals involved, particularly the firms, are loath to disclose to the public--not to the union but to the public--their competitive secrets, their finances. So, as a consequence this is the way it is established in the private sector, and we are following it as a matter of course in the public sector. But it does set what I consider a very bad situation in the handling of public funds.

The second aspect relates directly to this first one, in which, presently, the executive negotiates. If you recall--and again to set the scene a little bit for you--the Wagner Act back in 1935 actually established the premise of collective bargaining. It set up a scene in which labor and management had adversary positions which gave labor the right to strike and management the right to lock out. It stated--you will bargain in good faith. What it provided was an economic adversary situation, and we see this reflected throughout the years. Our most recent was the coal strike. It's an economic battle--labor versus management. When they sit down at the table, with labor on this side of the table and management on that side, each of the individuals present at the table is in a position to make a final decision. That's the way it is in private, but that is not the way it is in public employment. We have labor on this side of the table and we have the executive branch on that side. Labor can make the final decision but the executive may not; the final executive decision rests with the legislature. And I say that the way we should handle this is to have the legislators sit on the other side of the table. Now, people who stress the point that the legislators lack expertise must recall that when John Burns first was faced with the problem of lack of expertise, he hired the Hawaii Employers Council. He contracted expertise. And then when he got around to it and the legislature got around to it, they organized an Office of Collective Bargaining, and he hired experts to staff that office.

There is no reason why the legislature can't do exactly the same thing. They have the legislative auditor's office as a service for their operations. They could have an office of collective bargaining. And it would do the one thing that is missing in public employee collective bargaining and that is--have the final authority to make decisions. The executive does not have that right or that authority or that responsibility at this particular point

in time. So, the two aspects: (1) that negotiations should be open to the public because of the considerable amount of money that is being expended; and (2) that we need on either side of the table a final authority who can make decisions. Thank you.

CHAIRMAN: Thank you very much. Is there further discussion? Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: I must speak against my friend, Delegate Ellis, on this proposed amendment. I have three objections. First, the language is legislative in nature and not constitutional; that is, a constitution should provide the basic foundation for the law and not tie the hands of all parties concerned as to how that law should operate.

Second, I oppose it because it simply is impractical. Negotiations open to the public are not negotiations at all. I would like to quote testimony from one of the public hearings that we held: "Sufficient studies have been done on the Florida experience and experiences in all other states and localities to indicate that negotiations in a fishbowl virtually never resolve in either side making significant concessions necessary to come to an agreement. Instead, the parties at the bargaining table use that place for public prostrate in order to look good before the public and their various constituencies. The Florida situation, for example, has resulted in bargaining sessions taking place in neighboring Louisiana, in hotel rooms, and in various other places which are used to circumvent the law, which simply does not work. Collective bargaining is a process which demands flexibility and the ability to make concessions. If the aspect of confidentiality is taken away, it becomes little more than playacting."

Third, there are people who argue that it is ultimately the legislature or the county councils which have to balance the interest of public employees with the rest of the community. Therefore, according to these people, it is the county councils or the legislature which should have the responsibility of conducting public employment collective bargaining negotiations. It is my contention, Mr. Chairman, that the proposed amendment is unnecessary, for the legislature and county councils already have the ultimate burden of balancing the interests involved because they have responsibility for approving or disapproving the negotiation sessions.

Therefore, Mr. Chairman, I speak against this amendment.

CHAIRMAN: Is there further discussion on this amendment? Delegate Odanaka.

DELEGATE ODANAKA: I would like to speak in favor of this amendment. I think this amendment could lessen the suspicion and fear that are often brought up by the public.

CHAIRMAN: Thank you. Is there further discussion? The question before the Committee of the Whole is to amend Article XII, Section 2, by inserting these words: "The chief negotiator representing the public employer in negotiations with an employee organization shall be a representative of the state legislature and the legislative bodies of the various political subdivisions. All negotiations between a public employer and an employee organization relating to wages, hours and other terms and conditions of employment shall be open to the public."

All those who are in favor of this amendment, signify by saying aye. All those opposed, say no. The noes have it. The amendment is defeated.

DELEGATE ELLIS: Mr. Chairman, could I have a division of the house, please.

CHAIRMAN: A division of the house has been called for. All those in favor, signify by standing up. All those opposed, stand. The noes have it. The amendment is defeated. Delegate Fushikoshi, the Chair recognizes you.

DELEGATE FUSHIKOSHI: I move to rise and report to the Convention that we recommend Committee Proposal No. 5 with the following amendments be adopted.

DELEGATE VILLAVERDE: I second the motion.

CHAIRMAN: It has been moved and seconded that we recommend Committee Proposal No. 5 with all of its adopted amendments be adopted. All in favor--

DELEGATE TAM: Mr. Chairman.

CHAIRMAN: Delegate Tam, the Chair recognizes you.

DELEGATE TAM: Mr. Chairman, point of order. Did you say you were going to take these amendments section by section?

CHAIRMAN: By amendment. All amendments which are in the section, yes.

DELEGATE TAM: I note that there are some other sections we have not touched upon. Is this the--

CHAIRMAN: The sections where there were no amendments were passed, as there was no discussion.

DELEGATE TAM: Well, there were no amendments, but I would like to speak to one of the sections.

DELEGATE BARR: Point of order.

CHAIRMAN: State your point.

DELEGATE BARR: The appropriate time to speak would be at Second Reading.

CHAIRMAN: Thank you very much. Your point is well taken. Delegate Burgess.

DELEGATE BURGESS: I believe that we can consider each of the sections separately, and I too would like to speak very briefly on one section.

DELEGATE WAIHEE: Point of order, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE WAIHEE: Mr. Chairman, the only reason to speak tonight would be to offer an amendment, and the only way you can offer an amendment is to submit it in writing. If there are no amendments in writing, there is no business to conduct.

CHAIRMAN: Thank you very much. Your point is well taken. The question on the floor is that it has been moved and seconded that Committee Proposal No. 5 be recommended for adoption with its amendments. All those in favor say--

DELEGATE BURGESS: Mr. Chairman, I think there is debate allowed on the motion.

CHAIRMAN: Delegate Burgess, the Chair recognizes you.

DELEGATE BURGESS: Mr. Chairman, I would like to debate that motion.

DELEGATE HOKAMA: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Hokama, state your point.

DELEGATE HOKAMA: Hasn't the body already decided by voting on the motion?

DELEGATE BURGESS: Mr. Chairman, I believe that when a motion is made, debate is called for, and when there is no further debate, the vote is taken.

DELEGATE TAKEMOTO: Mr. Chairman, point of order.

CHAIRMAN: Delegate Takemoto.

DELEGATE TAKEMOTO: Thank you. I understand that once the vote is being taken, that it must continue and there can be no debate or point of order until after it is completed.

CHAIRMAN: Your point is well taken. Delegate Burgess, I must rule you out of

order at this time. We were talking about noes. Let's go back again. All those in favor signify by saying aye. Opposed, no. The ayes have it.

DELEGATE FUSHIKOSHI: Mr. Chairman, I move that we rise and report.

DELEGATE WAIHEE: Second the motion.

CHAIRMAN: Thank you. It has been moved and seconded that we rise and report. All those in favor signify by saying aye. Those opposed, say no. The ayes have it. We shall rise and report.

At 10:22 p.m., the Committee of the Whole stood in recess, subject to the call of the Chair.

Debates in Committee of the Whole on EDUCATION

Committee Proposal No. 6
(Article X [IX])

Chairman: DELEGATE H. JEAN GOODENOW

Wednesday, August 23, 1978 • Evening Session

The Committee of the Whole was called to order at 7:58 p.m.

Delegate H. Jean Goodenow presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. We have resolved into this committee to consider Committee Proposal No. 6 from the Committee on Education. I'd just like to make a few reminders for our session tonight. As you probably know--but I will repeat it at this time--motions for bringing the question, for tabling or deferring to a committee are all out of order. I would make a special request that delegates--if you would please state first whether you are for or against the motion you're going to discuss on the floor, when you speak. There will also be a period, this evening, of administrative recesses.

At 8:02 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 8:05 p.m.

CHAIRMAN: At this time I would like to recognize Delegate Ihara, chairman of the education committee, and he will summarize the committee report. Delegate Ihara.

DELEGATE TERUO IHARA: Madam Chairman, I have an uncanny ability to call women sirs, etc., so I'd better correct myself in this instance. The Committee on Education has spent long hours working on this package you have before you. I must say that the deliberations of the committee were free and always with full discussion, with all members participating. The report is a product of many hours and days of committee hearings and deliberations, all of which were open to the public. Not only were representatives of public lower and higher education present, but also appearing were representatives from private educational institutions as well as from numerous diverse community groups. Not only did educational experts, administrators and board members testify, but so did college students, faculty members, union representatives and private citizens. In short, your Committee listened to a wide variety and a cross section of the community before formulating its final report and recommendations.

Testimonies by both educational experts and the lay public attest to the saying that in matters of public education, everyone has an interest and, I might add, practically every interest has a different point of view. In what follows, I will attempt to highlight the various proposals of the committee which are covered in more specific detail in the standing committee report. It is the committee's view that Article IX on public education, although basically a sound section of the present Constitution, can be refined and improved by the proposals recommended for adoption to the Committee of the Whole. An example of language refinement which results in overall improvement is the committee's recommendation to substitute the word "discrimination" for "segregation" in the phrase, "There shall be no segregation in public educational institutions because of race, religion or ancestry." The substitute word "discrimination" broadens the scope of the guarantees covered in that section, since segregation is only one of the proscriptive descriptions covered under the general ban against discrimination. In short, the word "discrimination" covers a wider area of proscribed practices.

Your Committee also proposes the addition of the word "sex" to the list of prohibited

discriminatory practices, along with race, religion and ancestry. This definitely is an improvement.

The proposed changes in the manner of electing the members of the board of education were discussed at length in public hearings and in committee meetings. It was unanimously agreed that the present apportionment of the board, with two members from Hawaii and seven from Oahu but none from Kauai and Maui, was neither equitable nor satisfactory. In lieu of the present system, your Committee proposes a nonpartisan system of electing board members from two at-large units, comprised basically of Oahu on the one hand and all the neighbor islands on the other. Further, each of the two at-large units shall be divided into school districts by law, with at least one board member residing in each school district and with no member serving more than two consecutive 4-year terms. The committee's basic concern was that we should provide for an elective process which would encourage the selection of board members sensitive to local school district needs and more directly accessible to their respective constituencies.

In the area of substantive powers of the board of education, the committee proposes an amendment which will allow the board of education to override the veto power of the governor on educational rules and regulations, provided two-thirds of the members agree. The committee felt that the board, which is elected by the people to establish educational policy, should in some instances need some power to be more responsive to its constituency.

With regard to the University of Hawaii, the committee generally agreed that existing constitutional provisions relating to public higher education have basically proven valid and workable. There is one area, however, which the committee felt could be further clarified and improved. The committee agreed that the board of regents should have flexibility in the internal organization and management of the university consistent with the status of a corporate body, which was granted to it in the original 1950 Constitution. Under the corporate concept, the university was given a special legal status. This status was conferred in recognition of the unique role of the university, which differs significantly from other departments and agencies of the state government. For example, in addition to its teaching and service functions, the university also engages extensively in training and research activities, often funded in whole or in part by the federal government, and frequently with national and international participation and significance. Let me emphasize here that this proposed amendment will not detract from the governor's power to set ceilings upon and to review the university's budget. Neither will the amendment alter in any way the budget appropriation powers of the legislature. The university will also continue to comply with all laws passed by the legislature and signed by the governor. Finally, the power to audit all university management and financial procedures will remain with the executive and legislative branches of the state government.

What the amendment fundamentally proposes is to clarify the jurisdiction of the board of regents with respect to matters of internal organization and management which would facilitate discharge of the university's primary missions. The University of Hawaii, as the only public higher education system in the State, should be granted sufficient management and organizational flexibility commensurate with its unique mission. Similar to a corporate board of directors, the jurisdiction of the governing board should be clarified if it is to be effective and especially if it is to be held accountable for its actions.

And finally, the Committee on Education proposes to add a section calling for promotion of the study of Hawaiian culture, history and language on all levels of public education in the State. It is our view that such an emphasis will redound to the ultimate benefit not only of the ethnic Polynesian but to all of us in Hawaii who are beneficiaries of the legacy bequeathed us all by the Hawaiians.

Let me take this means to express my sincerest appreciation and gratitude to all members of the committee of whatever persuasion and commitment for the exceptional dedication to duty shown in committee deliberations. And to our staff my warmest mahalo for a job well done.

CHAIRMAN: Thank you, Delegate Ihara. I am sure all the delegates appreciate the fine work that went into the preparation of this report.

DELEGATE NOZAKI: Madam Chairman, there has been disagreement in the Committee on Education. The minority presents the following resume on this report.

CHAIRMAN: All right, Delegate Nozaki, may I just make a comment that we have just concluded hearing Delegate Ihara give the majority report. We have not before entertained any of the minority reports on the floor. However, they have a right to be heard. A minority report cannot be voted upon but it can be placed in the journal. Delegate Nozaki.

DELEGATE NOZAKI: Thank you. A minority of your Committee on Education does not concur with that part of Standing Committee Report No. 39 which relates to governance of education.

The standing committee report reflects an acceptance of the concept of an elected board of education. The portions of the standing committee report which recommend changes to the constitutional provisions for an elected board are ostensibly intended to strengthen the existing board and resolve the problems of reapportionment. We do not agree that these recommendations get at the basic issues of the governance of the public schools.

The issues of governance of lower education in Hawaii have recently centered on the reapportionment of the elected board. Historically, we have experienced both an appointed and an elected board of education. The change to an elected board occurred prior to the U.S. supreme court's rulings relating to one-person, one-vote requirements for any election to substantive office. The legislature struggled to develop a reapportionment plan that would not only conform to the one-person, one-vote requirements but would also ensure that Kauai and Maui would be able to elect their own respective members to the state board. The only viable alternatives, which the legislature developed according to criteria which had been proven in federal court, were large boards. These alternatives proved unacceptable to the legislature, and the federal court stepped in with the present temporary apportionment scheme. The reapportionment plan contained in Committee Proposal No. 6, while retaining the idea of two school board districts, injects a residential requirement which has not been put to court test. But even if it were to pass constitutional muster, we submit that it does not address the basic issue of educational governance.

That basic issue is this: within our fundamental three-branch structure of government, the governor and the board of education fall within the executive branch. By having both the governor and the board of education as elective entities--and therefore accountable to the people--which entity has responsibility for administering the educational system? The governor has clear responsibilities for certain executive functions. Is it up to the governor to delegate some of his responsibilities to the board of education? How does the public hold either or both accountable, for which decisions?

In examining the reasons advanced for making the board elected rather than appointed, from the mid-1960s through the present, it seems to this minority of your Committee that the concept of public input and public control weighed very heavily in favor of the franchise in lower education. But what does that franchise really mean when a state board is elected? Can the people really provide input in a meaningful way when they elect 9 or 11 or 13 or 17 members of a state board?

We believe that the public's input in education would be much more meaningful if the right to vote were brought to a lower level--the present administrative districts of the department of education. But it should be clearly understood here that we do not advocate a decentralization of the administration of the department of education to those districts. Rather, local boards of education should be elected to give the people of the smaller jurisdiction, the district, an opportunity to provide input at both the district and state levels. The people's input at the state level would be ensured by providing that the chairpersons of the local boards of education would also sit on the state board of education. Thus, by the exercise of the franchise according to our minority proposal, the public gains not one but two avenues for input into the public education system.

The problems of accountability inherent in our present governance structure would be eliminated by the adoption of our minority recommendations. The superintendent would become the head of the department of education as a cabinet member. The usual controls exercised by the legislature over the governor's appointees would be augmented by the power granted to the state board to select three names for superintendent, from which the governor must select one for nomination to the senate. Thus the public, through their elected representatives on the state board, would have a say in the selection of the

superintendent. The state board would also be empowered to advise the superintendent on the policies and administration of the department, but the "buck"--

CHAIRMAN: Delegate Nozaki, I'm afraid that your 10-minute time period is up.

DELEGATE NOZAKI: Okay.

CHAIRMAN: Is there further discussion?

DELEGATE NOZAKI: May I finish up?

CHAIRMAN: I'm sorry, it is out of order at this time, Delegate Nozaki.

DELEGATE NOZAKI: Would other delegates like to continue reading it?

DELEGATE CHONG: Madam Chairman, may I yield my time?

DELEGATE PATY: Madam Chairman, point of order. It was the understanding that the minority group would be afforded the opportunity to provide a brief of the minority report, in keeping with the committee chairman's report, which was a briefing of that report. He did not read it and it was an accommodation to the minority group, and let me suggest that we try to adhere to this, Madam Chairman.

DELEGATE FUSHIKOSHI: Madam Chairman.

CHAIRMAN: Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: I would like to refer this question to President Paty. If the Chair decides to cut the 10-minute talk, does the Chair have the prerogative to do that?

CHAIRMAN: President Paty, would you like me to respond to this? Yes, the Chair does have that prerogative, to ask in the manner that I did.

DELEGATE HALE: Point of information, Madam Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I think we're going to have a problem tonight and I'm just wondering if you have a solution as to how we might handle it. We have three basically different subjects. One is libraries, one is school boards and the superintendent, and one is board of regents, and if we just take them in order as you have suggested, and vote them down, I don't think we'll be able to do it in an intelligent manner. I have a suggestion if it's in order.

CHAIRMAN: This has been taken into consideration and I do feel, Delegate Hale, that it will work out satisfactorily as we progress along through the numbers. But thank you very much. At this time the next order of business is--

DELEGATE HALE: Well, point of information, Madam Chairman.

CHAIRMAN: Yes, Delegate Hale.

DELEGATE HALE: Again, what is the way? We're going to take each one and vote it down? Is that what we're going to do? Or vote them up?

CHAIRMAN: The order of business on the amendments will be--some will be deferred to be heard later in sequence.

DELEGATE DE COSTA: Madam Chairman.

CHAIRMAN: Yes, Delegate de Costa.

DELEGATE DE COSTA: Madam Chairman, since Delegate Nozaki didn't finish reading--some of us don't have our glasses--could we give her the time so that she could finish the report?

CHAIRMAN: No, Delegate de Costa. We have, as you know, 17 amendments--

DELEGATE FUSHIKOSHI: Madam Chairman, can we call a short recess?

CHAIRMAN: No, not at this time. We shall continue and start to do the work that we're responsible for this evening.

DELEGATE KIMBALL: Madam Chairman.

CHAIRMAN: Delegate Kimball.

DELEGATE KIMBALL: Madam Chairman, I appeal the decision of the Chair that was addressed to Delegate Nozaki. According to my watch, it was only five minutes which she took up and she's entitled to ten.

DELEGATE OKAMURA: Point of order, Madam Chairman.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: I believe that we have a motion on the floor and the delegate is not addressing the motion. I think it would be more appropriate for the delegate to make her speech when we're discussing the amendments.

DELEGATE FUSHIKOSHI: Madam Chairman, to clarify these things can we have a short recess so you can talk to those people?

CHAIRMAN: All right, at this time we will take a short recess and, delegates, do not leave the floor.

At 8:26 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 8:30 p.m.

CHAIRMAN: The Chair mistook Delegate Nozaki's report for a full report and not a summary as I had been anticipating. At this time, I would like to have Delegate Nozaki complete her report so all delegates can hear it. All right, Delegate Nozaki.

DELEGATE NOZAKI: Thank you, Madam Chairman. To continue: In recognition also that the individual schools of the public school system are the dearest to the hearts of the public, we propose that a constitutional guarantee be added to Article IX, Section 2, to mandate the legislature to provide for some structure at the school level for public input. Little argument has been heard on the concept that the public should be able to suggest improvements and to channel efforts on behalf of the school in its community.

That's the end of my minority report.

CHAIRMAN: All right, thank you, Delegate Nozaki. Is there any discussion at this time? All right, our next order of business is Amendment No. 1 pertaining to public libraries, submitted by Delegate Lacy. Will Delegate Lacy entertain a motion at this time?

DELEGATE LACY: Madam Chairman, I move for the adoption of Amendment No. 1 to Committee Proposal No. 6. The title of the amendment is "Public Libraries." It is suggested as a new section under Article IX on education. It will also entail the deletion of the words "public libraries" in Section 1, and the following addition as the new section: "The State shall provide for the establishment, support and control of an independent statewide system of public libraries, including physical facilities therefor, in accordance with law."

DELEGATE STERLING: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Amendment No. 1. Delegate Lacy, would you like to speak to your motion?

DELEGATE LACY: Thank you, Madam Chairman. I rise to speak in favor of the

amendment. In so doing, and in the interest of brevity, I request, Madam Chairman, that the text of my memo of August 22 to all delegates concerning this matter--a copy of which was delivered to each delegate's office by this morning and there is a copy on the clerk's desk--that it be included in the journal as part of my remarks, and I won't read the whole memo.

On Wednesday evening, I will be offering an amendment to Committee Proposal No. 6, relating to Article IX. This amendment will be offered as a supplement to, and not a criticism of, the fine work of the Committee on Education.

The amendment directs the legislature to create an independent system of public libraries. It does not mandate the details of how or where this system should be set up, administered or funded. These are, I think, statutory matters. The intended result of this amendment is to cause the removal of the public library system from the aegis of the department of education. There are a plethora of reasons why this would be desirable.

1) A variety of management studies have concluded that the public libraries are being inadequately run by the department of education. These include:

- a) Commission on Organization of Government (1977)
- b) Governor's Conference on Libraries and Information Services (1978)
- c) Legislative auditor (1977)

The legislative auditor's conclusions are noteworthy:

"During the 17-year period of statehood, the Department of Education's persistent failure to implement a systems approach was not for a lack of reminding. The 1961 Report on Survey of Organizational Structure, the statements of the 1963 governor's committee on state libraries, the elevation in 1964 of the state librarian to assistant superintendent (effected with the understanding the state librarian would control school as well as public libraries), and finally the master plan document of 1968 Planning for Libraries in Hawaii--all of these outlined an integrated system as the fundamental strategy for library development in Hawaii.

"In light of all of these policy cues, the Department of Education's inaction is indeed disconcerting. Our most distressing discovery was the isolation of individual school libraries. Each is part of the preserve of individual school principals. As a result, school libraries fail to share their resources with other schools and with the community; by the same token they fail to draw on the potential resources of a state system. If the books in all these small, fragmented libraries were pooled, they would constitute a majority of all the library books of the State. Thus regarded, the waste is horrendous.

"In sum, Hawaii has no real library system: (1) school libraries are almost totally isolated, (2) public libraries operate on their own, (3) regional libraries operate haphazardly, and (4) none are given the solid backup which should be forthcoming from a state resource library. State policy is frustrated by lack of implementation. Instead of a system, Hawaii has an accumulation of libraries."

There appear to be no independent studies of the library system which judge the current organization and operation as satisfactory.

2) Public sentiment strongly favors a separate, independent library system. Time and again, in testimony before the legislature, the board of education and this Convention, citizens have spoken, written and submitted petitions favoring an independent system. In fact, nobody testified against the concept of an independent library system to the Committee on Education.

3) Superintendent of Education Charles Clark has reportedly said that he has no particular objection to the removal of library services from the department of education.

4) It is inappropriate to ask the department of education, whose mandate is the orderly education of the youth of Hawaii in grades K-12, to operate a system of public information centers for the total population. School libraries and public libraries are different types of institutions and are not really much more compatible than oil and water.

School libraries exist as a support device for teachers and are maintained to supplement the curricula in the schools. The school libraries are classrooms in themselves wherein research and library skills are taught and practiced. The target user group is restricted and homogenous.

Public libraries, on the other hand, must serve everyone, from pre-school to senior citizens with the full range of interests and needs.

It is not efficient to combine the two institutions, as the department of education has done, since all of the library materials in the school libraries are totally unavailable to the majority of the population and inaccessible even to school children after school hours, on weekends, and during vacations. This is not economical.

5) None of the above is intended as an attack on the department of education. Public library funding amounts to only three percent of the department of education budget. It is simply a fact that within the giant task given to the department of education, and within the huge budget they must administer, the public libraries tend to get lost. The report of the Committee on Education (No. 39) states, "...your Committee urges the legislature to review and redress this problem" (emphasis added). I believe that the proposed amendment, the specific wording of which was not completed until after the committee had completed its deliberations, is in accordance with this sentiment. The amendment would direct the legislature to create an independent statewide system of public libraries. It does not, however, create a department via the Constitution or restrict the legislature's options unduly. It does move toward solution of a significant problem in a reasonable fashion.

CHAIRMAN: So ordered.

DELEGATE LACY: Thank you, Madam Chairman. If I may, I'd like to take just a few minutes to summarize that memo: it said emphatically that this amendment is a supplement to, and not a criticism of, the fine work of the Committee on Education; it cited a number of studies describing the chaos that currently characterizes the public library system; it noted an overwhelming burden of public sentiment in removing the

libraries from the department of education and even the willingness of the superintendent of education in this regard. The memo described the differing objectives of school and public libraries and the problems involved in combining them.

Finally, it noted that the Committee on Education voted overwhelmingly--21 to 3-- to direct the legislature to review and redress the problem in its committee report. The proposed amendment emphasizes this without unnecessarily meddling in statutory matters. In discussing this amendment with my colleagues over the past few days, it has become apparent that certain resistance to the amendment is based not on dispute with the information and conclusions in my memo but upon side issues which are, in my opinion, sort of like red herring.

As an example, it has been argued that adoption of this amendment will weaken the school libraries. This is not so. The amendment would have no effect on school libraries. If school libraries are to be strengthened or weakened, it will have to happen at the legislature or in the department of education.

Another example, it has been argued that this is motivated by personality conflicts internal to the department of education and is really nothing more than a tempest in a teapot. I will not argue that there are no personality problems involved. We're talking about bureaucracies which employ hundreds of people; conflicts are sure to happen. But over the years the people have changed and the same conflicts remain. The management studies discovered what they call "horrendous" problems, not just petty disputes.

In conclusion, let me say this amendment can solve a serious problem without meddling in statutory details, like how or where the system should be set up, administered or funded. One of the studies done by the Commission on Organization of Government for the Ninth State Legislature, dated February 1977, covered one possible organizational scheme. I'm sure there are others equally valid for the legislature to use. I encourage you, my fellow delegates, to support this amendment. This problem really exists, it will not go away by itself. Thank you.

CHAIRMAN: Is there more discussion?

DELEGATE DYER: Madam Chairperson.

CHAIRMAN: Yes, Delegate Dyer.

DELEGATE DYER: Madam Chair, I rise to speak in opposition to the proposed amendment. My family and I have grown close to the public libraries over the years. We consider use of the neighborhood library an important part of our family life. We have all helped by giving our time and energy in various volunteer projects for the library in our community.

I feel sympathy for the libraries and have seen their frustrations in working within the current system. I nevertheless oppose this amendment because I do not think it will solve the libraries' problems. The source of these problems rests in funding priorities and not in organizational structure. I agree that libraries deserve a higher priority than they are now accorded. But separation from the department of education is not the solution. Public libraries are educational institutions. Lifelong learning is the purpose for which libraries are dedicated. It is the source of their being. Education, information and recreation belong in the department of education. The mere separation of libraries from the DOE will not guarantee a solution to their administrative and internal problems.

Further, this proposal only creates a new bureaucracy. It adds new personnel, new administration and new expenses, while the DOE already has the means to administer libraries as part of their responsibility. I agree with the Committee on Education's report that this is not a constitutional problem. As the committee report states, the legislature should be urged to review and redress this problem.

CHAIRMAN: Delegate Lee.

DELEGATE RACHEL LEE: Madam Chairperson, I rise to speak in favor of the amendment to Committee Proposal No. 6. Hundreds of Hawaii's citizens have testified at legislative hearings, petitions have been circulated, commentaries written and articles repeatedly and vigorously stating that public libraries are not doing their job well in the department

of education, a department that is burdened with a kindergarten-through-12th-grade program of formal education.

In our present age of technological and scientific advances, a sophisticated public with need for access to information, publications, multimedia and cultural resources can best be served only by an effective public library. The library has not fared well during the 16 years they have been under the department of education. The legislature has told them--let the Con Con take care of your problem. Now are we going to pass the buck and say--let the legislature take care of it.

Fellow delegates, let's support this proposal and let the libraries become independent.

CHAIRMAN: Delegate Takemoto.

DELEGATE TAKEMOTO: Madam Chairperson, I rise to speak in favor of the amendment to Committee Proposal No. 6. The conventional wisdom of a generation ago may have dictated that it was a sound idea to include the public library system within the department of education, and it may have proven valid to pursue such a course of action then. But the passage of time brings changes, suggesting that the logic of yesterday may not truly reflect the realities of today and thus demanding rethinking and implementation of new plans. The inclusion of the libraries as part of the DOE may be yet another example of an idea that suffers such a state where the future eventually catches up with the past and thus creates a present which calls for changes.

In this case, one glaring fact that signals the occurrence of such a phenomena is the gradual deterioration of library services in this State over the past decade, to the irrefutable point where they are no longer adequate to meet the expanding needs of a growing public. A close examination of this problem suggests that perhaps this throws a slice to the organizational structure of the library system as part of the DOE. The bringing together of two public services, while superficially sound since they seem similar, may not in fact faithfully reflect their inherent differences, especially in terms of purposes, objectives and target groups. Such differences cannot help but be manifested in policy and personnel differences as well. However, these differences themselves may not be irreconcilable and need not necessarily be insurmountable barriers, given an organizational framework that recognizes them as such and provides for their fair share, as in an odd-couple relationship. But when one is placed under the other, as in the present situation with the libraries below the schools, a stepchild relationship ensues in which the genuine needs of the libraries are submerged beneath those of the schools and are treated peripherally by the school authorities as above. Such a relationship can properly breed only discontentment in those whose interests are subservient and overall turmoil within the general organizational bounds, especially during times of austerity when there never seem to be enough tax dollars to sufficiently meet the increasing demand for public services by an expanding populace, as is now the case in Hawaii.

Such does not make for a healthy situation. It is the public who ultimately suffer the cost. The people deserve better. At the very least they have the right to expect that vital public services are made available to them without unnecessary bickering between civil servants. The proposed amendment is a step in the right direction toward resolving the problems of the plagued public library system in recent years. These problems must be put to rest now. The public libraries provide too vital a service to the community to permit these problems to persist as long as they have, with both the department of education and the legislature unable or unwilling to resolve them. As the very existence of these problems suggests, now is also the time to rethink the ideas of the past and seek solutions. The proposed amendment attempts to do just that. It does so by addressing the issue at its apparent root cause--the inclusion and consequent submergence of the libraries as a peripheral part of the DOE, an idea which had been planted in the past when things were different from today. In so doing, the amendment affords as a solution a new plan--the creation of an independent statewide library system.

For the reasons stated above, I support the proposal.

DELEGATE HARRIS: Madam Chair.

CHAIRMAN: Yes, Delegate Harris.

DELEGATE HARRIS: I must speak in opposition to this amendment. I have conferred with the library staff on the Island of Kauai and they are opposed to this proposal, and I'm afraid that I must concur with their analysis. I don't believe that it's economically feasible in effect to start another department within the state government. I believe the additional staff that would need to be hired to organize this system would involve excess costs. It would probably take several legislative sessions. Many of the support services that the library system now enjoys with the state department of education--such as computer and administrative supports--would have to be duplicated. This again would result in increased costs. Other budgetary concerns--now the library is part of the department of education's \$100-million-plus budget--the question is, how will the library system fare if it had to fight for its \$7 million or \$8 million annually alone each year. Not very well, I believe.

At the present time, our library system is a good one, I believe. I think it's one of the best in the country. Yes, there's room for improvement, but I don't believe the answer is to create a new state department and excess costs.

CHAIRMAN: Delegate Ihara.

DELEGATE TERUO IHARA: Madam Chairperson, I rise to speak against the proposed amendment to Committee Proposal No. 6, regarding the establishment of an independent system of statewide public libraries. The committee is sympathetic to the problems of public librarians and is aware of the problems in the library system. The committee found, through testimony received, that public librarians are very unhappy working within the confines of the department of education. The committee believes that public libraries should operate independently of the department of education. It was felt that this matter should be resolved in some manner, but your Committee feels that the constitutional creation of a new department was not the proper method to solve this problem. Rather, the solution could be accomplished through statutory provisions or through an executive order.

Furthermore, it should be noted that the Constitution in no way restricts the legislature or the executive branch from establishing an independent system of statewide libraries. Therefore, as much as the committee is sympathetic to the public libraries, your Committee cannot respond to the explicit desires of the librarians and recommends that the matter be reviewed and redressed by the legislature or the governor. I would suggest further that this problem can be alleviated by this Convention, through memorializing by resolution that the state legislature and the governor should take action separating the public libraries from the board of education.

CHAIRMAN: Any further discussion? Delegate Campbell.

DELEGATE CAMPBELL: Madam Chairman, if this matter could have been handled efficaciously through the legislature, then I would not rise to speak in favor of the amendment as I do. Unfortunately, efforts in the past have been thwarted. The basic rationale for the creation of an independent state library system is to improve the functioning of the DOE and the state's libraries.

Under the department of education at the present time, the library system has remained peripheral to the department of education's main order of business, which is the formal education of our children from grades K through 12. The library system has not received adequate resources or the proper attention that it requires from a very much preoccupied department of education, and anyone in this room who has children or who, himself or herself, has tried to avail himself of the library's services at certain crucial times has felt the same kind of disappointment as we have when we have gone to a closed public library.

In recent years we have seen that because of many budgetary cuts, the library budget has had to bear a disproportionate share of the reduction in the department of education budget. As a result, as I have mentioned, we've witnessed serious cuts in library services and personnel and, unfortunately, the deterioration of programs. A separate department of libraries would be fully devoted to operating a quality public library system and concerned with the information and needs of the public. It would coordinate the various presently independent and isolated public libraries throughout the State, into a system of libraries.

Secondly, it would provide better management of the libraries. The libraries would have control over their own programs, operations and interests without being dominated by the department of education.

Thirdly, libraries could plan and decide on long-range goals and policies without fear of sudden interference or constraints from the department of education.

And lastly, I believe that this would actually simplify operations. It would eliminate the various levels of bureaucracy through which communications have to go at the present time.

Based upon all these rationale, Madam Chairman, I respectfully request my fellow delegates to support this amendment.

CHAIRMAN: All right, is there any further discussion?

DELEGATE ALCON: Madam Chairman.

CHAIRMAN: Delegate Alcon.

DELEGATE ALCON: I rise to speak against this amendment. The committee has considered all proposals and all testimony and it is faced with the problem of divorcing the public library system from the DOE, and the committee is also faced with the problem of what department to put it in for adoption.

It is rather asinine, Madam Chairman, to make it a separate department consisting of approximately 150 warm bodies. Besides, only one library is being affected by this unhappiness. Testimony has indicated that this problem has been presented to the legislature in the past. The legislature has not and wasn't able to find a home for this important facet of lifelong learning.

What this amendment amounts to, Madam Chairman, is taking it back to the legislature again and, believe me, I think they have done all their best to find a place for it to stay. But the problem, as I see it, is a matter of budget and I would suggest that the public libraries learn to work with the department of education.

CHAIRMAN: Thank you.

DELEGATE SHON: Madam Chairman.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: Yes, I would just speak briefly in favor of this amendment, noting that the amendment does not call for the creation of a new department. It merely calls for an independent statewide system of libraries, and it's been noted on this floor many times that the mere act of belonging to something in no way denies the possibility of being independent.

DELEGATE ODANAKA: Madam Chairman.

CHAIRMAN: Delegate Odanaka.

DELEGATE ODANAKA: I would like to speak in favor of this amendment because the libraries, I feel, are eventually going to be inaccessible to students and people in the community. Each year the hours of public libraries are being cut. As a student, this affects me directly. The library budget has borne a disproportionate share of the reductions in the DOE budget.

I, like Delegate Harris, have asked local librarians in my area and they support this amendment. The broad public would be better served by a library system which can give library operations first, rather than occasional, priority. I urge my fellow delegates to support this amendment.

CHAIRMAN: Delegate Miller.

DELEGATE MILLER: Madam Chairperson, I speak in favor of the amendment. The one facet of the quality of life that covers every person, every etiology, and conflicts with no laws by restricting access to the public resides in the public library system. No one is denied its use. The public library system has been studied statistically, graphically, historically and philosophically. Each time in Hawaii the consensus has been--make the public libraries a separate entity. From 1954 to 1978 endless commissions have agreed on the point--from the 1954 government advisory commission of Governor King to Governor Ariyoshi's 1977 government organization commission and in between. The 1978 governor's conference on libraries approved a resolution to the same effect. How many times must the need be stated for a strong independent public library before the public is given the opportunity to declare its preference? Thirty-two states have independent library systems or are separate departments. Of the 18 under departments of education, 13 have autonomous or semi-autonomous boards. Various states include culture, archives and history with the library.

For Hawaii, Hawaiians have stated their preference at endless hearings. Delegates to the 1978 Con Con, you are being asked to insure the future of public libraries throughout Hawaii. Let the decision reflect the will of the people. Make it possible for Hawaii to have independent public libraries.

CHAIRMAN: Is there any further discussion?

DELEGATE BLAKE: Madam Chairman.

CHAIRMAN: Delegate Blake.

DELEGATE BLAKE: I speak in consideration of a library that my residence is only about 500 yards from, and I'm a little surprised tonight to hear of this amendment asking that they be separated from the department of education. The County of Kauai started their first community-school library and this particular library is stationed on the school--the site is on the school--and of course there are more members there on the professional staff in the library section than one from the DOE. And from my experience, the working relation has been harmonious and efforts by the people, as well as the community services of the library, have been great, and I've asked for different books and had no trouble receiving the books. And I've noticed this also with our larger library that is located in the town of Lihue. Now, the department of education started this first project of a school and community library located on the campus. Another one was to be started on Kauai, and I think this is the first throughout the State. I ask all of you--I mean I say this because my wife is involved in the thing, and if it were wrong, I certainly would have heard about it, but the relations are good--and I ask you not to support the proposal.

CHAIRMAN: All right, is there any further discussion?

DELEGATE BURGESS: Madam Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: Fellow delegates, I speak in favor of the amendment. The essential of a working democracy is to have a well-informed public. Newspapers and magazines are generally good but they're not sufficient to find in-depth information when necessary. The ability to use the library, to study, to make in-depth examinations, to think--all of these abilities are necessary to have a successful democracy.

In years past, I've often used the main state library downtown. When my children were young, I took them to that library; I taught them how to do research and how to use the catalogs. I was dismayed recently to hear that that library is going to be closed to the public and used only for research information, not available to the general public.

Unfortunately, our public library system is becoming virtually inaccessible to working people. I found, especially in recent years, that the library is closed most of the time when I'm not working--that's in the evenings, on Saturdays and on Sundays. It used to be open every morning and all weekend. That's not true anymore. Unfortunately, the libraries are caught up in the board of education, and even those of us who have not served on the education committee know what a bogged-down situation exists there.

It's a group that has several different leaders--the governor, the legislature, the board itself and the director. And unfortunately the libraries are getting the short end of the stick.

I believe that this constitutional provision is one which will make the libraries independent. I don't believe it will increase the cost at all and I would urge you to support it.

CHAIRMAN: Thank you, Delegate Burgess. Anyone else to speak?

DELEGATE ANAE: Madam Chairperson.

CHAIRMAN: Delegate Anae.

DELEGATE ANAE: I speak in opposition to the proposal. I have lived in my district for 46 years and only in the last 5 years was our area able to enjoy the conveniences of a community-school library. So for some 35 years the windward area--more specifically the North Shore--did not enjoy the blessings of a public library. Whose benefits are being cut, I would like to ask. For 30 years we have been neglected on the North Shore, without a public library. The only access we had to library services was a truck that came once a week so students and other people could borrow books from the main library. We now have on our campus a community-school library. That was completed some 6 years ago. We have never enjoyed the benefits of a public library, and we have only enjoyed the benefits of a community-school library within the past 6 years.

I would like to ask the delegation--what benefits are we losing? Who's losing benefits? Is it the people in the more densely populated areas that are losing their benefits? What about those who live in the rural areas who have not enjoyed the benefits of the public library system of our State? For this reason, I speak against the amendment.

CHAIRMAN: Thank you, Delegate Anae. Is there any further discussion?

DELEGATE TERUO IHARA: Madam Chairperson.

CHAIRMAN: Yes, Delegate Ihara.

DELEGATE TERUO IHARA: Most of the testimony received on this issue came from public librarians, if not all of it. There was really no testimony from the DOE. I should also say that the present language of the Constitution does not preclude the establishment of a statewide system of public libraries.

CHAIRMAN: Thank you. The Chair would like to inquire now if there is anyone who has not spoken for the first time.

DELEGATE HALE: Madam Chairperson.

CHAIRMAN: Yes, Delegate Hale.

DELEGATE HALE: Yes, I would like to speak for the amendment. I think I'm much like many of the delegates; I use libraries as you do, my children have used libraries, but I haven't been very close to the problem. I didn't really understand it. I was visited by some members of the library group who tried to explain their problems to me, but I had more pressing issues of my own, and I didn't pay a great deal of attention to them. However, I read the committee report and I thought this was a solution. I could see that the education committee did recognize that there is a problem with the libraries. I was somewhat shocked, coming from a neighbor island, to use this library in Honolulu and to find that it isn't open as much as our library in Hilo is open, and I was not able to get there except for very short periods--I think twice a week--when it was open. This was a shocking thing and I was also shocked to read recently that it possibly might be closed.

We often think on the neighbor islands that, if we really want to find something or do some research, we have to come to Honolulu and use the main library here--and now it's not easily available and probably won't be available. Evidently, the Committee on Education did recognize a problem, and I thought I heard the chairman of the education

committee say that we should memorialize the legislature and the governor to do something about it, which does indicate that they do realize it's a problem.

I would also like to make one comment on community libraries. We have them on our island. We also have community gyms that are located on the school campuses and are used by the community. And we also have school gyms that are not used by the community. So it seems to me it doesn't preclude having a community library to have a statewide system of libraries.

My first reaction was that it's not a constitutional problem and we should not mandate a department, but when Delegate Lacy wrote his memo, I began to look into it a little bit more and I began to realize that what he is suggesting is really not necessarily an independent department and could very well go along with the Commission on Organization of Government's report which recommends that public libraries be taken out of the department of education and put into a department of lifelong learning.

And then I was studying the Constitution as it presently is organized, and Section 1 provides for public schools and public libraries and so forth, and a higher educational institution; Section 2 provides for a board of education, Section 3 for powers of the board of education, Section 4 for the university and Section 5 for a board of regents. It seems to me that it would go right along with our Constitution to put in a sixth section for a statewide system of public libraries. Public libraries are not public education, public education is concerned with school grades K through 12, and perhaps college--the University of Hawaii is concerned with higher education--and public libraries are concerned with public education and lifelong learning. And it seems to me that it does merit separate treatment in the Constitution. I don't feel that we're setting up a new department. I think that it's a very well-written proposal and it leaves the details up to the legislature, and I'd like to urge your approval.

CHAIRMAN: Thank you, Delegate Hale. Is there any further discussion? Yes, Delegate Kojima.

DELEGATE KOJIMA: I speak against the amendment. Just for the record and to set the facts straight, the department of education has an office of library services. This office is given the same status as the office of instructional services, the office of business, the office of personnel; and I would think if they have problems, the problems are those of management or internal management and finances, and everybody can use more money.

If the Hilo library is so good, and the one on Kauai is so good, and the one downtown is not too hot, and the one out at the North Shore is good, then only one isn't too hot. It's the same system, and maybe they should focus some attention on the library in this town here, but to set up a whole independent system may not be necessary at this time. But then the resolution is addressed to the legislature to look into the problem and to help solve the problem as necessary, and I think perhaps this would suffice rather than going the constitutional route.

CHAIRMAN: Thank you, Delegate Kojima. Is there any further--Delegate Barnes.

DELEGATE BARNES: Madam Chairperson, I'd like to speak in favor of the amendment. In the very beginning of our Constitutional Convention, I had the pleasure of being a resource person at the governor's statewide conference on libraries, and one of the top two resolutions--if not the top one--was separation from the department of education. Several of the people from my district who have been actively lobbying at the legislature for many years firmly believe--and they've been told by attorneys--that the only help for the situation is Con Con. So I just relay that message and ask that we seriously consider this issue.

CHAIRMAN: Thank you, Delegate Barnes. At this time, some delegates would like to make their second 5-minute talk, according to our rules. If there is anyone who has not spoken for the first time who would like to speak, would you please make it known to the Chair.

DELEGATE ODANAKA: Madam Chairman.

CHAIRMAN: All right, Delegate Odanaka.

DELEGATE ODANAKA: Madam Chairman and fellow delegates, I'd like to remind the delegates from rural areas that many who live in those areas go to the main branch library, but each year the hours are being cut. If the libraries weren't at the bottom of the DOE budget, I would not be so concerned, but the libraries are of least importance to the DOE.

CHAIRMAN: All right, is there anyone else at this time, or are you ready--

DELEGATE CHUNG: Madam Chairman.

CHAIRMAN: Yes, Delegate Chung.

DELEGATE CHUNG: I'm speaking for the first time and I shan't be long. I'm speaking against the amendment. You've all heard the chairman of our committee give his report; I'm on the committee and we all share with utmost sympathy the concerns of the people in library services. There's no question that something is wrong, and certainly I'd like to see this rectified, but I do not think that we can really straighten it out merely by taking constitutional action on it. I do not think this is our kuleana. So far I've heard that we're concerned about resources being cut, hours of service being cut, petty bickering of personnel. To me this can be handled in a better way, and I'd like to see, in the coming session of the legislature, that another crack be taken, perhaps a different approach in trying to get the assistance of the legislators to resolve some of the problems.

The committee has gone on record as expressing great concern and hopefully this could be impressed upon the legislators. So far, I've heard that if we have longer hours for research purposes, it's fine. Common sense tells us we need more manpower, more money. If resources are lacking, again we're talking about money and if the budget is being cut heavily because they're under the DOE, then this can be easily adjusted through administrative methods. I don't think the constitutional method--although it may seem important to people, and I don't blame them--but I think it's wiser if we do it another way.

CHAIRMAN: Thank you, Delegate Chung. Anyone else? Are you ready for the question?

DELEGATE PULHAM: Madam Chairman.

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: I would like to speak on this issue and I will speak for the amendment very briefly. I too am a member of the education committee and I too am from an outside island, but the overwhelming consensus of this body is that a great and serious problem exists. I would exhort my fellow delegates who do not have the problem to remember that we are talking about statewide concerns, and there is a problem. I'm not sure that this is the way to solve the problem, but I want you to search and see if you feel that it is the way to solve the problem. One thing is obvious--the legislature has on numerous occasions been petitioned, resolutions have come down from the governor's commission, and they have not taken action. The situation has not been alleviated by the legislature, and a resolution from this body will not prompt them to do more than they've already done, which is nothing. I think--in my heart I feel--that we have to go this route and hope by so doing that we will benefit all the citizens in Hawaii and I urge you very strongly to vote in favor of this amendment.

CHAIRMAN: All right. Anyone else care to discuss this? Are we ready for the question?

DELEGATE TERUO IHARA: Can I call for a roll-call vote, please.

CHAIRMAN: Yes, you may, Delegate Ihara. May I see 10 seconds? All right, there are 10 seconds. First I would like to state the question before the house, before we vote. Article IX, Section 1, is amended by deleting the words "public libraries," so the amended article will read: "The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no segregation in public educational institutions

because of race, religion or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution."

The new section, or addition, will read as follows: "The State shall provide for the establishment, support and control of an independent statewide system of public libraries, including physical facilities therefor, in accordance with law."

Are you ready to vote? The clerk will call the roll.

Roll call having been ordered, the motion failed to carry by a vote of 34 ayes, 56 noes and 12 excused; with Delegates Barnes, Blean, Burgess, Cabral, Campbell, Laura Ching, Chong, Chun, Crozier, Eastvold, Fernandes Salling, Hale, Hoe, Hornick, Ikeda, Ishikawa, Kaapu, Kimball, Lacy, Marion Lee, Rachel Lee, Miller, Odanaka, O'Toole, Peterson, Pulham, Shon, Souki, Sterling, Takemoto, Takitani, Tam, Wurdeman and Chairman Goodenow voting aye; Delegates Alcon, Anae, Andrews, Barnard, Barr, Blake, Chang, Calvin Ching, Haunani Ching, Chu, Chung, de Costa, Dyer, Fujimoto, Fukunaga, Fushikoshi, Hagino, Hamilton, Harris, Hashimoto, Hayashida, Hirata, Hironaka, Hokama, Dennis Ihara, Les Ihara, Teruo Ihara, Iwamoto, Kaito, Kojima, Kono, Ledward, Lewis, Liu, Marumoto, Nakamura, Nishimoto, Nozaki, Okamura, Ontai, Paty, Sakima, Sasaki, Silva, Stegmaier, Stone, Taira, Takahashi, Takehara, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax, Yamashita and Yoshimura voting no; and Delegates Donald Ching, De Soto, DiBianco, Ellis, Funakoshi, Hanaike, Hino, Izu, McCall, Penebacker, Shinno and Sutton being excused.

CHAIRMAN: The noes have it. All right, let us proceed on to Amendment No. 2. Delegate Nozaki.

DELEGATE NOZAKI: Madam Chairman, I request that Amendment No. 2 be placed at the end of the calendar.

CHAIRMAN: Thank you. I will defer it until later. The next, Amendment No. 3, on district boards of education, by Delegate Chu.

DELEGATE CHU: Madam Chairman, I move to adopt the amendment to Committee Proposal No. 6 that deals with district boards of education.

CHAIRMAN: You move to adopt which section, Delegate Chu?

DELEGATE CHU: The first section would be in Section 2, would be to amend Section 2 of Article IX.

CHAIRMAN: You're moving for the adoption. We'll deal with the first one first, entitled "District Boards of Education," is that right?

DELEGATE CHU: That's correct.

CHAIRMAN: Would you like to speak to your motion?

DELEGATE CHU: Yes.

CHAIRMAN: Is there a second on the motion?

DELEGATE BLEAN: I second it.

CHAIRMAN: It has been moved and seconded. Would you like to speak to your motion?

DELEGATE CHU: Yes, Madam Chairman. I am introducing this amendment which in essence provides for elected district or local boards of education, and then the combination of all the local district boards of education would comprise the state board of education. Each district board of education would formulate policy affecting the schools in a particular district, including personnel and curriculum. I agree with the general concept of the minority report. I would, however, like to see some specific policy-making powers in the local bodies as provided by law, and not merely advisory bodies.

There has been a great deal of concern and frustration expressed by the people

in my area because of the lack of local citizen control. A major criticism of our present statewide public school system is that the state board of education and the attending highly centralized structure of the department of education are too far removed from the local districts and individual schools to serve the areas effectively. This would provide the citizens a closer and more direct means of input into policymaking, which affects the education of our children. The logical place for affording such a means for input is at the district level, where school conditions are more familiar to the public and where personnel and district board members, if such boards are established, are more accessible. The district boards of education with district policy-making powers would replace the present statutorily created advisory school councils in each district, and in addition give them specific policy-making powers.

I believe that government should be more responsible, and since education is a prime concern of many of our citizens, greater public input is necessary. Basically, the district school boards would concern themselves with establishing their own priorities, policies and procedures, dealing with such matters as personnel and curriculum, educational support programs such as guidance, counseling and other services, and determination of certain priorities within the particular district. I believe that this is a viable concept. One criticism may be that the combination of these district boards, comprising the entire state board of education, would be too unruly a number and it would be too difficult to deal with so great a number of people. I feel, however, that more input and more diversity would add and not detract from the making of the statewide educational policy.

CHAIRMAN: Is there anyone else who would like to speak?

DELEGATE SASAKI: Point of inquiry, Madam Chairman.

CHAIRMAN: Delegate Sasaki.

DELEGATE SASAKI: Yes, are we addressing both the structure of the board and the powers of the board simultaneously? I thought we were going to take this separately.

CHAIRMAN: We are presently discussing district boards of education.

DELEGATE SASAKI: Structure alone, or including the powers? Just the structure alone--the top section?

CHAIRMAN: Yes, that is right.

DELEGATE TERUO IHARA: Madam Chairperson.

CHAIRMAN: Delegate Ihara.

DELEGATE TERUO IHARA: I speak against the amendment proposed by Delegate Chu. The proposed amendment calls for district boards of education, and this will result in decentralization of the statewide system of education that we have today, and that we enjoy so much. Hawaii's children have been able to enjoy a high quality of education throughout the State only because of our statewide system. Decentralization of the BOE can lead to decentralization of fiscal responsibilities, which could lead very easily to school districts unequally funded, as is true in many places on the mainland.

The proposal is also aimed--as referred to by the maker of the proposal--at creating a two-tiered board of education. The committee, in its deliberations, discussed this subject at length and arrived at the decision that the direct method of electing school board members as is the case today is best for Hawaii's children.

For these reasons I hope, fellow delegates, you vote down this amendment.

CHAIRMAN: All right, is there anyone else? Delegate Harris.

DELEGATE HARRIS: Would the movant yield to some questions?

CHAIRMAN: Delegate Chu, the delegate would like to ask you some questions. Would you be willing to answer them?

DELEGATE CHU: Yes, I would.

DELEGATE HARRIS: It's my understanding that it would be possible under this proposal to have more than one district board of education per district. Is that correct?

DELEGATE CHU: No.

DELEGATE HARRIS: The sentence reading, "Each school district shall have at least one district board. . ."--doesn't that leave it open for several district boards per district?

DELEGATE CHU: That was not my intent.

DELEGATE HARRIS: My other question would be--how many members would be on the state board under this system?

DELEGATE CHU: It would have to be determined by law in accordance with the one-man, one-vote principle. Some districts may have as little as two and some as many as five.

DELEGATE HARRIS: So each district board would be a different size?

DELEGATE CHU: Yes.

DELEGATE HARRIS: Thank you.

CHAIRMAN: All right, is there anyone else who would like to further the discussion? Are we ready for the question?

DELEGATE CHU: I have something more to add.

CHAIRMAN: Yes, Delegate Chu.

DELEGATE CHU: In response to--well, let me just say that the intent of my proposal is not to decentralize the board of education. The intent is to have one comprehensive board that would be representative of each district, and that the advisory council would not exist as such. This would eliminate that level, it would simply create in the Constitution specific boards--well, one board in each district--that would have certain policy-making powers that would not conflict with the statewide comprehensive education policy.

CHAIRMAN: All right, is there anyone else who would like to address the question? Yes, Delegate Eastvold.

DELEGATE EASTVOLD: Yes, I'd like to speak against the motion. In analyzing this proposal, it's completely contradictory to the proposal presented by the education committee. As I look at the makeup of this proposal, it leaves open the possibility of friction between the board of education and the district boards of education, and if by chance the district boards of education--the members of that--became the board of education, the idea of having a 30- or 40- or 50-member board of education to me seems absurd. We presently are having problems right now with who's in power between the DOE, the BOE, the governor and the legislature. To actually provide more input, I think, would call for interference in the proper education of our children.

Also, in analyzing this I don't think we could allow policy powers to be given to the district boards of education. As I said, there would be problems with who would be the authority and with overlapping powers between the board of education statewide and the district boards. And they would really basically turn out to be advisory--these district boards--which we presently have under the PTA and advisory councils already established by the DOE.

CHAIRMAN: Thank you.

DELEGATE HORNICK: Point of information.

CHAIRMAN: Yes, Delegate Hornick.

DELEGATE HORNICK: Thank you. I'd like to know if we're discussing the entire amendment or just the district board of education structure.

CHAIRMAN: We are at the present time discussing district boards of education--the first part of the amendment--and then we will vote on it. Are you ready for the question? All right, the question before the house is district boards of education, the section to read: "There shall be district boards of education composed of members who shall be elected by qualified voters in accordance with law. Each school district shall have at least one district board of education." All in favor raise your hands. Opposed, raise your hands. The noes have it. The first section of the amendment is lost.

All right, at this time I would like to proceed with Delegate Chu's second part, on the power of the district boards of education, of this amendment.

DELEGATE CHU: I will defer consideration of the other sections until the other proposed amendments have been discussed and acted upon.

CHAIRMAN: Thank you, Delegate Chu. Now we will go to Amendment No. 4. We will consider, on this amendment by Delegate Hironaka, the first section, if we may, entitled "Local Board of Education; Composition and Power," just this section at this time.

DELEGATE HIRONAKA: Madam Chairperson, may we defer both of these sections until after Amendment No. 6?

CHAIRMAN: All right, that is in order. At the present time, Amendment No. 5 on the "Board of Education." Delegate Okamura.

DELEGATE OKAMURA: Madam Chairman, I move to amend the committee proposal, page 2, the last line of paragraph 1. It may be confusing on the amendment because what has happened is that what I've amended has just been deleted from the amendment. So I would be amending the following--to delete the last sentence that reads: "No member shall serve more than two consecutive terms of four years each." I want that deleted.

CHAIRMAN: Yes, delegates, did you hear the statement that Delegate Okamura read? I don't believe it appears on your amendment, am I correct?

DELEGATE OKAMURA: Madam Chairperson, the amendment is to delete the last sentence--what I just said--and that's exactly what they did on the amendment. It's confusing because it's just not listed at all and that is the amendment.

CHAIRMAN: Once again I will read what is being deleted that does not appear on your amendment.

DELEGATE TERUO IHARA: Madam Chairperson, if they will look at the proposal which is attached to Standing Committee Report No. 39, the proposal is there.

CHAIRMAN: All right, at the back of Standing Committee Report No. 39 on your desks, in the white section attached at the back, you will find the committee proposal on the board of education.

DELEGATE OKAMURA: It is on page 2, the first paragraph, the last sentence.

CHAIRMAN: Thank you. Would you like to speak to your amendment?

DELEGATE OKAMURA: Madam Chairperson, I rise to speak in favor of the amendment.

DELEGATE LIU: Point of order, Madam Chairman, is there a second on this motion?

DELEGATE EASTVOLD: I'll second the motion.

DELEGATE OKAMURA: This amendment would delete from the education committee proposal the two-term limit on board of education members' tenure. I think that a two-term limit for the board of education is both unnecessary and unwise. By putting into the Constitution an artificial limit on the board of education tenure, we are denying ourselves the services of good leaders who could serve the public for more than two terms. The voters themselves should be the ones to decide how long a board of education member should serve. If a member is complacent or derelict in his duties, he can be voted out of office. If he is making a positive contribution to the leadership of our educational system, the voters should be able to elect him again.

It is important to point out that this is a very different situation than what we faced when we took up the question of limiting the terms of the governor. In the case of the governor, the voters sometimes cannot vote an undesired individual out of office because that individual has developed an entrenched political machine. The governor can potentially develop such a machine through his broad appointive powers and through his central political party role. Thus, there is good reason for putting a two-term limit on the governor. Board of education members, on the other hand, have no such broad appointive powers and, under this proposal, they will have no party affiliation whatsoever. Their power will not become entrenched and there is no need for a constitutional limitation on their tenure.

Education is a crucial part of our government's activity and of the lives of all our citizens in general. Expertise in education policy often grows over the long term, through experience. It often takes a long-term perspective, for example, to objectively weigh the value of new teaching methods, classroom strategies and management techniques that repeatedly arise in the area of education policy. For this reason, it would be unwise to constitutionally limit the length of tenure that members of our education policy council, the board of education, can serve.

Madam Chairwoman and fellow delegates, I urge everyone to approve the amendment to delete this provision.

CHAIRMAN: Is there further discussion on this? Yes, Delegate Hashimoto.

DELEGATE HASHIMOTO: Thank you, Madam Chairman. I would like to speak in favor of the amendment. After weighing the arguments for and against placing a limit on the number of terms that board members can serve, I feel the best arguments are for unlimited terms.

In formulating educational policies, expertise and experience are vital. If new members are constantly replacing incumbent members, there will be a loss of continuity of purpose and direction. According to testimony by the board of education, "a decade is a relatively short time to wrought change of significance and importance." Further, the board felt that "tested efforts in education typically take 10 years or more to institutionalize."

While it is important to have new insights and commitments to keep the school system dynamic and responsive, there is also a strong need for consistency and a reasonable amount of time for members to develop and implement programs.

Advocates for limiting the terms of board of education members feel that there are many qualified people who should have the opportunity to serve. However, under the present system of unlimited terms, these qualified people are not precluded from running and serving since, during every election, nine and possibly more positions will be open.

Opponents of this amendment argue that limited terms would discourage complacency. However, there is a strong feeling that the people of Hawaii should be able to retain qualified persons who they feel are competent in representing their views. The electorate should not be denied the right to elect whomever they want to represent them.

Finally, unlimited terms have enabled the Hawaii board of education to participate effectively on a national level. The national board of education is composed of 16,000 school boards. It formulates national educational policies and conducts dialogue with Congress as well as with the President. Presently, Hiroshi Yamashita, one of Hawaii's board members, serves as the first vice-president of the national board of education. In November he will be up for election as next year's president. Because of the unlimited number of terms he was able to serve and consequently due to his seniority, Mr. Yamashita can effectively represent Hawaii at the national level.

In conclusion, I feel that because of the nature and functions of the board of education, unlimited terms for members would be in the best interest of the people.

CHAIRMAN: Thank you. Anyone else? Yes, Delegate Ihara.

DELEGATE TERUO IHARA: I rise to speak in favor of this amendment. This amendment

concerns one of two decisions the committee made during the wee hours of the night when minds were not functioning too well. I concur with the maker of the amendment, which eliminates the two-consecutive-term limitation for service on the board of education. As much as we need infusion of new ideas on boards and commissions, we likewise need stability and continuity. As board members are actually voluntary servants of the public, the committee sees no reason to deny their willingness to serve. I therefore urge you to adopt this amendment.

CHAIRMAN: All right, thank you. Anyone else?

DELEGATE NISHIMOTO: Madam Chairman, just a point of information. If we do vote for this amendment, how long will the term be for each board member?

CHAIRMAN: As it reads, the term would be two years.

DELEGATE NISHIMOTO: I believe it says for the 1978 general election, but how about thereafter?

CHAIRMAN: Delegate Ihara, would you like to speak on this?

DELEGATE TERUO IHARA: In response to Delegate Nishimoto's question, that will be left to law. The reason for the two-year term stipulated in the proposal is to provide--to make it possible for the new board members elected in 1980 to take office representing local school districts rather than under the present system.

CHAIRMAN: All right, is there any further discussion? Delegate Crozier.

DELEGATE CROZIER: Yes, Madam Chairman, I'm confused. Those that are running for the board of education now, how many years are they running for?

DELEGATE TERUO IHARA: Four-year terms, consummate with the gubernatorial races.

DELEGATE CROZIER: Then can we, as a body, put in a shorter term than what they're going to win in the general election?

DELEGATE TERUO IHARA: According to our counsel, yes, to take care of that special need resulting from the 1980 election under the restructured board system.

DELEGATE OKAMURA: Point of order, Madam Chairman.

CHAIRMAN: Yes, Delegate Okamura.

DELEGATE OKAMURA: Yes, we're not facing the amendment right now. We're getting off the track.

CHAIRMAN: Yes, will you please address the motion? Did you have further to say, Delegate Crozier?

DELEGATE CROZIER: Yes, I was going to vote for the motion, but now that I'm confused about this and we're off the track and I cannot find out the answer, I'll vote no.

CHAIRMAN: Would you like to address the Chair on the question? All right, any further information or discussion on this?

DELEGATE EASTVOLD: Madam Chairman.

CHAIRMAN: Yes, Delegate Eastvold.

DELEGATE EASTVOLD: Yes, I'd like to speak in favor of the amendment. With all due respect to Chairman Ihara, I believe I function just as well at night as I do during the day, and I believe when I did vote in favor of the two-term limit, I was very concerned in my beliefs. However, after further deliberation on the subject, I reconsider my vote and do favor this amendment.

In response to Delegate Crozier's question, we are presently just voting on the amendment to delete the two-term limit and nothing more. The other--the balance of it is in the committee proposal.

However, in discussing the makeup of the board of education, I would like to concur with the prior delegate's testimony on behalf of it. However, we should also analyze it from the standpoint that the board of education is basically a volunteer service and to deprive qualified people and limit them to two terms, I think, would be unjust. I think we have to realize that they only meet once a week and they're only paid a per diem of \$50.00 for that volunteer service; using that as an argument as well as the ones given previously, I think we should vote in favor of this amendment.

DELEGATE OKAMURA: Point of information, Madam Chairwoman.

CHAIRMAN: Yes, Delegate Okamura.

DELEGATE OKAMURA: For clarification purposes, I'd just like to state that board members' terms are for a period of four years and it's listed in the statutes.

CHAIRMAN: All right. Yes, Delegate Hale.

DELEGATE HALE: Yes, I'd like to speak for the amendment, although I'm against the proposal, but I think that if the proposal does pass, we might as well eliminate this. I think it could cause serious problems to have a complete turnover at the end of eight years, which could happen if this wording stays in. However, I'd like to reserve comment to later and say that my speaking for the amendment does not make me for the original proposal. Maybe the whole committee was asleep at the time.

CHAIRMAN: All right, are you ready for the question?

DELEGATE CHONG: Point of order, Madam Chairwoman.

CHAIRMAN: Yes, Delegate Chong.

DELEGATE CHONG: Am I correct--if we vote for this, we are voting for eliminating the two-term limit?

CHAIRMAN: Yes, you are voting for the statement that says to delete the last sentence. As we discussed previously, it reads: "No member shall serve more than two consecutive terms of four years each."

DELEGATE CHONG: Thank you.

CHAIRMAN: Are we ready for the question? All right, the question is as follows: "There shall be a board of education composed of members who shall be elected in a non-partisan manner by qualified voters in accordance with law"--

DELEGATE CHONG: Point of order. I believe that the amendment is to delete the two-term limit.

CHAIRMAN: Yes, that is right. The deletion is the very last sentence of that paragraph. Are we ready to vote on this?

DELEGATE SOUKI: Point of information, Madam Chairman.

CHAIRMAN: Yes, Delegate Souki.

DELEGATE SOUKI: Is it my understanding--or is it your understanding that Amendment No. 5 is to be withdrawn in toto and that we are simply acting on the amendment on the nonlimitation on terms. I think there is some definite confusion here.

CHAIRMAN: Yes, there is definitely confusion, perhaps because it is not written onto what you are looking at. So let me clarify this now. We are voting to delete the last sentence of paragraph one, which you may or may not have, appearing on the amendment under discussion here, that reads as follows: "No member shall serve more than two consecutive terms of four years each."

DELEGATE CHONG: Thank you, Madam Chairman.

CHAIRMAN: All right, will those in favor raise their hands. Opposed, raise their hands, please. All right, the ayes have it. The line is deleted.

At 9:53 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:00 p.m.

CHAIRMAN: The next order of business will be Amendment No. 6. This amendment pertains to the state board of education, the superintendent and local boards of education. It was submitted by Delegate Yamashita. Will Delegate Yamashita please entertain a motion?

DELEGATE YAMASHITA: Madam Chairman, I move to amend Article IX, Section 2, by changing it as follows: the title would be changed to "State Board, Superintendent, and Local Boards of Education"; and the section would now read: "There shall be a state board of education whose members shall be the chairpersons of the local boards of education which shall be created in accordance with law. The state board of education shall submit three names to the governor to fill the position of superintendent of education. The state board of education shall advise the superintendent of education on the policies and administration of the statewide system of public schools.

"There shall be a superintendent of education who shall be nominated from among the three names submitted by the state board of education and, by and with the advice and consent of the senate, appointed by the governor. The superintendent shall have power, in accordance with law, to exercise control over the public school system.

"There shall be established by law in each school district a local board of education whose members shall be elected in accordance with law. Each local board of education shall advise the district administration on school matters of districtwide concern.

"Members elected to the state board of education in the 1978 general election shall serve for two-year terms."

DELEGATE CHONG: I second it, Madam Chairman.

CHAIRMAN: Thank you, Delegate Chong. Would you like to speak, Delegate Yamashita, to your amendment?

DELEGATE YAMASHITA: Yes, I would. I would like to reserve the right to speak first and last on my amendment, please?

CHAIRMAN: All right, you may.

DELEGATE YAMASHITA: Basically, first I'd like to go over what my amendment is doing mechanically, I guess--or in structure. What it's doing is bringing the elected input into our educational system at the district level. From the district level, from the various districts there will be a local board. From that local board, the chairpersons would be appointed by the governor to sit on the state board of education. The state board of education would, as I said, be the chairpersons of these local boards which were elected at the local level, and they would submit to the governor three names--a slate of three names--from which the governor will appoint the superintendent of education. That is in essence what my amendment is doing, just to make it very clear.

After much research I have come to the conclusion that the present educational system desperately needs to be improved. I think the present system is plagued with a question of accountability to the public, at the district level as well as statewide level. My amendment, I believe, addresses district accountability because it gives the public the opportunity through election to have input into the system at the local level. So it is here that the interest is high and the problems so unique. My amendment addresses statewide accountability by streamlining the system. It gives the power of appointment of the superintendent back to the governor, based on input by the board of education. Presently, the superintendent is forced into the confusing role of having three bosses--the governor, the legislature and the board of education. The superintendent has been caught between these three supervisory levels, which thus have retarded his effectiveness.

I would like to speak in support of this proposed amendment to the education committee report. First let me assure the delegates that I do not want to attempt to reach beyond my level of comprehension. I do not profess to be an expert on public education, but I have a special interest in seeing excellence built into it. I suppose I have some very selfish motives. You see, like many of the unattached delegates, although I do not have one now I do hope someday to raise a family in our beautiful state. I find it very special, and I credit that to the combined work of the various generations represented here in this constitutional convention--former educators, legislators, businessmen and parents. I want to say that I am proud there were people like this who paid their dues and had the courage to overcome racial and economic handicaps to make the State this island paradise so highly respected by the rest of the world.

But my world will be closing in on me in a short span of time. Eventually I may settle down and raise a family. But because I am in a position to influence change, I urge you to consider the importance of what we are doing today. I want to be able to face my children, look them in the eye and tell them I tried my best.

Out of all the practical politics I have been exposed to, out of the pragmatic nuances of political reality I have participated in, I want to hold onto this dream. On this issue I stand before you as a stubborn idealist. I am sure there was a time when many of you could identify with my position. I am sure that many of you embraced an idea about Hawaii's future with just as much passion as I do before you now.

Maybe it was the Nisei rising to a respectable level of participation in the changing islands after the bitter experience of World War II. Maybe for some of you it was the idealistic revolution brought forth by the Bobby Kennedys, the Martin Luther Kings, and even the John Burnses.

We do not today have the heroes we once had, but our problems and dreams are just as real. Why should the elapse of time limit our passions; why can't we reach back and grasp that dream which stirred our adrenalin and our feelings?

Maybe at times we must let go of our roles and view things through another perspective. Therefore, I would like to read into the record excerpts from a letter sent to me by two high school seniors from Moanalua High. If anyone has either a conflict of interest or a special interest in education, it shall be reflected in what I am about to read.

"Dear Delegate Yamashita,

"We are two students from Moanalua High School who are very concerned about problems in our educational system. We followed with interest your proposal to decentralize the elective level of public representation in the educational system. We heartily agree because it best serves our purposes as students.

"We are not lobbyists for any interests but our own, [but] ... we do profess to be in conflict of interest only because we are still presently in the public school system.

"We have studied the problem of governance of education, and ask you to see things from a different perspective: not from a lobbyist from HSTA, or a teacher, or an administrator, or a parent, or a member of the Board of Education, but that of a [high school] student....

"We are the so-called 'recipients of everyone's good intentions,' but always the last to know, and those with the least power. Recognizing that power can only come with responsibility and accountability, then, you should make an effort to either make the present Board of Education more accountable, as we see in your proposal and similar ones by Delegates ... Nozaki and ... Hironaka, or remove it altogether, as proposed by Delegate ... Chong.

"Most of our concerns deal directly with our own school, or at most, with our district. Those of a statewide concern are mostly channeled directly to the State Legislature, not the Board of Education.

"If we are to have our 'best interests' protected by adults, we would prefer to see adults from our community serve and be accountable for our district. We, who are not

even legally adults, see 'mature' logic in having the two-tiered system approach to the State Board still having policy making decisions, and therefore we agree with what is outlined in your proposal.

"What we cannot see is 'at large' representatives, who claim to have our best interests in mind, continue to 'represent' us in a system which is neither administratively consistent, nor 'representatively' accountable. With 'at large' representatives, we cannot see one or two or even three people who we have elected who are directly accountable or accessible. Compound that problem by two or three times and you can imagine what a student in School District 2, encompassing the outer islands, represented by 2 people from the Big Island, must feel. We would be very disappointed if the people from the outer islands do not see this immediate problem, and would be even more disappointed if they could not see that they would benefit even more from the system you propose. The only group [that] claims it will lose out is the teachers union. This we cannot understand, because it seems logical that it will be easier to lobby on a smaller level, since we can see that most concerns of policy and program interpretation and implementation that teachers deal with are on a district or school complex level. It may mean more work for the lobbyists, but isn't that the same value that they try to impress upon us in their teachings: that in order to get something you want, you have to work diligently and follow through with thoroughness.

"We have often heard that Con Con is controlled by the special interests and unions. Therefore we appeal to you as a special interest for we certainly have the most special interests in education: ourselves as direct recipients of whatever you, as adults, determine is the best system for public education.

"Sometimes, however, adults should demonstrate the raw courage and idealism of youth. You have an opportunity here to do so. You can put out the most intelligent and logical system of public education governance, or you can take the uneducated approach of being intimidated by the politics you profess to hope to remove from this system.

"Sometimes we need 'protection from our protectors' and to be 'guarded from our guardians.' Whatever the choice, we hope you keep us little people in mind. We are sorry we could not get our testimony out in time for a public hearing, but we hope our appeal can be heard through this manner.

"We hope we can also make our appeal heard to those we know who understand the problems of governance: the retiring Senator Robert Taira, the 'father of the State Student Conference' for which we are so grateful; the Honorable Akira Sakima, former Chairman of the House Committee on Education; and our present Senator, as we still have faith in his work, the Honorable Donald Ching.

"If there is one issue where we can turn the tide, change a mind, or, as many adults have expressed, do something to make the difference, we hope we can do it now.

"Thank you for listening and remember us while voting.

Mahalo nui loa,

Kory Hirai [and] Susan Hayashi
Class of 1979, Moanalua High School"

And so, Madam Chairman, I appreciate your patience, fellow delegates, and therefore I urge you to support this amendment. Thank you.

DELEGATE TERUO IHARA: Madam Chairperson.

CHAIRMAN: Yes, Delegate Ihara.

DELEGATE TERUO IHARA: Thank you, Madam Chairperson. I rise to speak against this proposal by Delegate Yamashita. This proposal is aimed at creating a two-tiered system of selecting the board of education. The committee discussed this concept at length and decided by a good majority that the direct election of school board members is better for Hawaii than the indirect method that Delegate Yamashita's proposal suggests.

Testimony for this concept was, incidentally, very meager compared to the voluminous testimony heard in favor of the direct elective concept. The committee could not reconcile the great community interest in an elective board with that of a board of education created through the elevation of a member to the state board from the local school advisory board. It is for this and other reasons that I urge my fellow delegates to vote this proposal down.

CHAIRMAN: All right, Delegate Hamilton, did you have a word?

DELEGATE HAMILTON: Yes, Madam Chairperson, thank you very much. I rise to speak against this amendment--although it seems to me there are really two parts to it. I think I could at least listen with a great deal of interest to the idea of a board of education which might be selected in something of this fashion, though I'm still convinced that this is unconstitutional and I can't really support it.

I do, however, have a very strong objection to the method of appointing a superintendent of education. One of the great virtues of our constitutional convention in 1787 was that the delegates were sufficiently realistic to recognize that human beings were highly fallible, that there were good men and bad men, greedy men and altruistic men, ambitious men and patient men, and occasionally a tyrant. And that the first thing that a tyrant tried to do historically was to get hold of the educational system. This is the principle too and we have been very fortunate in this State in having leaders of a benign set, but I don't think you can always count on this. Therefore, it's in the American tradition that we have developed the idea of a buffer which separates education from the political organs of government. This has been sound from the very beginning and I think it is still sound.

CHAIRMAN: Thank you, Delegate Hamilton. Delegate Uyehara, do you want to speak on this amendment?

DELEGATE UYEHARA: May I speak after Delegate Hironaka? He's been standing a long time.

CHAIRMAN: Yes, Delegate Hironaka.

DELEGATE HIRONAKA: Yes, Madam Chairperson. I move to amend the amendment by deleting the last sentence in the first paragraph, which states: "The state board of education shall advise the superintendent of education on the policies and administration of the statewide system of public schools."

DELEGATE BLEAN: I second that motion.

CHAIRMAN: It has been moved and seconded that we delete the last sentence in the first paragraph of Section 2. All right, is there anyone who would like to discuss this?

DELEGATE HIRONAKA: Yes, may I speak to my motion? The reason for deleting that is because in Section 3 of Article IX, there is, under the power of the board of education--it states that the board of education "shall have power, in accordance with law, to formulate policy, and to exercise control over the public school system through its executive officer, the superintendent of education"--which is included in the committee proposal, and I am in agreement with that portion.

CHAIRMAN: Is there further discussion on this?

DELEGATE EASTVOLD: Madam Chairwoman.

CHAIRMAN: Yes, Delegate Eastvold.

DELEGATE EASTVOLD: Yes, I'd like to speak against this amendment as well as the original amendment. With all due respect to the original mover of the--

CHAIRMAN: Delegate Eastvold, will you please hold to the amendment to the amendment at this time.

DELEGATE EASTVOLD: Well, I'd just like to state that the result of this amendment is not really going to change the status quo in any way. A rose by any name is still a rose.

CHAIRMAN: Thank you. Is there further discussion on the amendment to the amendment? Are you ready for the question?

DELEGATE HALE: May I ask a question?

CHAIRMAN: Yes, Delegate Hale.

DELEGATE HALE: I wonder if the mover of the amendment would respond to a question. He pointed out that by deleting this last sentence--it's because of Section 3 in the Constitution. Is it proposed to change? Because this section also changes Section 3 as to the way the superintendent is going to be selected. Section 3 says that the superintendent shall be appointed by the board and serve as secretary to the board and this says that the superintendent shall be appointed by the governor, so I just wondered about the purpose of the amendment. I don't know how to vote.

CHAIRMAN: Delegate Hironaka, would you care to address the question?

DELEGATE HIRONAKA: Yes, we will be making another amendment later to take care of that.

CHAIRMAN: All right, are you ready for the question at this time? We're voting on the amendment to the amendment. All those in favor raise your hands. Those opposed raise your hands. The noes have won. There were 26 ayes and 43 noes.

We are now back to the main motion on the floor.

DELEGATE EASTVOLD: Madam Chairwoman.

CHAIRMAN: Yes, Delegate Eastvold.

DELEGATE EASTVOLD: At this time, am I in order to speak against the original amendment?

CHAIRMAN: Yes, you are, Delegate Eastvold.

DELEGATE EASTVOLD: With all due respect to the original mover of this amendment, I strongly believe that his dream is actually a reality. This is in essence the status quo and in my own opinion it's really a nightmare, and I think that the purpose of the education committee in its deliberation was to change the present system. In essence, he hasn't really changed the structure of the present system--it all comes down to the governor who is in full control of it.

I'd like to note to the delegation that presently the governor has veto power over anything the board of education does, which really leaves them at a point of being advisory and nothing more, as well as the superintendent who is just an advisor to the board of education. If we analyze this proposal in the three points that have been provided, in the first paragraph the last sentence says: "The state board of education shall advise the superintendent of education . . ." Basically all he's doing is reversing the roles of the board of education and the superintendent; the superintendent presently is advising the board of education as well as the governor.

In the second paragraph, the superintendent "shall have power, in accordance with law"--that's basically what the board of education is right now, and anything that the board of education passes can be vetoed without any overriding powers of the board, which basically leaves them in an advisory role again.

If we analyze the last point of view, that each "local board of education shall advise the district administration on school matters of districtwide concern," again all we're going to have at the local level is advisory again. We already have PTAs, we already have advisory councils established by the DOE; what we're going to end up with is advisory on each level, and by the time it gets to the governor it's going to be so well diluted it's not going to mean anything.

So again what I'm saying is that this is not going to do anything for the status quo. It already is in existence; it may have a different name and different structure, but the essence of it is in existence. And I hope that this delegation will see fit to vote against it.

DELEGATE UYEHARA: Madam Chairperson.

CHAIRMAN: Yes, Delegate Uyehara.

DELEGATE UYEHARA: Thank you very much, Madam Chairperson. I was really planning to speak during the time of Delegate Hironaka's proposal because it is basically the same as we find in Delegate Yamashita's proposal. But since Delegate Yamashita's been "walking around my back door" and in my backyard, I thought I'd better address my speech to him because I'm definitely against the system, against the amendment.

I used to be very young at one time, and I had ideals and I had dreams like my fellow delegate, but today I am an experienced veteran. I have faced what I'll call reality of what life is and the two graduates of Moanalua High School--which is at my back door, by the way--have addressed their problems and seem to have really done some good research; I guess they've done a whole lot if they know all about the two-tiered system which originated in the education committee where we deliberated on it hard and long. We stayed up till midnight trying to decide on what was best for education in the State of Hawaii, and yet I'm proud in a way because they come from Moanalua High School and I would say that that's one of the best schools in the State of Hawaii.

The amendment reads that they will be elected on a local level--the board would be on the local level--and then three names would be submitted by the board of education for the consent of the governor, from which the superintendent would be selected. All of this to me dilutes the power--basically I'm going down to the grass-roots level. It is the people who vote for the board of education members and it becomes the people's choice, and then the board of education members in turn would select and have a superintendent represent them and be a body of the board of education. And this is where the power lies, and this is where the influence can be.

And also, the other one is--if you read carefully, just previous to what the board of education section has stated--that each island, or each school district, will have a representative on the board and this is where the accountability will come in, and I'm certain that if we know this, that it would be a better system, better philosophy of working out policies and procedures for education for the future of Hawaii.

And therefore, fellow delegates, I urge you to vote down this amendment.

CHAIRMAN: Yes, Delegate Villaverde.

DELEGATE VILLAVERDE: Madam Chairperson, I rise to speak against the amendment. This amendment would decentralize the two-tiered selection process for the board of education. I believe the education committee, after long deliberation, considered this change earlier and rejected it. I would like to reiterate some of the reasons for not accepting this amendment.

One of the strongest aspects of the Hawaii school system is that it is a unified statewide system. This helps make for consistency, rationality and equality throughout the system. The proposed amendment would decentralize this system by setting up school district elections and having the state board of education appointed from the districts. Rather than having a broad view of the best interests in public education for all of our schools, the board members would be representatives of their own district school boards and would have narrower interests. I cannot see this as being any kind of improvement. If what we seek is to protect the interest of every school district, we can do this more wisely by maintaining the current centralized statewide system, which assures district-by-district equality.

Another problem with this proposed method of selection is that it dilutes accountability and makes the state board of education less directly and less visibly linked to the voters. The board of education will still make the important decisions affecting our schools, but it will no longer be a board that is directly elected by the voters. Board membership

will be governed by the district boards rather than the voters. I think that this is a step in the wrong direction. Almost everyone agrees that the current apportionment of the board of education is undesirable because certain school districts, such as Maui and windward Oahu, do not have representatives on the board. The solution, however, is not to set up a two-tiered system with district school boards; a better solution, I think, can be found by a modification in the apportionment of the current statewide, directly elected board of education. Such a modification is contained within the education committee proposal. I urge you to reject this amendment to Committee Proposal No. 6. Thank you.

CHAIRMAN: Any further discussion? Yes, Delegate Takehara.

DELEGATE TAKEHARA: I'd like to speak against this motion. Looking at Delegate Yamashita's proposal, it seems to be very complex in that it encompasses many areas that we've been discussing in various manners. For example, the last paragraph talks about an elected local school district board, which we addressed ourselves to in Delegate Chu's proposal which we voted against.

The next thing that is suggested in this proposal is the appointment of the superintendent by the governor after three names are submitted by the board of education.

And the last thing that I would like to talk to in regard to this amendment is the two-tiered system. The superintendent appointed by the governor will once again take accountability away from the elected board of education. I do feel that we need to maintain the integrity of the elected board because it makes the superintendent responsive and responsible to the board of education.

In my objections to the two-tiered system, the school advisory councils or local boards and the board of education are two distinct entities and therefore have different interests. The movement of a school advisory council member or member of a local board up to the board of education may result in various problems. For example, whose interest does this member serve? Being elected to a local board would involve local problems, whereas membership to the board of education would necessitate knowledge and understanding of a statewide view of the school system as a whole. A member of the school advisory council also serving as a member to the board of education would have to be able to function in two roles, which may cause confusion or conflict.

Secondly, from the voter's point of view, confusion may also arise as to the purpose of the school advisory council or local election. Are these elections to choose members for the local councils or are the elections for the purpose of providing a slate for possible board of education membership? In other words, if I vote for someone who's running for a specific office, I want to vote for him for that office directly and not through this indirect process. From the candidate's point of view, what position in fact is the candidate running for? If a candidate is interested in serving on the board of education, he will first have to run for a local board, then still have to be appointed to the board of education, or be the chairman.

In other words, if I am running for the board of education, I want to run to be part of the board of education and not in this roundabout manner where I may or may not be. Presently the school advisory councils are on an advisory capacity. The board of education has policy-making powers, and to be a candidate I would like to know what I'm really running for.

For these reasons, I speak against this amendment favoring the two-tiered, indirect election of the board of education as well as appointment of the superintendent by the governor.

CHAIRMAN: There will be a short recess so the journal clerk may change her tape. I assure you that you delegates will have a chance.

At 10:33 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:35 p.m.

CHAIRMAN: I'd like to call upon Delegate Odanaka to speak on the amendment at the present time.

DELEGATE ODANAKA: Thank you, honorable Madam Chairperson. I appreciate the efforts at compromise that the committee stated in their report on the board of education, but I feel that their report won't really do anything. If you have at-large elections, representation on outer islands would--

DELEGATE LES IHARA: Point of order, Madam Chairman.

CHAIRMAN: Yes, Delegate Ihara.

DELEGATE LES IHARA: Is the delegate speaking for or against the amendment?

DELEGATE ODANAKA: I'm speaking for the amendment.

DELEGATE LES IHARA: Thank you.

DELEGATE ODANAKA: If you have at-large elections, representation on outer islands would still be diluted, because a candidate hoping to represent his district would still have to campaign in all the other districts in the at-large unit. The committee's recommendations expressly affect outer island representation. His constituents would not be from his district, but would be instead from the entire at-large district. This change would not really bring in more local representation and accountability, though this seems to be the intent. Because of the one-man, one-vote doctrine, Oahu would still dominate the state board. I feel that this proposed amendment would do a better job in truly representing local concerns at the decision-making level.

Therefore, I urge you to support this amendment.

CHAIRMAN: I would like, before anyone gives his second speech, to give other delegates their first round. Delegate Chong, were you waiting to speak on this?

DELEGATE CHONG: I will yield to Delegate Hironaka.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: Thank you, Madam Chairperson. I'm speaking against the amendment. I'm not speaking as a candidate or a teacher or a superintendent or a member of the board. I'm trying to look at this from the student's eye--the quality of education that will become part of the student. I think this is the problem that we're facing, and I believe that the proposal contained in the report addresses itself to this problem more than adding more machinery to the problem of how we're going to get quality education for our children. This mechanical layer, as it has been called, will add more confusion. I'm trying to see it again from the student's eye, Madam Chairman, and I think if there were any students here tonight, they'd be appalled at the arguments that are being presented here.

CHAIRMAN: I'm a bit confused and I would like to ask a question if I may, please. Delegate Hironaka, you did amend the amendment and I'm waiting because I considered that as your first round. But perhaps I'm wrong. If so then, Delegate Chong, will you please once again yield to Delegate Hironaka.

DELEGATE HIRONAKA: Thank you, Madam Chairperson. Although I realize that with the defeat of my proposed amendment to the amendment that this amendment will probably go down, I thought I'd take this opportunity to speak on the concept.

This past December, after 25 years of service as a teacher, vice-principal and principal in the department of education, along with a lack of accountability if the majority committee proposal is adopted, I see frustration on the part of the public. The people are concerned that their children are not receiving the best possible education, that somewhere along the way the public educational system has failed. Their concerns are not being channeled into constructive input because there is nobody in our State who is mandated to do just that.

I submit to you that there should be a constitutional guarantee that the public should have input into the policy decisions made by the board of education. A study of a constitutional report shows that the intent of the constitutional sections dealing with the governance

of education envisions just that for our public school system. However, I have not seen this to be the case. The present structure of governance provides no legal recognition--let alone constitutional recognition--of the right of the public to participate in a meaningful, constructive and responsible way in their schools and to contribute to their improvement. The right of the people to have a say in the governance of education is not an argument to be ignored.

The amendment envisioned here calls for information from local boards of education to guarantee input at the grass-roots level. The issue here is the importance of the public's participation in the educational system and how meaningful that participation can be made to be.

State Representative Norman Mizuguchi, the chairman of the house committee on education, stated that, more than mere tokenism or lip service to the nation that the public should have input into the public school system, there needs to be a fundamental guarantee that parents and citizens, in consultation with teachers, administrators and students, will have a voice in the kinds of changes and improvements made in the schools which their children attend. In a highly centralized educational system such as we have in this State, it is important that there be assurance that the views and expressions of local communities be heard in an area that is of such vital importance to the public. I envision the local board of education as a vital link between the public and the state board of education. And any educator will tell you that attitudes toward education are shaped at the basic core of our American system of democracy--the family. It is time that parents, and all other citizens of this State, be brought into the educational system and take an active role in deciding the future of education here in the State of Hawaii. This guarantee of public input and involvement by parents in the shaping of our educational system can only lead to a more secure and fulfilling future for our children.

I'd like to speak on behalf of the residents of Maui. I feel that ideally we would certainly want to have an elected board, one which is elected directly by the people. However, because of the one-man, one-vote rule--in order to comply with that rule, if we are going to go on the direct election--we are forced to have at-large elections. This means that on Oahu we would have people running at large--and I can't see how candidates running at large on Oahu can campaign effectively so that the people can make wise choices in electing board members. Now I notice that there are two members of this delegation who are running for the board this November, but they're not campaigning--it's impossible anyway unless you have a lot of money. But you know board members only get paid \$50 a meeting. Now, that's not that bad. Take Maui, Kauai and Hawaii--if I decide to run for the board from Maui, I'd have to campaign on Hawaii and Kauai. Who would be in their right mind and do that? It's impossible to campaign. Plus--let's say the candidate from Kauai--he's going to be elected not by the people of Kauai but by the votes on Maui and Hawaii. And I would think that a person running on Hawaii--let's say he's second to the top man in Hawaii, and still with more votes than the person from Maui and Kauai--may appeal the fact that he got more votes than the person from Maui and Kauai and still can't sit on the board.

The chairman of the education committee said that there was voluminous testimony for the committee's proposal, and I'd say it was the HSTA, ILWU and the board of education that testified for that. Where were the others? Presently, the PTAs and the advisory councils are not effective at all in the voice in education. The advisory councils are presently appointed by the governor and there was testimony--in fact, committee members brought out many, many times how ineffective the present advisory councils were, where even the chairman of an advisory council said that he couldn't do anything because the board wouldn't even listen to him. I don't know what they really do because, although it's spelled out in the statutes, they're not able to speak to the board members and advise them.

We feel that with local boards, if you're thinking of continuity, you have a training ground or you have a place where the local board members would have experience in dealing with school problems, and you have input from the schools or from the citizens into the local boards. And then, because one member will be representing them on the state board, you have almost a compelling input both ways--not only going one way but coming back--and presently we don't have that, and I don't think under the at-large election for board members we're going to have it.

The other thing is, under that at-large election, poor Molokai and Lanai are completely out in the cold; they don't even come close to getting representation. But under the local school board system, Molokai and Lanai would be assured--because I'm sure, in accordance with law, they're going to do the same thing as in our Maui county council election. Somebody has to be a resident of Lanai and Molokai, so they all run at large. Now you can see that running at large on a county level, at least in a school district, is smaller than running at large from Kauai, Maui and Hawaii combined. I can't see how, really, a person who is elected is responsible to his constituents in an at-large election where you have to run from such a big area. And I can see how a board member would not feel that he is accountable to the people he represents--he doesn't have to--especially let's say a member from Kauai, because he'll still get reelected by the votes from-- And once he gets elected, his name will be known and his chances for reelection from the members from Maui and Hawaii will be great.

I'd like you to really search your conscience and I hope you will consider the neighbor island people--I know the Maui people especially really want this. They cannot see how their board member is going to be elected running on Maui, Hawaii and Kauai.

CHAIRMAN: All right, Delegate Chong, do you have something to add to the discussion?

DELEGATE CHONG: Thank you. In 1964 the legislature changed the process of selection of the board of education from appointive to elected. Since then, there has been a continuous string of board members using their position to enhance their chances of furthering their political careers. The board of education has been criticized for its lack in fulfilling the duties stated in the Constitution--to formulate policy and to exercise control over the public school system. What this amendment proposes is to bring the election closer to home. With a district board of education, there can be a clear-cut responsibility to the district. There can also be responsibility to the State, as the chairmen of the district boards of education are selected to sit on the state board.

Today we have an excellent example of the same procedure in our county through the neighborhood board program. What we are attempting to do with this amendment is to raise the quality of education to one better than what we have today. By this same two-tiered system, we can have the grass-roots participation in our educational system that is demanded by the people of this State.

The end in resolving the issue of the governance of public education is the public educational system. The only way we can improve the quality of public education is by establishing clear channels of accountability. Once there are such channels, we can begin to improve the system. The present tripodal arrangement throws clouds over accountability, which precludes us from improving public education. We owe it to the people of Hawaii to improve the educational system. This Convention can contribute to such improvement by creating clear channels of accountability, which are lacking under the present system but would be added by the amendment before you. I truly urge you to support this amendment.

CHAIRMAN: All right, just one moment. I would like to say that the last speaker will be the maker of the amendment, Delegate Yamashita, so we shall proceed. The Chair calls upon Delegate Blean.

DELEGATE BLEAN: Thank you, Madam Chairman. I rise to speak in favor of this amendment. I don't want to address the many topics included in it, but I would like to briefly address the third paragraph dealing with local school boards because I feel that this is very important.

First, the concept of local school boards in no way dilutes the concept of a centralized school district or school system. The state school system, I think, is a sound one. I like the idea of centralized pay and equal opportunities and this in no way disrupts that. However, we have the problem of citizen participation in our schools. Perhaps my reasons for addressing this amendment and supporting it are provincial, but in my community of Lahaina there is one elementary school and it has been four years since there was a PTA active in that school, because the parents feel that there is no role to play and the department of education is too distant, too entrusted and too unresponsive to deal with

their needs or the needs of their children. I think it is important that we get people back into the school system, active in the policies, the needs, the responsiveness--and this is a step in the right direction.

Also, I think a local school board will be more responsive to community needs. I submit to you that the needs and priorities of the students at Kualapuu on the Molokai homestead land is far different from those at Hawaii Kai or Kaneohe, and I think that we have to build into our systems the responsiveness to deal with these unique needs. So as a new parent, one who is interested in seeing quality education for my child, one who would like to see more responsiveness to the students and the parents, and greater participation from the neighbor islands in our school system, I urge you all to support this amendment.

CHAIRMAN: All right, Delegate Hokama.

DELEGATE HOKAMA: Thank you, Madam Chairperson. I'd like to speak in favor of the proposed amendment. To describe in two short words my feeling of the present system--it stinks. One of the main reasons I would like to ask for your support on this proposed amendment is in the last sentence of the first paragraph: "The state board of education shall advise the superintendent of education. . . ." I believe that that is the only role the board of education should play, an advisory role. It should formulate policies and not get into the hair of the chief administrator, the superintendent, in carrying out such policies and programs, the concerns, the benefits and welfare of our primary education system.

I feel right now, members, that we have a board of education who would like to be the executive, who at the same time would like to be the legislature, and who would also like to be the judiciary, in formulating plans, and who would like to carry out those plans. I don't think we need a superintendent the way it exists presently.

One of the main second reasons, members, that I would like to support this proposed amendment--it says that the superintendent shall have the power "in accordance with law, to exercise control over the public school system." I myself would like to have just one person who I know is responsible for carrying out such policies and programs that are mandated to him. I'm very upset with the way the discussion has been going tonight, where we have 102 different opinions of how the state board of education and the department of education should be run in this State. I feel, members, that maybe the best solution to this problem would be to abolish the board.

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: Yes, Madam Chairperson. I wonder if he would yield--I would like to address a question to the maker or mover of this motion and then speak to it, if he would yield to a question.

CHAIRMAN: Delegate Yamashita, would you yield?

DELEGATE PULHAM: Madam Chairperson, I'm a little confused at this point. We started out and I believe part of a letter--and this is why I want it cleared up--or all of the letter, which appears very similar or the same as I received in my office--and what I wanted to know from the mover is if he received this letter and then duplicated it and passed it out to the delegates.

DELEGATE YAMASHITA: Yes, Delegate Pulham, for the convenience of the delegates I did distribute it to all the offices.

DELEGATE PULHAM: Okay, thank you very much for that information. Now I will speak to the motion. I will speak against it very briefly.

I am very sympathetic to brother Hironaka because I'm from the outside islands too and, as those on the Committee on Education know, I was very sympathetic to local boards. However, this does not address the problem--or redress the problem, rather--because, as Delegate Villaverde has pointed out so appropriately, it simply says in two places--advise both on the local and on the state level, and that's exactly what we're doing now. It simply, in paragraph two, creates a superintendent of education as the

dictator of education and I submit to you, as pointed out by Delegate Hamilton, that is not the position we want to leave our children in today.

CHAIRMAN: Are there any further discussions? Delegate Hale.

DELEGATE HALE: I'll have to admit before I start that I'm a little bit confused. I want to know--and I brought this out at the very beginning, because we have so many proposals in front of us--if we vote down this proposal, are we still going to take up Amendment No. 4 that was deferred until after No. 6? Or if we vote down No. 6, are we voting down the concept of local boards of education so we cannot consider it again? Could somebody give me an answer to that question? The reason I ask is that there are at least three or four different proposals, and I like the concept of the elected boards of education from school districts, but there are other things in this particular proposal that I do not like; and I would prefer to speak, if I have the time, on the amendment that was put in by Delegate Hironaka, as I think it addresses one problem at a time. I think the problem with this particular amendment, it addresses too many problems at the same time. We have in this amendment the problem of how we're going to elect our school boards on the local level and the state level and at the same time get our superintendent--

CHAIRMAN: Delegate Hale, will you please state the problem you want to know?

DELEGATE HALE: The problem I want to know is if I vote against this Amendment No. 6, will I be able to speak for Amendment No. 4, which I think addresses one problem--addresses that problem--and other amendments that come along on this same subject but with a little different twist to them. In other words, I think we're so confused and we're so bogged down in this one proposal--some people are speaking on one section of this proposal, they're for the advisory, other people are for--

CHAIRMAN: Delegate Hale, excuse me but there are others, including the second half, of amendments that will be coming up on the same topic, for your information.

DELEGATE HALE: Well, I just don't want to be in the position of voting this down and then hearing that because it's already been said tonight, that we have voted down the--

DELEGATE SOUKI: Madam Chairman, may we have a short recess, please?

CHAIRMAN: One moment. Not right at this point.

DELEGATE HALE: I want to be sure that when we're voting on this, if this is voted down, that we're still going to have an opportunity to vote for and to discuss the concept of--

CHAIRMAN: Yes, if you'll address the motion, please.

DELEGATE HALE: I will wait and make my remarks on Amendment No. 4.

DELEGATE KOJIMA: Madam Chairperson.

CHAIRMAN: Delegate Kojima.

DELEGATE KOJIMA: I'd like to speak against the motion. In deference to my friend, Delegate Hironaka, I have had three years more in education than he has. I've been a teacher, I've been a principal for 28 years. When you reach that stage, you forget to count. Anyway--but I'd like to speak against the motion because the committee, in its deliberations, has really studied this concept thoroughly and has come up with a plan which I feel is satisfactory to most of the delegates at this Convention.

When I came to this Convention, I wanted to make sure that Kauai and Maui would have a representative on the board of education and this is to be achieved by the plan submitted by the committee. I wanted to be sure that the members of the board would be elected directly and they are to be elected directly.

Third, an idea surfaced--that of a nonpartisan type of election--and that is incorporated in the plan submitted by the committee. These points, I feel, are quite admirable

and the needs of the different school districts seem to be met by the plan that the committee has submitted for your consideration.

Because of these points, I'd like to urge the members of the Convention to vote down this proposed amendment.

CHAIRMAN: Is there anyone who would like to speak for the first time on this amendment before we call on Delegate Yamashita? Yes, Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: Madam Chairman, I am totally against the two-tiered system. I am a member of the Committee on Education and I sat through the long hard meeting on this subject. I recall the testimony presented by the various state agencies, the unions and citizens. We voted against those that have been--the minority report that we had, we voted this down and all these things are being brought up again. Madam Chairperson, not one citizen testified that we should have a board of education which is not chosen by the people. Now my colleague over here, Delegate Hironaka, mentioned that the HSTA, the ILWU, the board of education itself were unanimous in their support of the directly elected board of education. I say again--we have had not one citizen testify that we should have a board of education which is not chosen directly by the people. In their support of a directly elected board of education, all parties agreed that there should be better representation so that all major parts of Hawaii can have at least one board member who directly represents their interests. I am a part of the majority of the Committee on Education that wants to have a board of education which is directly-- I say again, directly elected, voting districts that allow for at least one member from each school district and, most of all, Madam Chairman, that allow for district representation. That is my position and it is the position of the people as well. This two-tiered system is not well thought out. We have a centralized school system and we are proud of it. If we have to have elected school district boards, they will have to have power to do something. Power goes to those who get the votes. Make no mistake about it. No one in any responsible position that I have talked to wants a local school district board with power, but that's what will happen if we go that route.

If we have to have a system where they elect or appoint the people who will serve on the state board of education, then who will that board be responsible to? Not to the people, not to the folks back home. They will be responsible to the local board members who put them there. Madam Chairman, the Committee on Education worked hard to bring forth the best possible answer. I urge my fellow delegates to vote this down. Any effort to set up this ill-advised, two-tiered system--it just won't work.

CHAIRMAN: At this time, is there anyone who would like to speak? Delegate Souki.

DELEGATE SOUKI: Yes, Madam Chairman, I wish to speak in favor of the motion. Conceptually I am very much in favor of a decentralized system because I think that the neighbor islands for years have not had proper representation, as has been eloquently stated; the people from the islands of Lanai, Molokai, and from the area of Hana have no representation in the at-large school system, the system that we have now, and presently there is no means for the people in the small districts to get to them. It's an unfair system that we have now.

I speak with some experience, being director of our community action program, where we have a headstart program and parents who participate very actively in the program. They assist in making policies--I've seen the change, from parents who had no motivation at all, who didn't care for the school system at all, but as soon as they began to participate, assisting in policymaking--to determine the type of class, the type of lessons, what the students should have for lunch, etc.--their motivation increased correspondingly. And I think that in a local school system, if we have parents participating at the local level--and I do not mean the PTA, I mean taking part in an election process--they'll just become members of the local school board, where they can provide some leadership and some policymaking at the local level.

What is more important in a school system than being on a local level. You can still maintain the centralized system as far as making major policy, but I believe--I firmly believe, that the State can decentralize some of their powers to the local level. Also, you must consider that the board of education we have now is a very compromised board. The board is compromised by the legislature, which makes the laws and which determines

the kind of policy the board of education will follow; the board of education does not have the power to make laws. Then it's also compromised by the executive office. The executive office implements the program; they determine the CIP, the kind of improvement, the facilities. All of this is not in the realm of the board of education. They are compromised by these two other offices here, and I think as Delegate Hokama so aptly stated, let's change the system.

CHAIRMAN: Is there any first-time speaker who wishes to speak and has not? I'm ready now to go to those who have spoken once. Delegate Eastvold.

DELEGATE EASTVOLD: I'll yield to Delegate Chung, who has not spoken on this issue.

DELEGATE CHUNG: I'm speaking against the amendment. I see a lot of flaws in this amendment, although it has some good points. I'm concerned about the selection of superintendent and the singular power he has, which I feel is so great I don't think one man can handle the job. With the complexity of modern education, this is too big a job for any one person. The superintendent has to be a superman. We've got to find three supermen and out of the three pick the most super. I don't know anything about doing that--how are we going to do it? And all along in the process of selecting, I can see a lot of politics involved and so, therefore, the ultimate result will be the selection of some superperson who may turn out to be a dud. That's my main concern with this amendment.

I fully understand the concern of the neighbor island delegates who want direct representation instead of the at-large situation. Perhaps in our effort to find a more feasible and more effective solution, if it's possible we ought to look at this again, if we do have time, so that we can cover all the areas in this amendment and make revisions. And maybe we can come up with a better document satisfactory to the neighbor island people who want better representation, and also one where we might eliminate the possibility of political in-fighting in the selection of a singular superintendent. Those board members particularly with pure advisory roles would have very little significance in really managing or controlling a superman superintendent.

CHAIRMAN: Thank you. Delegate Takehara.

DELEGATE TAKEHARA: I'll yield to Delegate Eastvold.

DELEGATE ALCON: This is my first time, Madam Chairman.

CHAIRMAN: Yes, I recognize that so I will ask if Delegate Eastvold will yield to Delegate Alcon. He will, so proceed.

DELEGATE ALCON: Thank you very much, Delegate Eastvold. Madam Chairman, I rise to speak against this proposal. As I listened to the other speakers, all they are concerned with are--(1) accountability; (2) they are also concerned with elected advisory boards; and (3) there is concern about equal representation among the other neighbor islands.

If we were to adopt this type of selection to run our educational system, Madam Chairman, I feel that there would be a lot of problems to be implemented, and I submit to this group that although elected school boards are the most popular, I think we can cure all these problems by appointing the school board.

CHAIRMAN: Thank you, Delegate Alcon. Delegate Andrews.

DELEGATE ANDREWS: Madam Chairperson, I speak in favor of the amendment. I believe we must be reminded time and time again of the inequities and the problems that exist, especially on the neighbor islands, with the present setup and with the setup proposed in Committee Proposal No. 6. The candidates for the board of education on the neighbor islands have a very difficult time trying to represent those in their own school districts. They must run in three counties--a total of about six islands. They just have a very difficult time representing those at home and those that are in the community where they reside.

One of the main problems is that the number of registered voters is disproportionate on the different islands. The Big Island has 46 percent of the registered voters on the neighbor islands, Maui has 33 percent and Kauai 21 percent. It's pretty obvious that the votes come from the Big Island and that is where, for example, the Kauai person would be doing his campaigning, not necessarily on Kauai. And because of these inequities, I would support the amendment.

CHAIRMAN: Delegate Eastvold.

DELEGATE EASTVOLD: Would you please ask if anybody else wants to speak first?

CHAIRMAN: Yes, Delegate Sasaki, did you want to speak?

DELEGATE SASAKI: Thank you for yielding, Delegate Eastvold. As a noneducator on the education committee, I was thoroughly confused for six hours when we went through this debate, and let me give you some reasoning to clarify the last speaker. Okay, I'm speaking against the motion.

We were just talking about inequities. In the County of Kauai, if we did not try to circumvent the one-man, one-vote rule, we would derive a board of 39 members in order for Kauai to elect its own members. The only way you could get around this and keep the board small, without such a huge number, was really to go to two district school contests. Oahu is sacrificing the most. Hawaii right now has two of the representatives on the board of education. Maui and Kauai have none. Yet Hawaii is willing to sacrifice their one to give the others a voice in the DOE. Oahu is sacrificing nine members just so we can have a small enough board that will not be unwieldy. It's very difficult to understand from the people that have to do most of the sacrificing what the outside counties are asking for. We agree with the concept, it would be nice if every district could elect its own school board.

The Honolulu district itself would probably end up with a 70-man local school board. Kauai may end up with five, but we are doing this knowing inside that we are circumventing the one-man, one-rule vote to accommodate them. And I for one cannot accept all of the discussions and reasonings that we already have had to accomplish this goal. I think the primary goal, as far as I'm concerned, was to give each island--Kauai and Maui especially--a vote in the DOE, not, you know, to deprive anyone of that void. And by putting in a residential requirement, we thought we resolved this and by using this we could get around the one-man, one-vote rule.

CHAIRMAN: Thank you. Yes, the Chair will recognize Delegate Eastvold who has been yielding for several rounds, and then Delegate Hironaka.

DELEGATE TAM: Madam Chairman.

CHAIRMAN: Yes, Delegate Tam is speaking for the first time. Proceed.

DELEGATE TAM: Thank you, Madam Chairman. My apologies to Delegate Eastvold, you'll get your turn some time around. Madam Chairman, I speak for the amendment. We would like to thank the members of the Committee on Education and the members on the floor--those who are here, those who are standing in the back, or whatever. We'd like to thank you for your concern that the present system does not allow proper representation from the County of Maui, from the County of Kauai. We thank you for your attempts to bring some method of representation to us. I even thank the member--the delegate who spoke before me--who said that he did support the concept but couldn't go for the amendment.

May I just bring out two points. I remember, when I was going to school, a teacher whom I respected very much, and one thing I remember him saying one day, that if we're going to do something, we might as well do it right. No sense going halfway, and in all due deference to the Committee on Education, to the prior speakers, we're only going halfway. What is the problem? The problem is that even though there is an attempt to give more representation to the County of Maui and the County of Kauai, there still is going to be a problem, because the votes from the County of Maui and the votes from the County of Kauai are going to be basically overridden by the votes from the County of Hawaii. And in all due deference to our brother and sister delegates from the Big Island,

I know that they don't intend to do this--it's just the way the system is, because of the way the law is written at the present time.

If the committee proposal passes in its present form, the votes from the County of Hawaii are still going to control because these are all at-large, and their votes are going to be generally determinative of the representatives from this second unit. So we still have someone--we've gone halfway because now we have someone who actually physically resides in the County of Maui and someone who physically resides in the County of Kauai. But these are the people who basically appeal to the voters on the Big Island and not necessarily to the people in the counties from which they come. And that is the problem.

Now I for one cannot understand, for this reason, why our brother delegates from the County of Kauai would be against the two-tiered concept. They don't have a representative at the present time. Because of this at-large matter, they will have a vote in the future if this thing passes, but that vote again is going to be determinative of the island with the most votes.

DELEGATE HALE: Point of order, Madam Chairman.

CHAIRMAN: Yes.

DELEGATE HALE: Would you please remind the delegates who are talking to other delegates that that is against the rules.

CHAIRMAN: Delegate Hale, I'm sorry but you're out of order. I would like to ask Delegate Tam to please finish.

DELEGATE TAM: Thank you, Madam Chairman, and thank you, Delegate Hale, for your concern. I appreciate it. Now, the second matter that was addressed by the delegate before me as to the concern of the Convention to give representation to the outer islands without getting into an unconstitutional setup--may we point out that as far as we know what is being proposed will not be unconstitutional. And may I clarify something too, Madam Chairman? I'm basically intending to speak in favor of Amendment No. 4, but I am speaking for Amendment No. 6 by Delegate Yamashita because it is a good concept and I think it can be ironed out. But in any case, as to the constitutionality, I would draw the attention of this Convention to a memorandum opinion from our staff attorney on August 15, 1978, wherein our staff attorney indicates that there is a possibility--and this is in respect to the two-tiered system that Delegate Yamashita and Delegate Hironaka are presenting--there is a possibility that the court might view an indirect method of selecting a board of education as a sham or a means of circumventing the one-person, one-vote rule. Citing Dusch v. Davis, 387 U.S. 112--I believe that's it--this case cited involved a city council whose members were elected at large but resided in districts with widely disproportionate populations.

Based on the supreme court's pronouncements with respect to appointive methods of selecting governmental officials and to the desirability of experimentation with governmental structures, it is our opinion that a proposed two-tiered board of education system as discussed above would be upheld. So my appeal to the Convention is this: if your problem is with constitutionality, then let's try it anyway. We do seem to have some authority to go on, and if it should be declared unconstitutional, we can come back and adjust it. But at least we're not going against something that has been declared unconstitutional. It has not and the staff attorney has supported it and as to the two-tiered concept, if we really want to get down to local input, then I think it is a good concept. So I speak in favor of this amendment.

CHAIRMAN: Yes, one moment. Before there are any more talks, I have no business to ask you whatsoever--we're having a forum here with free debate and you can take until 4:00 a.m. if you like--but I am going to suggest, if you can kind of look it over and get to the point very quickly of what you're saying so we can go. Yes, Delegate Blake.

DELEGATE BLAKE: Point of information, Madam Chairman. I'd like to ask a question of the chairman of the committee.

CHAIRMAN: Delegate Ihara, would you answer Delegate Blake's question?

DELEGATE BLAKE: Delegate Ihara, as I understand the committee report which this amendment refers to, it's stated here that the first unit shall be comprised of the Island of Oahu, and then it says the second unit shall be comprised of the counties of Maui, Kauai and Hawaii. Then it goes on to state that there shall be at least one member residing in each school district. Is it my understanding that this definitely qualifies the counties of Hawaii, Maui and Kauai for a member?

DELEGATE TERUO IHARA: On the state board of education, yes.

DELEGATE BLAKE: Madam Chairman, I speak against the motion. If this is the case and if this has been cleared with the Committee on Education, and I think it's been cleared legally also, we from the neighbor islands are concerned. There's going to be at least 10 members on the board of education and if this does the job, the people on Kauai-- we're happy about this and I'm sure for the islands of Maui and Hawaii also. And this is the reason why I directed the question to the chairman of the education committee.

CHAIRMAN: Thank you. Delegate Hirata.

DELEGATE HIRATA: I hesitantly rise to speak in favor of this floor amendment. In so doing, I would like to express my reservations with the approach to educational governance advocated in the committee's report. Madam Chairman, I think it is clear that the education committee's mission was to provide a system of governance that would include some form of public participation. The quest for public participation is in keeping with this State's long-standing commitment to education initiated by the late Governor John A. Burns.

A key component of this participatory approach to educational governance was the election of the board, but the alternative offered by the education committee is only a minimal attempt to continue this commitment. The proposal merely addresses the constitutional concerns without providing either direct accountability or meaningful participation. As a result, the proposal is a mild form of elected governance that retains the statewide nature of the currently structured board with only the appearance of district representation.

My remarks, Madam Chairman, are an attempt to remind this Convention of the promises of many to give meaning to the idea of public participation. This commitment includes the public accountability of board members at a level that voters and parents can participate in. The history of educational governance in this State bears out the point I am making: in the 1960s election of the board was considered crucial to the progress we would make in the field of education. It was felt that there would be more public support of education if the public had a direct role in the formulation of educational policy. For this reason, the electorate overwhelmingly approved the Constitution providing for direct election of the board. The original proposal for the elected board did, however, recognize that meaningful participation could not occur if the board was a statewide one. Each region or county has different needs and district representation was considered the most effective way in which board members could respond to the needs of their constituents and the children.

This is the reason there were seven school districts, and the reason the district advisory councils were in existence. The 1972 federal court order to reapportion the board of education forced changes in the nature and complexion of this governance. Faced with the responsibility of meeting the one-man, one-vote requirement, the seventh state legislature took the opportunity to review the dilemma of governance and a joint house-senate interim committee was formed for that purpose. Their report confirmed that while there was sufficient sentiment for public participation, that participation must be more meaningful than what was currently offered. The legislature also felt that mere apportionment of the board was not the answer. To meet the one-man, one-vote mandate, we would need a 37- or 39-member board, a number too large for efficient decision-making. The legislature instead suggested a proposal that would make public participation more relevant to the formation of a three-tiered system of governance. In addition to the board and the district advisory councils, they recommended individual school advisory councils. This joint house-senate interim committee reported their findings in 1974, but their recommendations were not acted upon.

Now this Convention finds itself faced with the governance issue, for in the intervening years the federal court reapportioned the board by giving seven members to Oahu and

only two to the neighbor islands. In the 1974 election, the two neighbor island board members were elected from Hawaii county with its larger population, leaving Maui and Kauai unrepresented. We all agree that to continue this federally apportioned board would be unfair and a gross injustice to the people of Maui and Kauai. It completely eliminates the idea of true district representation. The current board members are not accountable to each geographic area. It is this dilemma that the education committee had tried to remedy. My reluctant support of the education committee's recommendation is due to my reservation that the recommendation again strays from the original purpose of an elected board. The answer to the question of public participation that the education committee proposes is to require residency of a candidate.

Madam Chairman, there is a substantial difference between a candidate elected by voters in the district and a candidate who resides in the area. A resident board member is still not accountable to his area. Under the committee's proposal, a board member can ignore the wishes of his constituents if he knows he can offset their lack of support by the vote within the district.

In essence, we have skewed the historical intent of an elected board. It no longer does what was intended nor what the people believe the purposes of an elected board are. I feel personally responsible for articulating some of these concerns before this body and I will vote for the amendment which offers a two-tiered approach to educational governance. It would, in my opinion, bring us closer to the original intent of participation and accountability. I feel that it would be more responsive to the needs of the people and the children in our public education system.

However, Madam Chairman, the Committee on Education has looked at this problem, and has considered the alternatives, and I would like to urge that my colleagues, if they should choose to do so, favor the committee's proposal. This is based on my belief that participation even minimal is better than none at all. We have not come to grips with the issue of governance and accountability. We have merely provided a temporary solution until there is greater consensus on this subject. It is my hope that the legislature will continue to grapple with this problem and to explore more methods to provide the voter with accountability and public education.

CHAIRMAN: All right, Delegate Chong.

DELEGATE CHONG: I speak again in favor of this amendment. There has been complete disagreement and confusion on this amendment--the same disagreements and confusion that attended the committee. I would suggest then--instead of "because we don't know, vote no"--we should vote aye and leave it to the people to choose whether they want this system or to leave it status quo.

CHAIRMAN: Delegate Eastvold.

DELEGATE EASTVOLD: I'd like to speak once again against the amendment. I'm sure all of my committee members will agree with me that we're seeing an instant replay of what took place in the committee and the time element is almost exact also. And, with all respect to Chairman Ihara, I hope that we are able to make a legitimate decision tonight on this matter. I'd hate to see it extend over to the next day.

I am really worried about what's taken place thus far. The comments that have been made in favor of this proposal have been rather misleading, and I'd like to point out the myth that has been presented to this committee. First of all, by having this local board of education--the local board is not going to be able to solve the problems of the local school system. All it is going to be is an advisory council, strictly advisory. They're not going to have any powers, due to the fact that they can't meet the one-man, one-vote requirement set by the supreme court. That's already been stressed prior to this.

People keep talking about a more responsible form of education. The education committee has deliberated on this and deliberated on this and deliberated on this, and we have come under the binding of this one-man, one-vote--the proposal you have before you. I can't urge you enough to go along with this. But to get back to this proposal--it's not going to solve any of the problems; it's not going to solve any, one way or another. It's just going to be strictly advisory. You're going to have an advisory at the local level, which is going to be advising the state level, which is going to be advising the

superintendent, and in turn is going to be advising the governor, and it's up to the governor whether he wants to listen to any of it at all; and I would truly respect him if he didn't want to listen to it, the way it's going thus far.

So far I've been hearing attacks on the board of education, attacks as though they're responsible for the present educational system. I'd like to point out to the members of this delegation that the board of education really doesn't have any powers whatsoever. They are there to set policies, but they're also there under the auspices of the governor; he can veto anything he desires, so if you want to get rid of anything, get rid of the governor.

As far as accountability, we have elected this board of education--they're elected by and under the same proposal, they'll be elected from various districts. They will have residency. I myself--I'm ideological also--I have a great philosophy and I agree with the concept that is presented here. I'd love all of us to represent ourselves. We have a true direct democracy, but that is not feasible. And to say that by having this local board of education, that it's going to solve that problem--it's not. You're going to go to the local board of education and give your complaints and they're just going to take it on advice, because that's all they're going to have as far as power.

As far as input, as I stressed before, we have input from the PTA and the advisory council. A rose by any other name smells the same, and if you think that the present system stinks, this is going to stink also. So I really strongly advise you to vote against this amendment because it's not going to change anything. You're going to end up with the same system you have today. So, please, think in terms of facts, not in terms of what you'd truly like to have because it's not going to come about through this amendment,

CHAIRMAN: Thank you very much, Delegate Eastvold.

DELEGATE HIRONAKA: Madam Chairperson, I've only spoken once on the amendment. May I have my second turn?

CHAIRMAN: All right, Delegate Hironaka.

DELEGATE HIRONAKA: First of all I'd like to inform the Convention that I think Delegate Eastvold is misinformed on some things, despite the fact that he's on the education committee. The local school board would meet the one-man, one-vote--because in each school district as long as you have the local school board candidates running at large--but at least that's better, running at large, in a local school district than on the whole island or running on Hawaii, Maui and Kauai. So, like Maui we would have assurance that there would be a local board member from Molokai and Lanai sitting on the Maui local board.

And Delegate Sasaki mentioned not being able to--you'd have to have Oahu, because of the proportions with local boards of 70 or 100 members. That is not true either. You could have on each island--each school district could have a seven-member local board, or a nine-member, or eleven-member, or whatever--the legislature, if you're going to do it statutorily, can specify that.

And as far as the board of education only having to do with policy, I beg to differ with that. The CORE report and the legislative auditor's report, if you will read them, state that this has been one of the problems with the board, that instead of sticking to policymaking, which the statutes call for, it has been spending some 70 percent of the time trying to manage and control.

And lastly, if Delegate Taira would yield, I'd like to ask him a question.

CHAIRMAN: Are you sticking with the motion in line with that? Delegate Taira, would you please answer a question?

DELEGATE HIRONAKA: Being a senator, that's the reason I want to ask him. When the one-man, one-vote rule was ordered, the legislature had a lot of time to come up with compliance of this one-man, one-vote rule. Could you tell this body the problems that the legislature had, and of course how they could not find a solution to this and so the court had to make a ruling.

DELEGATE TAIRA: Yes, Madam Chairperson, I'd be very happy to answer that question. The problems the legislature encountered were so numerous and so complex that we could not find a solution. We were in a worse situation than this Convention.

DELEGATE EASTVOLD: Madam Chairman, may we have a short recess, please? The hour is late and we'd like to get some coffee and take a break.

CHAIRMAN: Yes, the hour is late but we have a job to do. I would like to ask if Delegate Yamashita is ready to address the body.

DELEGATE TAKEHARA: Madam Chairperson, this is just my second time, may I speak?

CHAIRMAN: I'm very sorry. I have a message to read first. It is now after 11:30 p.m., there are several more amendments to be brought up. At the present rate of progress, it is not foreseeable that the Committee of the Whole would be able to dispose of the remaining amendments before midnight. Therefore, it is in order to rise and advise the President that more time is required to continue the consideration of Committee Proposal No. 6. The Chair will entertain such a motion at this time.

DELEGATE CROZIER: Madam Chairman, I so move.

DELEGATE WURDEMAN: I second it.

CHAIRMAN: All those in favor, raise your hands. Opposed? All right; it's been moved and seconded that the Committee of the Whole rise and report. Announce the vote, please, Mr. Clerk.

CLERK: The vote is 54 ayes and 26 noes.

CHAIRMAN: All right, the ayes win. It's been moved and seconded that the committee rise and report.

At 11:48 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Thursday, August 24, 1978 • Morning Session

The Committee of the Whole was called to order at 12:07 a.m.

Delegate Goodenow presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. Good morning. I should like to say that we'll march right into this on your terms. Keep one thing in mind: we have several, several, several more to go. Okay, we're discussing Amendment No. 6. Is there any discussion?

DELEGATE TAKEHARA: Madam Chairperson, this is my second time around. I'd like to remind my fellow delegates here of some of the things that Delegate Eastvold talked about regarding the two-tiered system. One of these was the fact that we need to be sensitive to the one-man, one-vote premise, which I'm sure we all believe in--that possibly if we go this route of appointed--or even another process of selection from the school advisory councils, this board of education will be merely an advisory board.

Also, if we look at the proposals turned in by the committee, it does allow one representative from every island--someone who is residing there. People in the windward district will also have one member residing there. Presently they don't have one. The same with the central and the same with the leeward district.

Now as far as statements on accountability, we have noted that 81 percent of the electorate public wants an elected board. Although the intent of the two-tiered system

is to focus on grass-root participation, it is not the best solution to the problem of board of education membership. It would create an indirectly elected board, or even possibly an appointive board, and the accountability factor would remain in question and I really wonder if our public realizes that. They want an elected board. For those of you who feel that our present board of education stinks, with direct election to the board of education, the board members will be now directly accountable to the electorate. The present process--no, we must admit to that. This will be a tremendous improvement in accountability to the electorate. A board of education chosen indirectly, the indirect process via the two-tiered system, would not afford the same, and I ask again that you please give the board of education another chance at it. You will have someone living in your residence area that you can talk with regarding the problems that your children and families are having.

DELEGATE TERUO IHARA: Madam Chairperson.

CHAIRMAN: Yes, Delegate Ihara.

DELEGATE TERUO IHARA: As a candidate for the board of education, of course I have a conflict of interest here, but I intend to vote on this question. I'll admit that during the early stages in meetings of the committee, I was for this concept. But when the committee--after spending many, many hours discussing this issue concerning the indirect method of electing the school board and the direct approach--when the committee by a great majority went for the direct method of choosing school board members, I, as chairman, could not help but go with the majority as to the wishes of the committee, and that is where my position is as of this moment. And therefore I ask you to vote down this amendment.

CHAIRMAN: Delegate Yamashita.

DELEGATE YAMASHITA: Madam Chairperson, I'll make my--

DELEGATE UYEHARA: Madam Chairman, point of inquiry. Will this be the last speaker?

CHAIRMAN: Yes, he is the last speaker.

DELEGATE UYEHARA: I'd like to speak for the second time.

CHAIRMAN: Yes, the Chair recognizes Delegate Uyehara.

DELEGATE UYEHARA: I'm afraid that if we close debate now, we might not all be here and our minds to reason--as the prayer has been given, to provide us with reason--the power to reason would still be blurred.

There needs to be a very careful study and very careful reasoning on this amendment. Perhaps some of us have not had enough time to really come down to the nitty-gritty, and therefore I'd like to make this very simple and try to clarify it. The words "local board" or election to the local sound very pleasant. However, in reality it is very provincial for each locale, being rightfully proud of its own local board or local school districts--they will begin to fight in what we call a power struggle. They will start looking for more money for their own district, and the board or the legislator from within that board that has the most power would begin to wield most of the influence and money for their own area. This is the danger in this amendment.

Secondly, when they are elected, and appointed to the state board--if you read very carefully again, I would like to say--it says that it is to advise the governor and not to make policies and plans for our schoolchildren. Therefore, I would urge my fellow delegates to vote down this concept and to give education a better chance for the next few years.

CHAIRMAN: All right, is there any further discussion?

DELEGATE NOZAKI: Madam Chairman.

CHAIRMAN: Delegate Nozaki is recognized.

DELEGATE NOZAKI: Thank you. I speak for the amendment. I really believe that the district school councils can afford people at the top or at the state level board of education--with information that will center on their problems and diversity, and in so doing bring about quick resolutions, or solutions to their problems. And I think that because they are in an advisory capacity, this will omit a lot of the bickering over budget and other money items that have been referred to. And because of this, I feel that there will be more benefits than disadvantages to such a system.

CHAIRMAN: All right, any further discussion? Delegate Hirata.

DELEGATE HIRATA: I just want to speak briefly and tell my fellow colleagues that, in giving my speech I was speaking to the concept of a two-tiered system. I would like to inform all of you that this particular amendment on the floor really does not address itself to the concept I was talking about.

There are several flaws in this amendment before us. For one, the superintendent of education will be appointed by the governor, which will not afford the board of education any access into the department of education. Secondly, the board of education will only serve to advise the superintendent, which again defeats the purpose of the board itself.

CHAIRMAN: Delegate Hirata, you are speaking against the amendment?

DELEGATE HIRATA: Well, I would just like to clarify some things in the amendment and also in the committee proposal, because I believe there are a few people who are a little bit confused. In the committee proposal--someone inquired of me about the makeup of the board--in the committee proposal, they're not asking for a 39-member board. The board that would probably be created with the committee proposal would be a small board of 13 members--possibly 13 members, 10 from Oahu and 3 from the neighbor islands. So I just wanted to clear that up for those who may think that the committee proposal is proposing a 39-member board. It isn't.

The committee proposal will also assure that one member of the board be from each of the neighbor islands and 10 from Oahu. But I just would like to emphasize that when I spoke, I spoke on the concept of a two-tiered system, and the amendment before us does not really solve the problems that I brought up.

CHAIRMAN: All right, thank you.

DELEGATE FUSHIKOSHI: Madam Chairman, I would like to speak briefly too, to what I did not mention. I ask myself, why do we have public hearings? I think we have public hearings to have input from the community, and of those people who testified, none of them, as I mentioned, talked about the two-tiered system. And yet we have all these other people who testified before the committee and talked about a directly elected method, that this is what the people want. They don't want the superintendent per se to have the power. We would like the board to have the power and this is what they're saying, that let's have a direct method, let's have people elected directly to the board, rather than the indirect method. And that's what I want to say.

DELEGATE HIRONAKA: Madam Chairperson, may I just correct an error there?

DELEGATE KOJIMA: Point of order, Madam Chairman. I think he's spoken two times already.

CHAIRMAN: Delegate Kojima, it is a new day. All right, is there anyone who hasn't spoken and would like to?

DELEGATE TAKITANI: Madam Chairperson, I yield one of my two times to Delegate Hironaka.

CHAIRMAN: Yes, proceed.

DELEGATE LIU: Point of order, Madam Chairman, that's out of order.

CHAIRMAN: That's out of order.

DELEGATE HALE: Madam Chairman, I have not spoken twice, I asked a question once. I would like to say that Delegate Hironaka was going to correct a misimpression, and he says that as a member of the education committee. I'm not a member of the education committee, but Delegate Hironaka said that Ruth Tabrah did speak for this system, and she was a member of the public; but I'd also like to say, I don't know whether I'm considered a member of the public, but I also spoke for a two-tiered system.

DELEGATE FUSHIKOSHI: Madam Chairman, point of information. When I said public, I feel--correct me if I am wrong--Delegate Helene Hale is a delegate, and Mrs. Tabrah being on the board of education, I don't consider her a public person.

CHAIRMAN: It's a matter of interpretation. They both work for the public, so we will get on with the points. Anyone else?

DELEGATE BURGESS: Madam Chairman.

CHAIRMAN: Yes, Delegate Burgess.

DELEGATE BURGESS: Madam Chairman and fellow delegates, I speak against the amendment. I appreciate the very thorough and well-thought-out arguments that have been made, particularly by Delegate Yamashita and Delegate Hironaka, and I can see the difficulty in the question for which they are attempting to find a solution.

However, I have some problems with the solution being suggested, and the two problems I have with it particularly are--first, that it reduces the power of the board of education. Instead of having a board of education, which is directly elected--instead of that directly elected board of education having power to control education in the State of Hawaii, it reduces the board of education to really nothing more than a nominating commission in the selection of a superintendent of education. The control, under this proposal, would be vested entirely in the superintendent of education, which would dilute the public's input into the educational process of the State. The voters would elect their local boards, and the local board would do nothing more than elect one representative to the state board of education. Then the state board of education would do nothing more than nominate three people for superintendent, to be selected by the governor with the advice and consent of the senate. Now that superintendent of education would continue to act even in the extraordinary situation where he may be completely out of touch with the local boards and completely out of touch with the state board of education. Neither board would have any power whatsoever over what that superintendent could do.

My experience during the campaign was that the voters of Hawaii want more, not less input into the educational process and therefore, although I appreciate the difficulties that have been addressed, I would suggest that this is not the best solution to the problem.

CHAIRMAN: Thank you. Anyone else? Any further discussion?

DELEGATE VILLAVERDE: Madam Chairperson, for the second time.

CHAIRMAN: Yes, it is the second time, Delegate Villaverde.

DELEGATE VILLAVERDE: Thank you. The Committee on Education has, after much thought and deep deliberation, as has been attested earlier--and I'm sure it was exhaustive deliberation, as I see by all of these consensus signatures here--they have deliberated and have come up with a solution to the problem of representation on the board of education. And in the final analysis, I believe they are right. I urge you to vote this and all similar amendments down.

We need an elected board of education, with the power to set policies, and not to advise. Also, we need a board to hire and fire the department's chief administrator, the superintendent, as well.

CHAIRMAN: All right, is there any further discussion on the matter?

DELEGATE TAM: Madam Chairman, this is my second time. I beg the indulgence of this group, but if I may just add a couple of things. I would like to correct a misconception that some of you may have in moving for this--that we, the delegates of the Maui

county, in some way are planning some kind of substitute such that there would be a 7-person board of education, and 3 would come from the neighbor islands. That was never our intent--that was not, and is not now our intent. If in fact there were going to be any problems with representation, we would be all for in some way increasing the number of representatives from Oahu, so it's not to bring it up to a larger number of 13, or 12, or whatever it would take to be fair about it.

Secondly, I would like to point out that the concept as proposed by--by the way, Madam Chairman, I'm speaking for the amendment, at least for the concept of a two-tiered system--the amendment that the problem Delegate Yamashita is trying to correct is a problem that could even occur on Oahu. In other words, because the Oahu delegates are going to be elected at large, it's possible that the highest man in a district may not in fact be the highest man at large, so that the number-two man in a district, because he pulls more votes from the other districts, may turn out in fact to be the district representative. That is a real problem.

In any event, Madam Chairman, I would like to conclude with this: We, the delegates of Maui county, realize that throughout this debate there has been concern for us, and for the County of Kauai, and we can feel the aloha in this group. For that we thank you.

CHAIRMAN: Is there any further discussion before--all right, Delegate Yamashita.

DELEGATE YAMASHITA: Okay, thank you. I'll make my comments very brief, I know everyone wants to go home. I would just like to say that I believe that after Reynolds v. Sims, one-man, one-vote reapportionment will always be a problem. I think the present system is an anachronism, and I think we have to look to new directions. What we're trying to do is again put Band-Aids on a huge wound. I believe the majority's report is an honest effort to try to work within this system; however, I think that a new approach is necessary. I think their approach by a two-unit, at-large district with stipulations of residency still does not address the question of accountability. There still is a problem of residency within an area, for the person is still not accountable to those voters in his particular district because he is running at large. So what I'm saying is that it still does not answer the question of accountability.

In the '60s, there was a need for many statewide policy decisions, and I think there were various decisions that were very good. However, we are in the '70s now, and most of the problems today are on the district level. They are provincial in nature. Therefore, I think that the local board concept brings the input back to the local level and making it accountable, truly accountable, is essential. I have been sitting here listening to all the comments and I'll have to admit, some of them are very valid concerns with my particular amendment. But I would just ask this Convention--let's go for the optimum. I've heard questions about the problems of an advisory board. That's why I still can't seem to figure out why Delegate Hironaka's amendment to retain policy-making power with the state board was voted down by this body. It seems to be a major concern of the group.

The second problem seems to be the selection of the superintendent, where again I got a sense of great concern in this body. However, my point is, let's go for the optimum. I think the question here is local district accountability because I think, today in the '70s, that's where the problem is and I think we have to address it.

CHAIRMAN: Thank you. Are you ready for the question?

DELEGATE CHONG: Roll-call vote, please, Madam Chairman.

CHAIRMAN: All right, a roll-call vote has been called for. Do we have 10 seconds? Yes, we have 10 seconds. The clerk will call the roll.

Roll call having been ordered, the motion failed to carry by a vote of 27 ayes, 65 noes and 10 excused; with Delegates Andrews, Barr, Blean, Cabral, Haunani Ching, Chong, Chu, Chun, Hale, Hirata, Hironaka, Hoe, Hokama, Izu, Kimball, Kono, Liu, Miller, Nozaki, Odanaka, Silva, Souki, Takitani, Tam, Yamashita, Yoshimura and Chairman Goodenow voting aye; Delegates Alcon, Anae, Barnard, Barnes, Blake, Burgess, Campbell, Chang, Calvin Ching, Laura Ching, Chung, Crozier, de Costa, Dyer, Eastvold, Fernandes Salling, Fujimoto, Fukunaga, Fushikoshi, Hagino, Hamilton, Harris, Hashimoto, Hayashida, Hornick, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Kaapu, Kaito,

Kojima, Lacy, Ledward, Marion Lee, Lewis, Marumoto, Nakamura, Nishimoto, Okamura, Ontai, O'Toole, Paty, Penebacker, Peterson, Pulham, Sakima, Sasaki, Shinno, Shon, Stegmaier, Sterling, Stone, Taira, Takahashi, Takehara, Takemoto, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax and Wurdeman voting no; and Delegates Donald Ching, De Soto, DiBianco, Ellis, Funakoshi, Hanaike, Hino, Rachel Lee, McCall and Sutton being excused.

CHAIRMAN: The result of the vote is 27 ayes, 65 noes and 10 excused. The noes have defeated the amendment.

DELEGATE FUSHIKOSHI: Madam Chairman, would it be possible then, because of this vote--that if the makers of the three amendments, because they're similar in nature--would they yield and not bring them up?

CHAIRMAN: One moment, I am still not clear on Delegate Fushikoshi--if he would please--what was the point?

DELEGATE FUSHIKOSHI: I would like to know, since these three amendments are similar, would it be possible not to take them up so that we can expedite matters faster?

DELEGATE HALE: Point of order, Madam Chairman.

DELEGATE FUSHIKOSHI: I am asking a question, I'm not--

CHAIRMAN: Yes, it would be, but the problem is when.

DELEGATE HALE: Personal privilege. I specifically asked you whether or not we were going to take the other proposals after this, that if we voted down this concept, would we still have a chance to vote on the others, and you assured me that the answer was yes.

CHAIRMAN: There are many, many proposals. We have several overlapping--

DELEGATE WAIHEE: Madam Chairperson.

CHAIRMAN: Yes, Delegate Waihee.

DELEGATE WAIHEE: Point of parliamentary inquiry. This is specifically with regard to Amendment No. 7. Specifically with this proposal, it is my understanding, Madam Chairman, that under Robert's Rules of Order, any matter which has been acted upon by the body and turned down may not then be brought before the body. Am I correct?

CHAIRMAN: There is a difference in--

DELEGATE WAIHEE: Yes, what I'd like to suggest, Madam Chairman--

CHAIRMAN: Specifically you're referring to--

DELEGATE WAIHEE: What my inquiry would be is whether we would act upon those portions of this proposal that are identical to the one that we just voted down, or whether we would just--if necessary, and if there is a mover--we would only act on those provisions in this particular proposal which are completely new. I would like a ruling.

CHAIRMAN: It is the intention of the Chair, because there are many overlaps in the remaining seven or eight proposals, that those delegates meet sometime before the next meeting, where this can be properly discussed.

DELEGATE CHONG: Thank you, Madam Chairman.

DELEGATE HALE: Madam Chairman, I move that we rise and report that we've made progress and would like to meet later on today.

DELEGATE CROZIER: I second the motion.

CHAIRMAN: It is now in order that we rise and advise the President that we need

more time to continue to consider the proposals that are left for our consideration. All in favor, please raise your hands. Opposed? The ayes have it.

At 12:43 a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Thursday, August 24, 1978 • Evening Session

The Committee of the Whole was called to order at 9:10 p.m.

Delegate Goodenow presided as Chairman.

CHAIRMAN: The meeting of the Committee of the Whole will please come to order at this time.

It is my sincere wish that this evening we can work well together and progress and really have a major accomplishment by completing our report, Standing Committee Report No. 39, and if we all work together and smile along the way, maybe we'll make it. So let us proceed.

First in order tonight, we will consider Amendment No. 4A pertaining to the state board of education submitted by Delegate Hironaka. The Chair at this time will recognize Delegate Hironaka.

DELEGATE HIRONAKA: Madam Chairman, I move that we amend Committee Proposal No. 6 by adding a new section to Article IX entitled "Local Board of Education; Composition and Power," to read: "There shall be local boards of education composed of members who shall be elected in a nonpartisan manner by the qualified voters of the respective school districts as provided by law.

"Each local board of education shall select from its membership a representative or representatives, in accordance with law, who shall serve as members on the state board of education."

CHAIRMAN: Is there a second to the motion?

DELEGATE CHONG: I second.

CHAIRMAN: Delegate Hironaka, would you like to speak on your amendment.

DELEGATE HIRONAKA: I'd just briefly like to tell you about this amendment because it's a substitute for the amendment that was numbered 4. This should have been placed on your desks just this evening. It's the same as Amendment No. 4 except that I've added in the second paragraph the following words: "or representatives, in accordance with law," and the reason for this being that should the legislature decide to put more than one member from certain school districts on the board of education, this would give them the leeway.

In other words if, for instance on the Island of Hawaii, instead of having one member on the board, the legislature should see fit to have one from east Hawaii and one from west Hawaii and, perhaps, Honolulu's school district being larger to have two members. So instead of a 7-member board, we may have 12, 13, depending on if they see fit to have one to be shared between Molokai and Lanai--and they may do that, according to this language. In other words, this would give the legislature the power to have as many as they see fit.

I'm not going to discuss the merits and demerits again because I think we had enough last night, and I ask that the opponents of this proposal do the same in the interest of time. As we pointed out last night, we all want direct voting and being able to elect our own man, but it's impossible. The only way is by the at-large election or the two-tiered route. And I think you know the advantages of the at-large and the advantages of the two-tiered

system; and you have the disadvantages of having an at-large election and the disadvantages of the two-tiered. We went through all that last night.

As far as effectiveness and power of the board, I'd like to make it clear that there is no difference between the two plans except for whatever the Constitution and the statutes grant the board, and of course the quality of the individuals who are elected to serve on the board. For your best judgment I realize that it may be a difficult decision because you have good and bad in each plan. It so happens that we think that the two-tiered system is a better plan. Thank you.

CHAIRMAN: Thank you, Delegate Hironaka. The Chair recognizes Delegate Ihara.

DELEGATE TERUO IHARA: Madam Chairman, I rise to speak against this amendment. As Delegate Hironaka mentioned, the two-tiered approach to the state board of education was discussed for almost three hours last night.

Let me tell you something about what the committee did with regard to this concept. I spoke about it last night but I want to again say that the committee spent many hours discussing the indirect route and the direct route and overwhelmingly favored the direct. This amendment merely changes the nature of the board from advisory to nonadvisory.

So I therefore would like to recommend that my fellow delegates vote down this amendment. Thank you.

CHAIRMAN: Is there any further discussion? Yes, the Chair recognizes Delegate Uyehara.

DELEGATE UYEHARA: Thank you very much, Madam Chairwoman. I would like to speak against the amendment that my fellow delegate from Maui is offering. This is the same issue that we discussed and debated last night, and we overwhelmingly voted it down. This is the same two-tiered system that we talked about.

Secondly, I feel that you should not be misled. If you have carefully read the proposal that was made in the education committee--that each island will be represented in the direct system, at least one member will be represented, whether he is from Kona or Hilo--and this language was left up to the legislators to decide--there will be representation from all the school board districts. And therefore I urge the delegates to vote very carefully but vote down this amendment. Thank you.

CHAIRMAN: Is there any further discussion, or are you ready for the question?

DELEGATE SOUKI: Yes, Madam Chairman, just a point.

CHAIRMAN: Yes, the Chair recognizes Delegate Souki.

DELEGATE SOUKI: Thank you. I just wish to clarify a couple of points. One of the major considerations of the arguments last night was not the representation, but rather accountability, and I think this should be borne in mind. In the method presented by the education committee, it does provide for representation, but the difficulty is in trying to determine who you are accountable to--to the voters of Maui, Kauai or the Big Island. That is the problem, not representation.

Another question raised last night concerned the superintendent having extraordinary powers. I believe this amendment eliminates that problem. These are the two considerations for us to think about.

CHAIRMAN: All right, is there further discussion?

DELEGATE FUSHIKOSHI: Madam Chairwoman, I would like to speak against this amendment. This Committee of the Whole dealt with a similar amendment last night. After some four and a half hours of debate, the amendment failed by a vote of 65 to 27, I believe. Here we are again. Last night the most significant argument raised by the speakers on behalf of the amendment was that the neighbor islands have not been fairly represented. The speakers argued that if local boards were composed of locally elected

members and those boards sent one of their members to the state board of education, we would have a system which is more geared to the neighbor islands.

Madam Chairman, my fellow delegates--first, such locally elected boards would by their nature take power from the centralized system, and we don't want that. Second, the members of the state board of education under such a system would owe their allegiance to those who put them on the state board and not to the people, and we don't want that. Finally, Madam Chairman, the premise that we on the neighbor islands favor a change from a directly elected board of education with policy-making powers is faulty.

May I ask the delegation to consider First Hawaiian Bank's published survey results on the subject. The survey was done under the direction of Dr. Thomas Hitch, the renowned expert on polling and public research. The survey found that 81.7 percent of the citizens of Hawaii favored a directly elected state board of education; that is, almost 82 percent of all the people did not want the two-tiered, appointive board system.

What is even more interesting is the county-by-county results on this question: 82.5 percent of the citizens on Oahu favored a directly elected board such as the one the Committee on Education has recommended; 78.6 percent of the citizens of the Big Island favor it; 75.1 percent of the people on Kauai favor it. And, Madam Chairman, the highest percentage of any county, higher even than the State as a whole, is on Maui county. Apparently, the vast majority of the people in Maui county would reject my colleague's proposal if it were offered to them.

According to the First Hawaiian Bank survey, a stunning 82.6 percent of the people of Maui county favor a state board of education directly elected by the people. I urge my fellow delegates to vote this and all similar proposals down.

Thank you.

DELEGATE YAMASHITA: Madam Chairperson.

CHAIRMAN: Yes, Delegate Yamashita.

DELEGATE YAMASHITA: I would like to address what was stated by the previous speaker. Basically, I think I would like to address the topic of saleability versus credibility.

Frankly, I'm quite distressed hearing this phrase because I resent it when it is used for convenience. You can look at the polls but I think it is unnecessary. If we look at what is saleable as those alternatives which will win approval at the polls, we could easily have passed on a unicameral legislature--

DELEGATE VILLAVERDE: Madam Chairman, point of order, please.

CHAIRMAN: One moment, please.

DELEGATE VILLAVERDE: I think the delegate should stick with the subject matter rather than--

CHAIRMAN: Yes, your point is well taken. Thank you, Delegate Villaverde.

DELEGATE YAMASHITA: Madam Chairperson, I was addressing the previous speaker's implication of saleability. He was addressing the problem of saleability and I would like to respond to that.

CHAIRMAN: Are you speaking for or against?

DELEGATE YAMASHITA: I'm speaking for the amendment.

CHAIRMAN: All right, continue.

DELEGATE YAMASHITA: Thank you.

DELEGATE PULHAM: Point of order, Madam Chairman. The delegate may not address the previous speaker, he must speak to the motion.

CHAIRMAN: Continue, but speak to the motion.

DELEGATE YAMASHITA: But this Convention has shown its intent to study all issues before putting forth an alternative that addresses the particular problem directly and completely. We have done that with ethics. Why stop now? Why is this issue the only one where public opinion is used as a definite limit, not a guideline?

The First Hawaiian poll also shows that neighbor islanders, who have only two of the nine seats on the present board of education, would approve of a local board of education. I am sure that we would all like to address accountability before responsibility for the board of education and I believe we have an intelligent compromise package which addresses accountable representation.

Policy-making powers still entrust, in an elected base, an input into the selection. I sincerely feel that we have a solid alternative that at least I can live with in my conscience. Let us put out the best studied alternative to the public and let our work sell itself to the public based on logic and reason.

I believe that we are here to come up with the best product we can. I really think that it should not be a question of saleability versus credibility but that after September 21st and the adjournment of this Convention, it is our duty as delegates to go out and sell our product. And so I would not think that the argument of saleability is a valid one.

Thank you.

CHAIRMAN: Thank you, Delegate Yamashita. Any further discussion? Delegate Funakoshi.

DELEGATE FUNAKOSHI: Madam Chairman, I rise to speak against this amendment. Basically, it is still the two-tiered system, which is not in line with our democratic system. The concept of the local BOE selecting the state BOE is akin to the legislators selecting their executive branch.

I believe the people's right to vote for the BOE should be maintained, and I urge my fellow delegates to vote against this amendment.

CHAIRMAN: Thank you. If there is no further discussion--

DELEGATE HARRIS: Madam Chairperson.

CHAIRMAN: Yes, Delegate Harris.

DELEGATE HARRIS: Thank you. I'd like to speak for a minute to the proposal. It has been stated here this evening that we discussed this and voted down the concept last night. I disagree with this. As one who did vote against the proposal last night, I want to make it known that I voted against it because I thought that amendment had many serious flaws, but my vote was in no way against the concept. Thank you.

CHAIRMAN: Thank you, Delegate Harris. Are we ready for the question?

DELEGATE TAM: Madam Chairman.

CHAIRMAN: Yes, Delegate Tam.

DELEGATE TAM: I'd just like to speak briefly in favor of the proposal. I would just like to point out, in terms of the sincerity of Delegate Hironaka, that I would support him in view of his experience. He spent seven years as a teacher with the department of education on Maui. He also has spent 18 years as a principal, and I believe he knows what he's talking about.

As far as the comment that this would take away from the power of the board of education, I would just direct the attention of the members of the Convention to another proposal by Delegate Hironaka, which would still leave the power to formulate policy with the board of education and not dilute this power.

Further, this argument that persons who may be selected from these local boards to the state board would only be responsible to those people and not the people of the county, I think, does not really reflect the situation. If the person is elected--first of all, to get to the local board the person has to be elected by the people in the district; and secondly, the faith of that local board is put in that person to represent the district, so he would not be mainly looking to appease the other members of the board. I think their interests all together would be for the whole, they would be for their district, for the good of their district. He would not be there just to represent himself or only for his own benefit. He would be there for everybody.

Thank you very much, Madam Chairman.

CHAIRMAN: Thank you, Delegate Tam. Is there any further discussion?

DELEGATE BARR: Madam Chairman.

CHAIRMAN: Delegate Barr.

DELEGATE BARR: I would like to speak for the motion. I would like to address myself to a couple--three matters that have come up. One, I was impressed with the speaker on the opposite side, who said this was akin to the legislature selecting the executive. And I would like to point out that that system is known as parliamentary government. It works in England, Canada and several other countries very successfully and, while this would actually be a board rather than just one executive, if that model is one that it is akin to, I would suggest that's a virtue and not a flaw.

Secondly, I would like to point out that the earlier statistics given about public opinion on Maui were misleading because the kinds of answers the public gives in opinion polls depend upon the way the questions are asked, and this two-tiered system, in this form, was not asked of the people of Maui. I would like to suggest that the eight delegates who voted together last night--I will be surprised if we don't vote together again tonight. I think it's rather evident that the people of Maui--unless you think we're completely out of touch with them--perhaps see this a little differently from what that particular opinion poll shows.

Finally, I would like to suggest that if we are concerned about representative government, we must reject the proposal of the committee. The original proposal in no way guarantees representation. A representative represents those who elect him--that is, his constituency. If the election is at large, the constituency that he represents is at large. What the people of Maui want is their own representative, not one at large. Thank you.

CHAIRMAN: Thank you, Delegate Barr. Is there any further discussion? Delegate Sasaki.

DELEGATE SASAKI: Yes, Madam Chairman. I speak against the amendment. I see here that the proposer, or the mover, of this amendment has made a correction by adding after "representative" the words "or representatives, in accordance with law." However, by leaving this up to the legislature without giving them any guidelines as to how they are supposed to equate themselves, I think a lot of districts on the Island of Oahu may not be proportionately represented again.

As it is right now, there may be a board with seven representatives on the board of education. Should this be the case, based on the 1970 census, Kauai with approximately 29,700 in population would be allotted one member on the board of education. That's the smallest island, the smallest school district.

When we get to the largest, Honolulu would have one board member for 290,200 residents of that school district. I agree in concept that we should have something that is accountable, but at least equitable in representation. Because the areas differ, the amount of students in the areas differs, the number of schools differs and, should we arrive at a seven-member board, I don't think even on the windward side, which I represent--according to the 1970 statistics it has 102,800 residents, as compared to, as I said, the smallest, with 29,700--how could I go back to my constituents and tell them that we have equality on the board? Thank you.

CHAIRMAN: Thank you. Is there any further discussion? Are we ready for the question? Delegate Hironaka's amendment is for election to local boards in the districts, with selection of representatives to the board of education. Are you ready for the question?

DELEGATE BARR: Madam Chairman, may we have a roll-call vote?

CHAIRMAN: Yes, we may have a roll-call vote. Do we have 10 seconds? Yes, we have 10. The clerk will call the roll. Please, delegates, if you will use your micro-phones?

Roll call having been ordered, the motion failed to carry by a vote of 27 ayes, 58 noes and 17 excused; with Delegates Andrews, Barnes, Barr, Campbell, Chong, Crozier, De Soto, Hale, Hanaike, Harris, Hirata, Hironaka, Hokama, Hornick, Kono, Rachel Lee, Liu, McCall, Nozaki, Odanaka, Pulham, Souki, Sterling, Takitani, Tam, Yamashita and Yoshimura voting aye; Delegates Alcon, Barnard, Blake, Burgess, Cabral, Donald Ching, Laura Ching, Chung, de Costa, DiBianco, Dyer, Eastvold, Fernandes Salling, Fujimoto, Fukunaga, Funakoshi, Fushikoshi, Hagino, Hamilton, Hashimoto, Hayashida, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Kimball, Kojima, Lacy, Ledward, Marion Lee, Marumoto, Nakamura, Okamura, Ontai, O'Toole, Paty, Penebacker, Peterson, Sasaki, Shinno, Shon, Silva, Stegmaier, Stone, Sutton, Taira, Takahashi, Takehara, Takemoto, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax, Wurdeman and Chairman Goodenow voting no; and Delegates Anae, Blean, Chang, Calvin Ching, Haunani Ching, Chu, Chun, Ellis, Hino, Hoe, Izu, Kaapu, Kaito, Lewis, Miller, Nishimoto and Sakima being excused.

CHAIRMAN: The amendment has failed.

DELEGATE KOJIMA: Madam Chairman.

CHAIRMAN: Yes, Delegate Kojima.

DELEGATE KOJIMA: There are two amendments that I had cosigned yesterday that I'd like to withdraw today. The first one, Amendment No. 9 on the powers of the board of education, should be replaced by the one signed by Delegates Fushikoshi and Hirata on the powers of the board of education.

The second one that I'd like to withdraw is dated 8/23 and signed by Delegate Hirata and myself, entitled "Board of Regents; Powers." This is to be replaced by the one dated 8/24 and signed by Delegates Fushikoshi and Hirata. It's not that I disagree with these proposals, but I wasn't around to sign them. Thank you.

CHAIRMAN: Thank you, Delegate Kojima. If there are no objections, the Chair will call a short recess.

At 9:43 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:45 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. I would like to ask at this time if there are any other amendments that the delegates would like to withdraw.

DELEGATE HIRONAKA: Madam Chairman.

CHAIRMAN: Yes, the Chair recognizes Delegate Hironaka.

DELEGATE HIRONAKA: First of all, I want to apologize for the lengthy discussion that we had to have last night and tonight, but we'd like to thank you for giving us our day in court. We really appreciate the chance we had to express our views.

I'd like to withdraw the second half of the amendment that we just discussed, and also Amendment No. 8. Thank you.

CHAIRMAN: Yes, thank you. Delegate Sasaki.

DELEGATE SASAKI: Madam Chairperson, I'd like to withdraw my amendment dated 8/23 and signed by myself.

CHAIRMAN: Would you like to state the nature of it so we could--

DELEGATE SASAKI: All it did was to add another sentence.

DELEGATE NOZAKI: Madam Chairman.

CHAIRMAN: Yes, Delegate Nozaki.

DELEGATE NOZAKI: I would like to withdraw Amendment No. 7, which pertains to the state board, the superintendent and local boards of education.

CHAIRMAN: Thank you, Delegate Nozaki.

DELEGATE CHONG: Madam Chairman.

CHAIRMAN: Yes, Delegate Chong.

DELEGATE CHONG: I'd like to withdraw mine also, on the power of the board of education.

CHAIRMAN: Thank you, Delegate Chong.

DELEGATE ODANAKA: Madam Chairperson.

CHAIRMAN: Yes, Delegate Odanaka.

DELEGATE ODANAKA: I would at this time like to withdraw Amendment No. 14 on the powers of the board of regents. The reason I'm withdrawing my amendment is that my concerns have been taken care of by an amendment submitted today by Delegate Hirata.

CHAIRMAN: Thank you, Delegate Odanaka. The next order of business will be Amendment No. 9 which has to do with the power of the state board of education.

DELEGATE WAIHEE: Madam Chairperson.

CHAIRMAN: Yes, Delegate Waihee.

DELEGATE WAIHEE: I'd like to move that Committee Proposal No. 6 be amended in the manner set forth in Amendment No. 9 proposed by Delegates Fushikoshi and Hirata.

DELEGATE TAIRA: Madam Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that we accept the amendment. I wonder if Delegate Fushikoshi would like to speak on this amendment.

DELEGATE FUSHIKOSHI: Madam Chairman, I would like to yield to Delegate Waihee.

CHAIRMAN: All right. Delegate Waihee.

DELEGATE WAIHEE: Madam Chairperson, I'd like to speak in favor of this motion. I think that the language in this amendment would serve to clarify some of the problems we have with the board of education with relation to its role--these would be with the executive and the legislative branches.

What this amendment would accomplish would be to give the board of education, as far as possible, control over its own internal affairs. If you read this amendment carefully, you will see that the "except" clause, which says, "...except that the board shall have jurisdiction over the internal organization and management of the public school system..." is an exception to the idea set forth in the original language, which states that the powers of the board will be provided in accordance with law. This is an attempt

to have enabling legislation setting forth the duties and powers of the school districts-- to have the legislature look at that and identify the areas that deal specifically with internal management and affairs, and to have those things isolated and given to the board.

This amendment also recognizes, however, that there will be areas of concurrent jurisdiction with the executive, because the board of education is a department of the executive branch and that's why the jurisdiction on internal affairs cannot be absolutely exclusive. So in recognition of this, what this amendment attempts to do is have the legislature identify those areas that belong to the executive and its overall supervision and those areas that belong under the authority of the board, through enabling legislation.

We believe that what will be accomplished by this, first of all, would be protection of the board of education against such actions as were taken last year by the legislature, where the legislature attempted to impose educational policy upon the board when it attempted to disband the Office of Instructional Services. This would be one effect of this amendment.

The second effect of this amendment would be to deal with the type of concerns set forth in the committee's proposal, which is the paragraph just below the amendment, which we are proposing to delete. It would deal with issues such as rules and regulations and how they should be handled. I believe that this kind of specific language dealing with kinds of veto power relating to specific rules and regulations would be better left to the legislature to determine the context of overall internal management and organization of the board of education.

So, rather than dealing with just one specific item this would include many areas that the legislature would now become cognizant of, in delegating that authority to the board of education.

The last effect of this particular language is that while the internal affairs of the department would be given to the board of education insofar as that is possible, general laws, such as those dealing with collective bargaining, civil service and the budget, would be left intact.

In essence, Madam Chairman, as far as possible the board of education's internal policy would be similar to that set forth in the committee report dealing with the board of regents. However, I caution the delegates to remember that the board of education is not a body corporate, and this language would still give the executive the chance to provide overall supervision where necessary.

CHAIRMAN: Thank you, Delegate Waihee.

DELEGATE TERUO IHARA: Madam Chairperson.

CHAIRMAN: Yes, Delegate Ihara.

DELEGATE TERUO IHARA: I rise to speak in favor of this amendment. Not being a lawyer, I was not privy to some of the discussions that went into arriving at this language, but I can assure you that the committee, in its deliberations, at all times has wanted to give the board of education more power than it now has, and it hopes that this amendment will do the trick.

CHAIRMAN: Thank you, Delegate Ihara.

DELEGATE TAKEHARA: Madam Chairperson.

CHAIRMAN: Yes, Delegate Takehara.

DELEGATE TAKEHARA: I rise to speak in favor of the amendment regarding the power of the board of education. This amendment would delete the present wording of the committee proposal which includes the 2/3-overriding-veto power and offer in its place a concise statement giving the board jurisdiction over the internal organization and management of the public school system, subject to laws of general application.

This amendment would clarify that, with respect to matters of internal organization and management, the authority of the board is near complete. The governor would still have the final authority.

The proposed amendment would not affect the governor's authority over the board of education in major areas of policy formulation affecting the public in the budget-preparation process. In the budget-making process, the governor would continue to review the board of education's budget requests before submission to the legislature. Nor would the budget-making process of the legislature be altered. The board of education would continue to comply with laws passed by the legislature.

The import of the proposed amendment is simply to give the board of education the final flexibility in terms of program units, personnel and organizational efficiency. It offers the board of education the authority to channel these appropriated funds into prioritized areas for the education of our children.

The history of education in Hawaii has perpetuated the dilution of the board of education's accountability to the electorate with continued legislative mandates in internal affairs of organization and management. Now the voter is unsure where the responsibility lies.

Because of this uncertainty, we have worked toward providing more grass-root input by constitutionally mandating that at least one member of the board reside in each school district. Without the control over internal management and organization, this representation would have no true meaning in the light of accountability to the electorate.

Madam Chairperson and fellow delegates, for this reason I strongly urge adoption of this amendment.

DELEGATE HAMILTON: Madam Chairperson.

CHAIRMAN: Yes, Delegate Hamilton.

DELEGATE HAMILTON: I rise to speak in favor of the amendment. The case has been so well made by the previous speakers that I think I need not take the time of the body to elaborate on it, but I did want to give evidence of my virtue.

CHAIRMAN: Thank you, Delegate Hamilton. Delegate Lacy.

DELEGATE LACY: Madam Chairperson, I also want to thank whoever thought up the word "management" and got it back in there. I lost 14 fights on that.

CHAIRMAN: Thank you, Delegate Lacy. Delegate Hirata.

DELEGATE HIRATA: Madam Chairman, I rise to speak in favor of this amendment. In our long deliberations in the Committee on Education, the major problem articulated by almost every person testifying before us was the problem of governance. It is a question of who, exactly, is in charge of educational policy. Is it the board of education which has the delegated responsibility of formulating policy? Is it the legislature that appropriates funds and establishes, by law, certain basic policies of state government? Or is it ultimately the governor, who is charged with the execution of all laws and the supervision of all executive agencies?

All three derive their powers and authority from this present Constitution. As a result, a significant portion of committee time was devoted to this issue.

After some serious study on the matter, I feel that the present language of the proposal, which would give the board of education power to override the governor's veto, is not consistent with the concept of the inherent powers of the executive. The board of education is an executive agency. Its powers are limited and derived from those delegated by the governor and the legislature. Thus, by including this veto provision, we are, in essence, giving it equal status with the state legislature with its specific constitutional power to override gubernatorial vetoes.

I do not believe that this is the intent of the Convention. The framers of the 1950 Constitution made it very clear in their deliberations that the board of education's powers were to formulate policy in the absence of any law or, if there were applicable law, in a manner not contrary to law. These interpretations have been upheld in several attorney general's opinions over the past 20 years.

If it is the desire of this body to vest the board with such inherent powers, then we are, in essence, creating a fourth, coequal branch of government without the adequate safeguard of checks and balances that we have in the legislative and executive branches. Because the department of education and its supervisory board are an administrative agency, the governor is ultimately responsible for the function of public education. However, his inherent powers are limited to recommending laws which he thinks are wise and to the vetoing of laws he thinks are bad. Should this Convention decide to change this system of checks and balances, we would be choosing to deviate from Madison's federalist concept, which provides for the division of power so that each may check and balance the other.

Madam Chairman, I would like the journal and the Committee of the Whole report to reflect some of the concerns and implications of this substitute amendment.

First of all, I hope that the report will clearly state that this amendment is not intended to allow the board of education, the superintendent, or the department of education to be outside executive supervisory control, or to disregard administrative directives thereof, or to be above any general laws of applicability. I believe that it is the intent of this Convention to reemphasize the role of the board of education in formulating educational policies for the public school system.

Secondly, I believe that in recent years the board has tended to expend more time on management and operational control of the department. Examples are personal transactions, contracts for services, accepting gifts, approving trips and the naming of schools.

In the committee's reapportionment, the board will receive direct input from each school district in formulating educational policies. It is imperative that the reapportioned board refocus its attention on educational policy, particularly in the areas of strategic planning decisions, which would establish objectives for public education, formulate systematic review and evaluate educational programs, and develop appropriate guidelines for the kinds of decisions which the department should be permitted to make without prior board approval. The board should not burden itself so heavily with administrative responsibilities and functions; the superintendent of education is appointed by the board for that very reason and should be held accountable for execution of these administration functions.

The education committee's desire to grant the board more educational policy power and flexibility, along with the new reapportionment scheme, underscores the need to redirect its energies toward representing local concerns and developing them into statewide policy.

I would like the Convention to be cognizant that this substitute amendment does not expand the power of the board of education. The board is still within the purview of executive supervisory control and administrative directives thereof, and subject to any general laws of applicability. However, this substitute amendment does clarify the role of the board of education, and the legislature.

I thank you for your indulgence and I urge you to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Hirata.

DELEGATE CHUNG: Madam Chairman.

CHAIRMAN: Yes, Delegate Chung.

DELEGATE CHUNG: I just want to say that after long hours of discussion on this complex problem of BOE powers, we are finally hammering out a suitable compromise on what I call the anvil--on the anvil of school problems and concerns, and I want to congratulate the two makers of this proposal, Delegates Fushikoshi and Hirata. I think they did a good job on this. Thank you.

CHAIRMAN: Thank you, Delegate Chung. Is there any further discussion? Are you ready for the question?

DELEGATE ALCON: Madam Chairman.

CHAIRMAN: Yes, Delegate Alcon.

DELEGATE ALCON: I would like to speak in favor of this amendment. One of the first proposals that I submitted to this Convention was to make the board of education a superboard of education, in that I wanted to eliminate all veto power of the governor. But there were some complications in my proposal--it was a little bit too strong, Madam Chairman, so after hammering it out and consulting with attorneys, we finally arrived at a document--an amendment that I can believe in and buy, so I urge everybody to vote for it.

CHAIRMAN: Thank you, Delegate Alcon. Delegate Hale.

DELEGATE HALE: Madam Chairwoman, I just have a question for the maker of the amendment. I understood if Delegate Hirata would--since he made the speech about it, maybe he would be in a better position to ask him--but I'll ask you. I'm just wondering--

CHAIRMAN: Delegate Hale, Delegate Waihee did initiate--

DELEGATE HALE: No, I'm talking about Delegate Hirata's speech, which left me a little bit confused. I'm just wondering whether or not the board would now have power to, say, make a rule about smoking and the governor would be able to overrule it. Did you say he would or he wouldn't?

CHAIRMAN: Delegate Hirata?

DELEGATE HALE: Or can anybody answer it? I don't care--

CHAIRMAN: Yes, Delegate Waihee.

DELEGATE WAIHEE: Under this provision, what is hoped is that rules and policies like those proposed here, where there'll be an override or the extent of the regulations would be dealt with in the legislature, the problem now is that current legislation does not clearly define what internal management and what the scope of the board is, so they are subject to the whims of various things. So what we're compelling the legislature to do, hopefully under this amendment, is to define the areas of internal control and management which would be exclusively under the board's jurisdiction, including possibly the kinds of amendments that were originally proposed by the committee.

CHAIRMAN: All right, is there any further discussion? Delegate Eastvold.

DELEGATE EASTVOLD: Madam Chairwoman, I'd like to move that we amend this amendment to include the last paragraph.

DELEGATE DiBIANCO: I second the motion.

CHAIRMAN: It has been moved and seconded that the last paragraph be included in this amendment.

DELEGATE EASTVOLD: May I also request that I speak first and last.

CHAIRMAN: All right, Delegate Eastvold.

DELEGATE EASTVOLD: I don't want to upset the apple cart but I strongly believe that this proposed amendment is not really going as far as possible for the board of education, and I think what has been happening is that the delegates who proposed this amendment are deleting what the education committee set out and intended to do; and that was to extend as far as possible the powers of the board of education in order that we may provide a better education for our children.

The argument against including this last paragraph is that this two-thirds overriding veto should be provided for legislatively, because presently the governor has the power to override all laws and regulations or policies made by the board of education.

Let's analyze these two paragraphs. The first paragraph is basically giving the board of education a crumb and that's as far as it's going to go. They're saying that

they're going to provide the board with "jurisdiction over the internal organization and management of the public school system, as provided by law," and that the board will "exercise its jurisdiction in a manner consistent with general laws."

Under general laws, the governor has the power to veto anything the board of education does--anything. All this basically does is allow--or prevent the legislature from putting their noses in the educational process. I think that we should extend that one step further and tell the governor to keep his nose out of the educational process to some extent. Under my amendment the board of education is allowed to override a veto with a two-thirds vote. This is not setting up a separate department but I think we have to analyze this historically.

The board of education at one time was appointed and under those conditions it was fine to let the governor veto whatever it did because, since the members were appointed by the governor, they should be responsible to the governor and the governor alone. However, the board of education is no longer appointed; it's elected by the people, and therefore I think the board should represent the people and not the governor. If the board, representing the people, comes up with a policy that it feels very strongly about, I think it should be responsible to the people; it should not be at the whim of the governor as to whether or not it becomes policy.

An example of this is the smoking policy that was brought up by Delegate Hale, where the board of education came up with a strong smoking provision in the educational system. The governor at his own whim decided that he didn't like it and vetoed it. What's the purpose of having the board if the governor can veto something any time he wants? You're giving it a strictly advisory role and if that's the case, why not just put it at the grass-roots level and have advisory boards and representatives as the two-tiered system will provide. That's basically what you're going to have--it's the one little crumb that they are asking for in the first paragraph.

I say we can go for it and adopt this last paragraph. I admit statutorily the governor has the veto power, but we can include in the structural format of the board of education within the Constitution that it can override any veto provided by law. If we leave it up to the legislature, the legislators are not going to take that step. Realistically they just won't do it; they haven't done it in the past and they won't do it in the future. I think we'd better take a stand right now and, if we want a better educational system and we want to keep the legislature's nose out of education and the executive nose out of the educational system, I think we'd better provide this, and I would just hopefully, hopefully ask you folks to vote in favor of this.

If you have any questions, ask me directly--I would prefer that, rather than mythological statements coming up and generalities spoken. Thank you.

CHAIRMAN: Thank you, Delegate Eastvold. Delegate Eastvold is moving to amend the amendment. Delegate Chong.

DELEGATE CHONG: Thank you, Madam Chairman. I'd like to speak against this amendment. It seems like this no-smoking policy was one of the policy-making decisions that came out of our board of education; a few years ago when I was in school in our public educational system, the smoking occurred under the banyan tree at Roosevelt High School, and if this is all that the board of education has been doing all these many years that have passed since then, then I feel that's all the power I'd like to give them. Thank you.

CHAIRMAN: Thank you, Delegate Chong. Any further discussion?

DELEGATE TERUO IHARA: Madam Chairperson.

CHAIRMAN: Yes, Delegate Ihara.

DELEGATE TERUO IHARA: I rise to speak against this amendment. I'd like to give you a little history of this particular amendment, at least the central issue. At our last committee decision-making meeting, we were up very late that night and we couldn't reach a decision on this matter. We had two forces, one wanting to give the board more power and the other not at all. So finally we had two delegates go out and work with

the council--the two were Delegates Sasaki and Eastvold. The committee members sat in committee Room No. 3, perhaps for about an hour, and then they finally came back with the proposal. In fact, the proposal contained two sections--the first section, this two-thirds veto power; the second section, giving the board additional powers similar to those granted earlier to the university board of regents.

It didn't take the committee long, even at midnight, to reach a decision on both of these issues. Delegate Eastvold, I'm sure, was wide awake but I'm not too sure about the other members of the committee. We voted in a good majority for this particular amendment that Delegate Eastvold has presented, but we almost unanimously voted down the second part of the proposal.

In preparing the committee report and in preparing for the sessions here in the Committee of the Whole, I had to go out and poll the members to see where we stood because there were still two very strong factions in the committee--one opposing more power and another opposing no power. So it became a problem that I had to resolve. I called a meeting and we were able to resolve the problem by giving the board of education those powers that the board of regents have and in place deleting the two-thirds veto rule.

In other words, the faction which was strongly opposed to giving more power gave in. It still remained for me to see how the committee stood on this particular issue. So I personally contacted and polled each member of the committee on this issue. The issue was to replace the two-thirds rule with this new university board of regents language. And I might say that, except for four members, the rest of the committee agreed to that exchange. I believe at that time even Delegate Eastvold agreed.

The reason I wanted to bring this up was because I'm almost certain that the members who voted that night, at midnight, weren't too sure what they were voting for. So I'm asking you to vote down this amendment.

CHAIRMAN: Thank you. Anyone else that would like to speak on this amendment to the amendment? Yes, Delegate Barr.

DELEGATE BARR: Thank you, Madam Chairman. I am very impressed hearing the chairman of the Committee on Education discredit the work of his committee. It sounds to me very much like this entire matter should be referred back to the committee. However, since I am aware that we cannot, as a Committee of the Whole, do that, I will be forced to vote no on this amendment.

CHAIRMAN: Thank you, Delegate Barr. I wonder if there is anyone who hasn't spoken for the first time. Yes, Delegate Hale.

DELEGATE HALE: I would just like to suggest that since it has been admitted by the chairman of the education committee that people can't work at night and almost half of our people aren't here, I think we ought to recess and go home and think about this before we do any more voting.

CHAIRMAN: All right, is there anyone else who would like to speak to amending the amendment?

DELEGATE DiBIANCO: Madam Chairwoman, I'd just like to speak briefly. This is not a subject in which I'm particularly knowledgeable but it seems to me the language offered by Delegates Fushikoshi and Hirata is just fine, but it doesn't seem to conflict at all with the language offered originally by the Committee on Education, which Delegate Eastvold is attempting to reinstitute into the proposal. I think the two go hand in hand. They do emphasize the powers that the board is to be given. I don't see any conflict between them and I think we should vote in the whole package, and let the board of education know that for the first time in the history of the State they'll have some power to implement the policies they feel are best. They're closest to our children, certainly closer than the executive department, and if they can ever get together and agree--which is unlikely--and reach a two-thirds vote on anything, I think that the rest of the State ought to defer to their wisdom in those matters. Thank you.

CHAIRMAN: All right, delegates, are we ready for the question?

DELEGATE HOKAMA: Madam Chairperson.

CHAIRMAN: Yes, Delegate Hokama.

DELEGATE HOKAMA: Thank you. Briefly, members, I'd like to speak against this amendment. I myself have not strayed from my original position and my strong feelings about the board. Here I see further justification for giving an egotistical, power-crazed board sufficient justification to go to the legislature, as it did a few years ago, and ask for additional revenues. These additional revenues weren't for the department of education; these additional revenues were to increase its own staff. The purpose of this request was so that they could get into the administrative responsibilities and management area that the superintendent should have had the power in--to carry out the programs.

I see the board becoming an unchecked branch of government higher than the chief executive, higher than the legislature of the State, and even higher than maybe the judiciary, which this State holds so sacred. So with these strong feelings, members, I cannot see giving the board additional unchecked powers.

CHAIRMAN: All right, are you ready for the question, delegates?

DELEGATE TAIRA: Madam Chairperson.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: I'd like to speak against the amendment to the original amendment. I wasn't going to say anything, but I would like to point out to all the delegates here that regardless of what we try to do here, unless we create an atmosphere or environment in which the board will see fit to cooperate with our chief executive and also to cooperate with the legislature, we're not going to improve the situation and we're not going to help cure the problems we're discussing.

And let us not forget that the legislature has the power to make appropriations, and without funding we all know that not much will happen in the field of education; and as long as our chief executive retains the power and the responsibility of allocating these funds for education, not much will happen. And please, let us try in our work here to create a situation where the board of education and the chief executive will be able to cooperate and work together better, and this also holds true with the legislature. Thank you.

CHAIRMAN: All right, are you ready for the question?

DELEGATE PULHAM: Madam Chairman, may we have a one-minute recess so I may consult with legal counsel?

CHAIRMAN: A one-minute recess? May I have a second on that?

DELEGATE CROZIER: I second it.

CHAIRMAN: All right, there will be a one-minute recess. Please do not leave the area.

At 10:24 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:26 p.m.

CHAIRMAN: Will the Committee of the Whole please be seated. At the present time we are amending the amendment. Are you ready to vote--are you ready for the question?

DELEGATE EASTVOLD: Madam Chairman, I think I reserved the right to speak last.

CHAIRMAN: Yes, Delegate Eastvold did ask to speak last on amending the amendment. Will you do so please, Delegate Eastvold.

DELEGATE EASTVOLD: Once again I'd like to speak on behalf of my amendment.

I can't stress enough the fact that the first paragraph alone will do nothing. It will leave the board of education in an advisory role, strictly under the auspices of the governor with nothing to say, merely to maintain the policy of the governor.

We've heard arguments against this amendment--that the board of education hasn't done anything in the past, so why allow them to do anything in the future? Well, that argument is precisely the reason for my amendment; they haven't been able to do anything in the past because they haven't been given any power to do anything in the past. The governor is always there to veto and under that control naturally they're not going to do anything against the whim of the governor.

As far as the history--the way the amendment was proposed, I'd like to clarify matters to this Committee of the Whole. As Delegate Ihara admitted--I guess his mind was a little foggy that night, and I think that's history.

CHAIRMAN: Delegate Eastvold, please address the--

DELEGATE EASTVOLD: Yes, Madam Chairman, I'm getting to that. It was a little illogical, but the committee did know what they were voting on at the time; we were addressing this proposal of the two-thirds vote. As Delegate Alcon stated, his proposal, which gave the board full authority without any veto power of the governor, was not acceptable to the committee. So we decided the governor should have his veto power but with the 2/3-overriding-veto power of the board of education.

It's also been stressed that if we allow the board of education to have an overriding veto power, there will be no cooperation between the governor and the legislature; I would just counter that by saying that if that's the case, why do we have a legislature? They have veto power over the governor and they cooperate at all times, at least as far as politics will allow.

If we give the two-thirds vote to the board of education, there will still be cooperation and, as Delegate DiBianco stated, if they can overcome that with two-thirds, and they're representing the people, the two-thirds vote should be well thought of and they should be able to set policies as provided.

This is the general structure of the board of education and I think we have to analyze that; if we want a better education system, I think we should implement this. If you really don't want to change your education system and want it to remain under the authority of the governor, then fine, vote for the first paragraph--you don't even need the first paragraph since you're going to end up with the same thing anyway. Thank you.

CHAIRMAN: All right, are you ready for the question? The question is to amend the amendment by reinserting the bracketed paragraph to make it part of Amendment No. 9. All in favor please respond by raising your hands. Opposed? The noes have it. The amendment to the amendment fails.

We are back to the original question. Are you ready for the question? All those in favor, please respond by putting your hands up. All those opposed? Thank you. The amendment carries.

The next order of business is Amendment No. 10, entitled "Power of the Board of Education." It has been introduced by Delegate Campbell. The Chair recognizes Delegate Campbell.

DELEGATE CAMPBELL: Madam Chairman, I move for the adoption of Amendment No. 10. However, in the second paragraph of my amendment--you will notice it contains the override provision which the Convention has just moved to defeat. That should not be reflected as a part of the amendment. It should just contain the first paragraph.

CHAIRMAN: Delegate Campbell, did you want that deleted?

DELEGATE CAMPBELL: Yes, may the second paragraph be stricken in light of the Convention's previous action. Now I move for the adoption of Amendment No. 10 as amended, Madam Chairman.

CHAIRMAN: Is there a second?

DELEGATE WURDEMAN: I second it.

CHAIRMAN: All right, Delegate Campbell, would you like to speak to your amendment.

DELEGATE CAMPBELL: Madam Chairman, I rise to speak in favor of this amendment. In a democracy every citizen should be afforded maximum opportunity to participate in the direct choice of those who represent him, whether they be in the executive, legislative or judicial arenas. The people of our State have been seeking a greater voice in the educational process for some time now, where that representative leadership role affects lives in a significant way, and the election of the superintendent will be a positive step in this direction.

At the present time there are 21 states in the union which elect their superintendents of education, including California, Arizona, Washington, Oregon, Florida, etc. Apparently our department of education thought highly enough of Wilson Riles, California's elected superintendent of education, to have invited him to be the keynote speaker for the superintendents' seminar here this week to talk about the direction that basic education will be taking over the next two years.

Since an elected superintendent would be chosen by direct vote of the people, he would be directly accountable to them. Under an elective system, it becomes the responsibility of the people to elect the kind of superintendent who will be responsive to their interests and needs.

What is most important, Madam Chairman, is that I believe the people of this State will best be served by a system that provides for a superintendent who is depoliticized--that is, removed from political influence. The people themselves--not elected officials--should have the opportunity to choose a person as important to the education of our children as the superintendent of education.

In his book, The Children of Light and the Children of Darkness, Dr. Reinhold Niebuhr, one of our late great theologians, said: "Man's capacity for justice makes democracy possible; but man's inclination to injustice makes democracy necessary." I submit to you that a system of electing the superintendent would make democracy live. Mahalo.

CHAIRMAN: Thank you, Delegate Campbell. Is there any further discussion?

DELEGATE TERUO IHARA: Madam Chairperson.

CHAIRMAN: Yes, Delegate Ihara.

DELEGATE TERUO IHARA: I rise to speak against this amendment. Of all the 90 proposals which were submitted and referred to the education committee, there was not one proposal calling for an elected superintendent. Therefore, the committee really had no discussion on this issue. However, the committee did feel very strongly that the elected board should appoint the superintendent and then work with him in running the state department of education.

An elected superintendent on the mainland serves in a little different capacity from our superintendent in this State. Most of the states have what they call local school districts and the state superintendent of instruction, elected as he or she may be, has a role more of a coordinating nature, not as administrative as ours here.

Speaking of our State Constitution, we only have at the moment two statewide elected officers. To add another such person would only cloud the picture as far as the government leaders are concerned; in other words, they will be vying as top attraction. This is one of the reasons I believe the Convention voted against an elected attorney general.

Furthermore, a situation could be created where there would be an independent elected superintendent working with an independent elected board of education, and I can just imagine what kinds of problems would arise from this kind of situation.

CHAIRMAN: Thank you, Delegate Ihara. Any further discussion? Delegate Crozier.

DELEGATE CROZIER: Yes, Madam Chairman, I'd like to speak against the motion. I see a problem and Delegate Ihara just touched on it. The board of education is elected by the people so it is accountable to the people; if you had a superintendent who was also elected by the people, then he would feel that he was accountable only to the people and it wouldn't take very long before the board of education and the superintendent would be going toe to toe and getting nothing done. So from that standpoint I speak against the motion.

CHAIRMAN: Thank you, Delegate Crozier. Is there any further discussion on the issue of electing the superintendent? Yes, Delegate Kojima.

DELEGATE KOJIMA: I speak against the amendment. I quite agree with what the two delegates have just said but, for Delegate Crozier--when the elected superintendent and the elected board members go toe to toe as you say, we Hawaiians would say they go hukihuki and get all kinds of pilikia. Thank you.

CHAIRMAN: Thank you. Are you ready for the question? Delegate Hale.

DELEGATE HALE: I've sat here and I've eaten almost a package of all kinds of stuff, trying to keep my mouth shut. I've done pretty well, I really think so. But things are voted down anyhow, whether I speak for them or not, and I think, Delegate Campbell, your amendment doesn't have much chance, so at least give me a chance to express some of my frustrations and my support of this amendment.

I would like to respond to some of the things that have been said here tonight. Number one, someone said that the role of superintendent would be only of a coordinating nature if it were elective, that that's all he would be able to do. And I say that's all he can do now. He's got to coordinate the legislature, the governor, the board and the people, the teachers, the students; it's almost an impossible job and that's why we change our superintendent so often and nothing gets done.

I also heard that we only have two elected officers in this State and that's one of the main reasons I came to this Convention--to make sure that the people had a chance to vote for more than two elected officers. But it doesn't look as though they're going to get that chance, even to decide this issue. So I would just suggest that we at least put it to the voters, because this is a position that everybody ought to be able to understand; everybody's gone to school or had children in school or they pay taxes for education, and if the attorney general is too dear to the heart of the governor, you certainly can't say that about the superintendent of education, because he's not appointed by the governor now. So I suggest that we elect him and it couldn't be any worse than it is right now.

We voted down giving the board any additional power, so there isn't going to be too much for the superintendent and the board to fight about. I'd also like to say that using that argument, we should not elect our governor or our legislators because they're both going to fight; they represent different interests, of course, but it doesn't hurt us. It may make for better government. It may make for a better board of education. I certainly don't think that anything we've done tonight has been worth the effort and the time that the education committee spent on it. I sat in and watched them try to get through some of these procedures and I sympathize greatly with all the members. I know you put in many, many hours, you had many, many conflicts, you really weren't able to resolve anything by the will of the majority rules and so, on with the vote. Thank you.

CHAIRMAN: All right, are we ready--

DELEGATE TERUO IHARA: Madam Chairperson.

CHAIRMAN: Delegate Ihara.

DELEGATE TERUO IHARA: I don't want to belabor the point but I want to correct a statement that the previous speaker made, and that has to do with her reference to the superintendent here in Hawaii having only coordinating powers. That is not true. I was referring to superintendents of education on the mainland.

CHAIRMAN: All right, thank you. Your correction is well taken. Now, are we

ready for the question? The question is whether or not we would like in this State to have a superintendent of schools elected. All those in favor please raise your hands. All those opposed? The noes have it. The amendment is defeated, although a very gallant attempt.

The amendment before us at this time is on the matter of the board of regents and their powers. The Chair recognizes Delegate Waihee.

DELEGATE WAIHEE: Madam Chairperson, I move that Committee Proposal No. 6 be amended as set forth in the amendment by Delegates Fushikoshi and Hirata.

DELEGATE ODANAKA: Madam Chairperson, I second it.

CHAIRMAN: Yes, it has been moved and seconded. Would you like to speak on your motion?

DELEGATE WAIHEE: Madam Chairperson, I'd like to speak on behalf of this amendment because this amendment attempts to clarify the present language set forth in the committee report, to bring it more in line with the intent of--well, the amendment attempts to clarify the language in the committee proposal, to bring it more in line with the committee's report.

What this amendment does is to reinforce the concept that the University of Hawaii is a body corporate, that it is a corporation with its own powers and its own life. Basically, what this amendment would do would be to have the legislature evaluate the enabling act setting up the University of Hawaii, as well as existing laws and future laws, to insure that the internal management and operations of the university would be left to the jurisdiction of the board of regents.

However, this jurisdiction is not unchecked because the board of regents would still be subject to laws of statewide concern--specifically, budgetary laws as now set up, the collective bargaining law, civil service laws, as well as other laws of that nature.

So for these reasons, Madam Chairperson, I would speak in favor of this amendment.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Lewis.

DELEGATE LEWIS: Madam Chairman, I rise to speak in favor of this amendment. Obviously, a great deal of careful thought and time have been given to its preparation. If there has been any one single factor responsible for the accelerated political, economic and social development of Hawaii, that surely must be its commitment to quality education--quality education equally accessible and ranging all the way from elementary schools to the extensive university system. Many of our leaders in government, education, commerce and increasingly in the field of art have come and are coming from our own educational system.

Thus, it is no wonder that the framers of Hawaii's 1950 State Constitution recognized a number of years ago that the University of Hawaii occupied a unique role among state agencies and departments.

That recognition has been amply justified in the last two decades as the University of Hawaii has overtaken many established private and public institutions of higher education in receiving federal research and training grants, to a point where it is now No. 30 in the nation receiving federal funds. The university's standing is even higher when compared with other public universities; here it is No. 16 in the country. It is also ranked No. 5 among institutions receiving federal grants for scientific research.

All of this explains why this amendment is so important and crucial; it is needed to enable the university to move quickly and efficiently in managing its internal affairs in order to maintain and improve its position of research leadership among the nation's topflight universities.

And it is needed in order to expedite the university's internal capability to meet the changing instructional demands of students on the university system's 10 campuses throughout the State. University organizations which cannot move with reason and dispatch

in these days of constantly changing academic and research needs may soon find themselves left in the wake of other institutions. This amendment will assure the university the kind of internal management flexibility it needs in order to compete successfully.

May I also add that neither the legislature's budget-appropriation powers nor the governor's allocation authority will be diminished by this amendment. Neither will this amendment affect the application of laws, such as civil service laws or collective bargaining at the university. All of these will remain intact.

Madam Chairman, therefore I strongly support this amendment and urge all of those who desire the best in higher education for Hawaii to do likewise.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE TERUO IHARA: Madam Chairperson.

CHAIRMAN: Delegate Ihara.

DELEGATE TERUO IHARA: I rise to speak in favor of this amendment. This is an issue which the Committee on Education agreed on almost unanimously at an early stage, and this action also brought about a desire to bring the board of education powers in line.

I would like to state, though, that we need to say something about the exclusivity provision of this amendment, and that is to say that it does not exclude the participation of students, faculty, staff and administration in the internal governance of the university. Thank you.

CHAIRMAN: Thank you. Delegate Lacy.

DELEGATE LACY: Madam Chairperson, I have a question to ask the preparer. I'm just wondering a bit--the last phrase in this as compared to the one in the board of education power, they're worded a little bit differently. Is there any technical reason for this?

DELEGATE WAIHEE: No, it just read better.

CHAIRMAN: Delegate Waihee, will you please address the Chair.

DELEGATE HAMILTON: Madam Chairperson.

CHAIRMAN: One moment, Delegate Hamilton. Was the question answered?

DELEGATE WAIHEE: Yes. My apologies, Madam Chairperson.

CHAIRMAN: Yes, by all means. Delegate Hamilton.

DELEGATE HAMILTON: Madam Chairperson, I rise to speak in favor of this. I think that most of the questions have been answered by now and I shall not elaborate extensively. This does not remove the university from laws of general applicability--the administrative practices act still applies, the civil service act, the collective bargaining law and so on. And I should like also to reassure some friends of mine, from the student body to the faculty, that it does not change their roles in the internal administration of the university.

Part of the confusion may have been caused by the legal friction when it was found necessary to use the board of regents term when referring to the university. Unfortunately, this is something that the courts have always used. What it does is permit the university a necessary and badly needed flexibility and I can testify to this with some justification. For the authority to deal with internal problems--those have been pretty well set as to what constitutes problems of internal administration in the organization. In the attorney general's opinion in 1972, dealing with the administrative procedures act--I shall not debate it, but the point is that it is reasonably well defined. So I would urge you to vote for this amendment.

CHAIRMAN: Thank you, Delegate Hamilton. Are you ready for the question?

DELEGATE BARR: Madam Chairman.

CHAIRMAN: Delegate Barr.

DELEGATE BARR: Yes, I would like also to speak in favor of the amendment. Elaborating a little bit on an allusion of Delegate Hamilton, there has been a good deal of concern expressed in the last couple days by the Associated Students of the University of Hawaii and the faculty senate about the wording in the original amendment and a large part of that concern was that the wording seemed to suggest a great deal more than was intended. This new wording goes a long way to solve that problem.

CHAIRMAN: Thank you. Are we ready for the question?

DELEGATE ODANAKA: Madam Chairperson, I'd like to speak in favor of the amendment.

CHAIRMAN: All right, Delegate Odanaka.

DELEGATE ODANAKA: The reason I'm speaking for this amendment is that I'd like to read the speech that I prepared for this amendment because it has reasoning to why I withdrew my amendment.

I understand and agree with the original intent of this amendment. On page 3 of the committee proposal, there seems to be an important contradiction between the sixth line of Section 5, which says that the board's powers are under law, and the new language of the committee, which says that the board has powers "[n]otwithstanding any law..." I am fearful of letting the courts clear this up; my fear is that if the courts decide that this new language should be taken as it reads, we will have given tremendous powers to a group accountable only to the governor.

As a student at the university, I am afraid that this constitutional power might allow the board, if it so desires, to close any program it wants, or to influence campus organizations such as the Associated Students of the University of Hawaii, the student newspaper, or any other mechanism or facilities important to the free and dynamic movement of ideas within and out of the university. With complete control over funding within the UH system, might the university someday become even more of a political football than it is today, with a legislature hesitant to hand over money to a board so controlled by a hostile governor?

I favor the intent of the amendment--to free the university administration, faculty and students from strangulation by the state bureaucracy. I favor this amendment as long as it means all that I have said.

CHAIRMAN: Thank you. Are we ready for the question? Delegate Alcon.

DELEGATE ALCON: As a tenured faculty member of the University of Hawaii, may I declare a conflict of interest, but I will vote for the amendment.

CHAIRMAN: All right, are we ready for the question? All those in favor raise your hands. Opposed, please raise your hands. Oh--all right, the committee will come to order. The amendment is carried, by unanimous vote.

DELEGATE HALE: Madam Chairwoman.

CHAIRMAN: Yes, Delegate Hale.

DELEGATE HALE: Madam Chairwoman, do we have a quorum?

CHAIRMAN: Mr. Clerk?

CLERK: Yes, Madam Chairman, we do have a quorum.

CHAIRMAN: Thank you. At this time the Chair will call a short recess.

At 11:00 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:06 p.m.

CHAIRMAN: The next order of business pertains to an amendment on the board of regents' power, submitted by Delegate Harris.

DELEGATE HALE: Madam Chairman, I question whether we have a quorum. How many do we have present?

CHAIRMAN: Mr. Clerk? We have 52. Half of them are in front of me.

DELEGATE HARRIS: Madam Chairman.

CHAIRMAN: Yes, the Chair recognizes Delegate Harris.

DELEGATE HARRIS: Unaccustomed as I am to speaking to large groups, I'd like to move that Committee Proposal No. 6 be amended to read--on the sheet that was handed out, and I should like to note that the last paragraph on the second page has been changed by the previous amendment, so that should be reflected on each of your copies.

CHAIRMAN: Delegate Harris, would you please read that aloud?

DELEGATE HARRIS: The last paragraph has been changed by the previous motion.

CHAIRMAN: Thank you. Would you like to speak to your motion?

DELEGATE HARRIS: Yes, thank you. As you no doubt recognize, what I'm proposing here is that we handle the board of regents the same way that we've decided to handle the board of education. This proposal would provide a uniform procedure for board selection at all levels of our educational system. Both would be elected and both would use the same process of election. Because of the late hour, I won't go into a lengthy discussion on the merits of an elected board. In essence, the arguments are identical with those we heard all last night and this evening, supporting an elected board of education.

I urge the delegates to support this amendment and I reserve the right to speak last on it. Thank you.

DELEGATE TERUO IHARA: Madam Chairperson.

CHAIRMAN: Delegate Ihara.

DELEGATE TERUO IHARA: I rise to speak against the amendment to provide for an elected board of regents. Your committee finds that the present method of selecting the board of regents, by gubernatorial appointment with senatorial advice and consent, best suits the needs of the University of Hawaii system.

An appointed board provides the following benefits: (1) elimination of the danger of voting without sufficient comprehension of the abilities needed to be a good governing board member and adequate appraisal of candidates' qualifications; (2) better board members acquired via appointment, as well-qualified people are sought out and drafted for this type of public service; (3) by appointing members, education is kept out of politics.

In 1968 the Con Con rejected a similar proposal by declaring that, in contrast to lower education, attendance at the university was voluntary, and therefore decisions made by the governing board did not affect almost every member of the public. Consequently, a means for giving the public a direct voice in the governance of the institution was felt unnecessary.

Additionally, no evidence was presented to indicate that the appointive process failed to obtain dedicated and qualified persons to serve as members of the board of regents. Therefore, I urge members of this body to vote down this amendment for an elected board of regents.

CHAIRMAN: Delegate Hamilton.

DELEGATE HAMILTON: I guess I rise to speak in favor of a kanalua because in effect I did introduce a proposal that called for an elected board of regents at one point

in our discussion. Also, I know of states in which it works well. The thing that makes me have doubts about this, however, is tying it to school districts, because the school districts were developed in terms of the board of education--grades K through 12--and they have no relevance as far as the university is concerned.

CHAIRMAN: Thank you. Is there any further discussion? Delegate Hale.

DELEGATE HALE: Madam Chairperson, I would just like to speak against the amendment. With all due respect to my fellow delegate from the County of Kauai, I think that it would put us on record as being too consistent and therefore I move that we vote it down.

CHAIRMAN: Is there any further discussion? Delegate Harris.

DELEGATE HARRIS: Thank you, Madam Chairman. I'd like to point out that all the arguments that have been presented by the chairman of the education committee could apply equally in opposing an elected board of education. I believe that educational problems at all levels are of vital importance to the welfare of our entire society. Therefore, I believe that the election of public representatives to control and manage the educational system is critical. We must have accountability and we can only achieve that through the ballot.

The 1968 Con Con considered establishing an elected board of regents but rejected the proposal on the grounds that attendance at the university was voluntary, and therefore decisions made by the governing board did not affect the entire public. Consequently, a means for giving the public a direct voice in the governance of the institution was held unnecessary. I contend that this fundamental assumption by the '68 Con Con is wrong. I contend that the quality of our university directly and profoundly affects the entire public, the very fabric of our society and indeed the future of our State.

I urge you to give the public a direct voice in the university's governance by supporting this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Harris. Delegate Alcon.

DELEGATE ALCON: Madam Chairman, again may I declare a conflict of interest in this matter.

CHAIRMAN: All right, thank you. It will be noted by the clerk. Are you ready for the question? All right, all those in favor raise your right hands. Opposed? The noes have it and the beautiful amendment fails.

DELEGATE HARRIS: Was it also a gallant attempt, Madam Chairman?

CHAIRMAN: I'll tell you later. All right, our next order of business is an amendment pertaining to school advisory councils, submitted by Delegate Nozaki.

DELEGATE NOZAKI: Madam Chairman, I move to amend Article IX by adding a new section, entitled "School Advisory Councils."

DELEGATE DE SOTO: I second it.

CHAIRMAN: Delegate Nozaki, would you like to speak to your amendment.

DELEGATE NOZAKI: Madam Chairman, I reserve the right to speak last, after this.

CHAIRMAN: Granted.

DELEGATE DE SOTO: Madam Chairperson.

CHAIRMAN: Delegate De Soto, I believe Delegate Nozaki has the floor. Would you like to speak to your amendment.

DELEGATE NOZAKI: I speak for my amendment, which seeks to establish a school

advisory council for each public school in the State and places the educational focus where it should be--at the base, not the apex, of the educational pyramid.

For too long now, changes in curriculum and proposed solutions to problems have been formulated and instituted at the top. Teachers and citizens from the individual communities have had little if any input into DOE program and policy formulation. Yet these programs and policies have a direct effect on the daily lives of the general public. For instance, something as minor as extending the school day by half an hour would have a tremendous effect on traffic matters and parents' schedules.

Individual citizens, teachers and parents, or just concerned community members, need to feel that they can speak out and that they will be listened to; that whatever concerns and criticisms they voice will carry weight and will be taken into account. To be frank, the average parent doesn't really care about the board of education--whether elected or appointed.

Many of my constituents feel that the board of education is not responsive to the needs of the individual schools. As one parent said, "After all, what would outsiders know about our community? They don't care. The board members think they know everything." It should be noted that the superintendent of education has directed public school principals to establish school advisory councils; however, no uniform guidelines have been set up to make sure that teachers and community members can make recommendations for improvement and have a meaningful role in school operation. So much depends upon the receptiveness and goodwill of the individual principal, since that is the person who appoints the advisory council members.

Many members of the Leeward Oahu District School Advisory Council feel that they have little clout, if any. In fact, at one Waianae coast school the teacher and the parent were accused by the principal of being "out to get" him. After that incident, the council in question was relegated to the status of window dressing.

Is it any wonder, then, that school advisory councils as they presently exist are ineffective in providing an avenue for meaningful citizen participation? If school advisory councils were constitutionally guaranteed and given meaningful status, perhaps incidents such as the following would not have occurred. In a certain leeward school, one Hawaiian language course out of only three offered was eliminated by the administration without the advice and consent of the department head--and the subject teacher, despite the fact that interest in Hawaiian language culture is being rekindled.

Citizens need to be given some input into curriculum offerings as well as policies relating to school discipline and other matters. Given the increasing citizen concern with tax and spending limitations, it would be wise to have school advisory councils so that community members can express their views and concerns with respect to priorities in school budgets, distribution of money and the like. The concept of the school advisory council is not contrary to that of an elected school board. The idea is an independent proposition that stands on its own merits. School advisory councils are already in existence in California and Florida. This is an idea whose time has come. The average person will no longer settle for the school system making all the decisions concerning the education of his or her child.

One parent vented his frustration this way: "My boy can't spell, add or read. What's the school teaching my kid, anyway." Let's make incidents like that a thing of the past by guaranteeing the establishment of school advisory councils as an avenue for meaningful citizen participation.

CHAIRMAN: Thank you.

DELEGATE DE SOTO: Madam Chairperson.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: I yield to the chairman of the Committee on Education.

CHAIRMAN: All right, thank you. Delegate Ihara.

DELEGATE TERUO IHARA: I rise to speak against this amendment. I have the deepest respect for my fellow colleague from Waianae and I know that this means a lot to her. She did tell me that she had one goal in this Convention, for which she campaigned two years, and that this is it.

However, the committee in taking this question up for discussion on several occasions voted it down. Most of the members who voted it down sympathized with the concept and felt that this was a very good thing. The only thing is that they felt this was really not of a constitutional nature. Furthermore, there were several school principals on the committee who were familiar with the local school councils which are now in existence in many schools in our State.

Therefore, for these reasons I would urge you to vote down this amendment.

DELEGATE DE SOTO: Madam Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Madam Chairperson, I rise to speak in support of this proposal. It appears to me that while we are being so "liberal" to existing bureaucracies, we forget for whom we build and Delegate Nozaki truly represents, with respect to education, the feeling of the Waianae, Makaha, Maili and Nanakuli communities.

Prior to election, there were several large public hearings on the leeward coast, and at every public hearing it was evident to all who were present that the need for citizen participation in education was vital. Many of our children on the Waianae coast need special consideration, as they do in other areas where there are heavy populations of minority groups. On the Waianae coast, from Nanakuli through Makaha, 56 percent of the population is native Hawaiian. Where do we go, besides into town, to talk to somebody--and then that somebody has no idea about what we need in Waianae.

For a system to establish as policy the right to smoke on campus, contrary to the recommendation of the surgeon general of the United States that cigarette smoking may be hazardous to your health--contrary to that, the policy was established that our young people could smoke in school. It's not my nature to criticize individuals or groups in public but we need to have grass-roots participation, and although different school councils' rubber stamps are allowed in other areas, for the kind of area that Delegate Nozaki and I represent--not to degrade it in any way because we love it very much--but we need special consideration. It may appear unwieldy to have citizen participation. The process of electing somebody--and even if they truly represent you, it doesn't mean they're going to develop policy that will benefit you, because there are priorities.

I ask all the members of this delegation to seriously consider giving one small portion for those people throughout Hawaii so they may truly have citizen participation in the pure form. Mahalo.

DELEGATE STERLING: Madam Chairperson.

CHAIRMAN: Thank you very much for your fine testimony, Delegate De Soto. Delegate Sterling.

DELEGATE STERLING: I rise to speak in favor of the amendment. I rise from a sea of ashes, Big Boy hamburger bags and empty cookie cartons. This question of school advisory boards is very important in Kona because our teachers feel that there are many problems unique to Kona, particularly with youngsters coming from a very agricultural part of the country. With the new racial mixtures moving in, problems have developed that are very unique, which they feel could be better handled through some person or people familiar with the situation at that level, rather than--

Let me say this--we very seldom saw our member of the school board. The teachers didn't know what to do, and the PTA wasn't very strong. I as the lay minister in the area very often served as unofficial chaplain in many of these cases where we have so many problems at our schools, in our high school and grammar school.

So I urge my fellow delegates to this Convention to give attention to this idea of

a school advisory council, because it does meet the needs and the concerns of parents and teachers at the day-to-day contact level.

Thank you very much.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Takehara.

DELEGATE TAKEHARA: Madam Chairperson, I rise to speak against the amendment to Committee Proposal No. 6 regarding the addition of a new section entitled "School Advisory Councils." The reasons are as follows: at present, individual school advisory councils are already encouraged via department of education policy; the results in most cases are effective councils that include parents, students, faculty and community members, and that do promote citizen participation at the school level. There has been a positive effort by those concerned to work toward the betterment of our educational institutions.

A constitutional mandate requiring the establishment of school advisory councils at each school is not only unnecessary at this time but may, in fact, have negative side effects; a constitutional mandate of this sort may cause people to believe that these school advisory councils are the most important avenues for citizen participation. This, in turn, may result in a dwindling of efforts already put forth by other community volunteer groups, such as the PTA, room mothers, the Title I advisory councils, alumni associations, booster clubs and parent volunteer groups. I teach at a school in Maili where this participation is an active, welcome and contributing aspect to our children's education.

Since the school advisory councils at each school are presently operating without constitutional mandate and are in most instances quite productive, I believe that this amendment is an unnecessary move which may have deeper negative effects than may be seen at first glance. For these reasons, I urge you to vote against this amendment.

DELEGATE KIMBALL: Madam Chairperson.

CHAIRMAN: Delegate Kimball.

DELEGATE KIMBALL: I'd like to speak in favor of the amendment. Throughout this Convention we have heard the excuse time and time again--is this matter properly a constitutional issue? This same excuse has been raised relative to the issue of providing for school participation by parents, students and others in the community. Just as, earlier this evening, we established meaningful public participation through election of the board of education, I think we cannot afford to drop the opportunity to provide it at the school level.

The arguments against this amendment have not really centered on whether it is a good idea to have students, parents and community participate in the schools. Rather, people have argued that it is not necessary to include such a provision in the Constitution because the department of education has already, through rules and regulations, recently established these advisory councils--rules and regulations that are the creation of superintendents and boards of education that happen to be in office at one time; rules and regulations have been changed and have been changed often within the course of the same board's term.

This amendment provides a constitutional guarantee that parents and the community have the right to participate meaningfully in the affairs of the school--not to interfere but to support in all of its functions, by right--and when I say right, this is not a matter for our BORSE committee because it deals in the field of education and properly belongs in the education article.

The amendment recognizes that parents who send their children to school retain the right to have some say in what the school is doing with their children's education. As California's Superintendent of Public Instruction recently pointed out to our educational officers: "Parents are the natural partners of principals and teachers in the educational process. They are the secret weapon in the arsenal of a good principal determined to improve the teaching of basic skills"--which I feel we need to do in Hawaii. "They influence a child's attitude toward learning." We should pay particular attention to that last sentence; parents influence the children's attitude toward learning. If we continue to tell parents they have no right to participate and provide no means to do so, in improving the schools

which their children attend, we will continue to contribute to the dissatisfaction and alienation of parents and students alike. We have the obligation to build parent participation in our public school system in every school, just as we have in the elective process of the board of education. I urge the adoption of this amendment.

CHAIRMAN: Thank you. Are we ready for the question? Delegate Chong.

DELEGATE CHONG: I speak in favor of this amendment. Making this mandatory demands more public participation in the schools through the advisory councils. As you can possibly tell by now, I've been in the minority in the education committee. However, the amendments passed here tonight were in the areas to which I disagreed in the committee. Obviously, the committee saw the light. This amendment is also in an area in which I disagreed in the committee.

Public participation in education is sorely needed, especially in the rural and neighbor island districts. Again, this is just another avenue to which the public can turn. Delegate Nozaki attempted several times during the education committee meeting to insert the words "public participation" in Article IX of the Constitution. She was advised to insert it first in one section, then in another, until finally it was voted out altogether. This amendment is borne out of frustration and necessity. I urge you to vote in favor of this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Chong. Delegate Ontai.

DELEGATE ONTAI: Madam Chairman, I rise to speak in favor of this amendment. For the past couple of days, the subject of education has been bisected, and dissected. We've done everything to it but have sex with it.

Tonight I speak on two subjects dear to my heart: the first is education and the second is grass-roots participation by the people that are involved in the subject, education. As I listen to the pros and cons of the amendment before us, to constitutionally guarantee public participation in the schools, in my mind I see those old European castles with moats around them and drawbridges over the moats, by which the people gained access to the castle. I think we still have castles with moats today, if only in the minds of parents and citizens when they look at the schools attended by their children.

For too long we have all gone along with the demands of educators, and lay people as well, to leave education to the professional educators. It is true that certain aspects of education are better left to professional educators--but not all. I do not believe that even educators themselves will agree that schools ought to be castles with moats around them. I can't imagine that education people feel that the drawbridges should be let down to allow parents to cross only when convenient to the school.

The amendment before us not only lets the drawbridges down when the parents and citizens want them down; this amendment fills in the moats, and eliminates all need for drawbridges. The amendment before us says to parents and citizens, "Come, come join us at the school and help make improvements here." It would say, "This is your right, which cannot be taken away, even as superintendents and boards of education change." Are the delegates to this Convention prepared to tell their constituents that they do not grant them the right to participate in school improvements?

Fellow delegates, I urge you to vote yes on this amendment. Mahalo, mahalo nui loa.

CHAIRMAN: Thank you, Delegate Ontai, the artist with words. All right, are there any further discussions, or are we ready for the question?

DELEGATE KOJIMA: Madam Chairman.

CHAIRMAN: Delegate Kojima.

DELEGATE KOJIMA: I'd like to speak against the amendment. Earlier this evening we heard Delegate Burgess speak about cluttering up the Constitution with things that may be legislative. Earlier in the week, Delegate Lewis stated the same thing and the public, through the cartoonist Corky--in the cartoon that Delegate Burgess brought today

to remind us--the public, through him, is expressing concern that perhaps we are a superlegislature.

I speak along this line because right now the department of education does have an established policy in this regard. The department of education is in great sympathy with what is being said tonight and recognizes the need for this kind of council; and so it has established a policy, and regulations to implement the policy, which has been in effect for over three years. I have here in my hand a copy of the revised regulations and policy, revised on June 1, 1978. May I read the policy?

CHAIRMAN: Delegate Kojima, how long is the reading?

DELEGATE KOJIMA: Two minutes, maybe less.

CHAIRMAN: Yes, proceed.

DELEGATE KOJIMA: "Each school shall have an advisory council"--it says, "shall have ... with membership representing the community, parents, students, and staff. The council is established to provide for community participation in each school, to provide each principal with regularly scheduled consultation on school programs and problems and to be a grassroots communication link to the district school advisory councils and to the board of education. Each school-community council shall be expected to organize in a manner best suited to local school needs and community desires."

This statement, a policy statement, seems to meet all of the concerns of the people; whether it is being implemented in every school is an administrative matter. It's for the district superintendent to make sure that his schools have established these councils and if any one school has not established a council, then the teacher can see the principal or the district superintendent about the matter. But to put it back in the Constitution, I think, is a waste of ink and paper because the department has already recognized the problem and has taken action on the matter. If this has to be mandated further, it becomes a legislative matter, and not necessarily constitutional, and in the case of the mover of the amendment, we talked yesterday to the principal of that particular school and he said there was one. This same concern had come up in the committee meetings and he has established one here, and it is my understanding that the mover of the amendment is also a member of that particular local school council.

CHAIRMAN: All right, are we ready for the question?

DELEGATE ALCON: Madam Chairman.

CHAIRMAN: Delegate Alcon.

DELEGATE ALCON: Thank you very much, Madam Chairman. I'm surprised that the previous speaker has alluded to the fact that we're wasting ink and paper when he introduced two proposals and withdrew them for nothing.

I'd like to point out to this Convention, Madam Chairman, that this is giving the right to parents, teachers and citizens to participate in our schools. Because of the demise of the PTA, we have some problems in our schools because there is no feedback from the community. All through the deliberations of the Committee on Education, Madam Chairman, I have been concerned about two islands in the State of Hawaii--namely, the islands of Molokai and Lanai. They do not have senators to cry to because the senators are all from Maui, they don't have representatives to cry to because the representatives are all from Maui, and they don't have school boards to cry to because the school boards are from the Big Island.

The previous speakers who objected to putting this in the Constitution have stated that the policy of the department of education is good and effective. If it is good, let's put it in the Constitution, and that is not wasting paper and ink either, Madam Chairman. Policies by the department of education are policies, and if there is a change of superintendents tomorrow, Madam Chairman, the policies can also be changed; there is no guarantee that Mr. Clark will live forever. Thank you.

CHAIRMAN: All right. I would at this moment in time like to remind you of where

we all are in time. I don't mean to be discouraging, but I would like to ask for the question after--yes, Delegate Odanaka.

DELEGATE ODANAKA: I had a speech but I decided not to read it. I'd like to speak for the amendment and, really briefly, I would say that before coming to this Committee of the Whole I did not know about the school advisory councils; and just by listening to the testimony--the positive assets of this amendment--I would say the advantages outweigh the disadvantages and the amendment has merit in itself.

CHAIRMAN: Thank you very much, Delegate Odanaka. Delegate Uyehara.

DELEGATE UYEHARA: Thank you, Madam Chairman. With all due respect to my fellow delegates from the Waianae coast, I remember my days as a teacher on the Waianae coast, when I used to attend SAC meetings--or what we used to call the SAC meetings. When there were grievances that I needed to address myself to, I went to the SAC meeting and made my grievances known; I must say that on that coast the SAC meetings were very lively, and I enjoyed it very much because my grievances were heard.

SAC is already in existence. It was mandated first by the superintendent of education. Whether this form of amendment is placed within the highest laws of our State or mandated by the superintendent of education--it does not guarantee community participation. The guarantee comes from the community itself, the philosophy being that you can lead a horse to water but you cannot force him to drink. This provision is something that should be a legislative matter and I'm sure that the legislators see this, the superintendent of education knows about this and has already implemented it, and it is very viable in many communities. Therefore, this does not belong, I feel, within the Constitution of our State. Thank you.

CHAIRMAN: Thank you. Are we ready for the question? It is now 11:45.

DELEGATE TERUO IHARA: Madam Chairperson.

CHAIRMAN: Delegate Ihara.

DELEGATE TERUO IHARA: I don't want to let the remarks of Delegate Chong go unanswered and I don't recall the experiences that she related with regard to Delegate Nozaki's proposal. As far as action of the education committee was concerned, and as most of you members of the education committee know, I tried to give every member of the committee whatever time they needed to present their views, and I must say again that this particular concept was turned down with quite a majority of the votes in the committee.

CHAIRMAN: Thank you. Are we ready for the question?

DELEGATE YAMASHITA: Madam Chairperson, a short one--it will take me about 30 seconds.

CHAIRMAN: All right, Delegate Yamashita.

DELEGATE YAMASHITA: For the past three days we have been discussing this problem with the committee report and I think one of the major concerns is getting it down to the local level. Today most of our concerns are at the provincial level, as I stated before. I believe a constitutional mandate for district advisory boards will emphasize how crucial input at the local level is.

This amendment, I believe, sets an important priority which will guide us in future educational policies or administrative decisions, and I think it's just something that should be stated. Thank you.

CHAIRMAN: Thank you. Are we ready for the question?

DELEGATE NOZAKI: Madam Chairman, I think I reserved the right to speak last.

CHAIRMAN: Delegate Nozaki.

DELEGATE NOZAKI: I would like to give my closing arguments for this amendment.

Many delegates feel that because voters are given a shot at changing the makeup of the school board every four years, therefore citizens participate meaningfully in the educational system. I for one don't think this is true. Generally board elections don't attract voter interest because the average citizen doesn't have a philosophy of education or a general stand on educational issues. He or she often doesn't understand the jargon that is used to express current trends or programs.

However, this average citizen certainly is made aware of the effects of educational policies and programs as they manifest themselves in his or her particular community. The 3-on-2 program and modular scheduling are a couple of examples from the recent past. Unfortunately, the general public usually becomes aware of school programs only after negative incidents pertaining to them have occurred. The typical reaction is one of anger and frustration because parents feel that they have not been kept well informed, or even consulted on such matters.

This amendment constitutionally guarantees that no matter what changes may occur with respect to superintendents, board of education members, principals or educational trends, the citizens will have a right to give input into the public school system. This amendment would not create a conflict with the elected school board since school advisory councils will be just that--advisory. Rather, these councils should be a complement to the board of education. What could the councils accomplish? These councils would: (1) give advice to the board that should help it formulate policies and programs that would be workable in practice as well as in theory; (2) enlist community support in such areas as curbing vandalism and student absenteeism, and encouraging the use of school facilities; (3) help to inform community members about public school rules, regulations, funding, programs and the like; (4) become a sounding board for local concerns and problems. School advisory councils should facilitate the efforts of board members to keep in touch with their constituents.

To conclude, citizen participation at the local school level will help to increase awareness and understanding of our state public school system--its structure, basic policies and goals. Such awareness can only lead to restoration of public confidence in our school system. Therefore, I urge all of you to please vote for this amendment.

CHAIRMAN: Thank you. The question before the committee is on school advisory boards at the local level. Delegate Odanaka.

DELEGATE ODANAKA: I call for a roll call.

CHAIRMAN: A roll-call vote has been called for. Do we have 10 seconds? I'm sorry, there aren't enough. All those in favor please raise your hands. Opposed, please raise your hands. The noes have it. The amendment on school advisory councils at the local level has failed.

We have arrived at a memorable moment: carved into the sands of time, we have just finished the last amendment. Yes, the Chair recognizes Delegate Waihee.

DELEGATE WAIHEE: Madam Chairperson, I move that we rise and report to the Convention.

DELEGATE BLAKE: I second it.

CHAIRMAN: Are we ready for the question? Those in favor please raise your right hands.

DELEGATE HALE: What is the question? State the question.

CHAIRMAN: To rise and report. Those opposed? The motion is passed.

At 11:48 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on LOCAL GOVERNMENT

Committee Proposal No. 7

(Articles VIII [VII] and XVIII [XVI])

Chairman: DELEGATE FLOYD PULHAM

Friday, August 25, 1978 • Afternoon Session

The Committee of the Whole was called to order at 1:48 p.m.

Delegate Floyd Pulham presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. The Committee of the Whole has been referred for consideration Committee Proposal No. 7 from the standing Committee on Local Government. Before we begin, I'd like to remind you of a couple of rules that apply when we're in a Committee of the Whole. I would remind the delegates that during the Committee of the Whole, motions for bringing the question or tabling or referring to a committee are out of order. The Committee of the Whole will consider Committee Proposal No. 7 by sections. I'd like to call your attention to the amendments that have been placed on the clerk's desk and referred to you in writing. If you would get these together at this time, I will give you the order in which we are going to take them up.

The first amendment to Committee Proposal No. 7 is entitled "Local Self-Government; Charter" by Delegate Ginger Wurdeman; that will be numbered 1. The second proposal, entitled "Taxation and Finance" by Delegate Yvonne Izu, will be numbered 2. The third proposal, also "Taxation and Finance," by Delegate Alan Kimball concerns itself with the power to levy general excise tax; that is numbered 3. The second one by Delegate Kimball, concerning personal income tax, will be numbered 4. There is another one entitled "Taxation and Finance," by Delegate James Shon, numbered 5. The amendment by Delegate Kay Kaito, "Land Use: State and County," will be numbered 6. Delegate Hokama's proposal, entitled "Land Use: State and County," will be numbered 7. And the proposal by Delegate Izu, "Effective Date and Application of Article VII, Section 3," will be numbered 8.

I would ask the delegates as a favor and because I feel that it is a good rule of procedure to follow, although not necessarily a binding rule, that when you rise to speak for or against an amendment, that you do let the other delegates, as a matter of courtesy, know whether you are speaking for or against. I'm not going to rule anyone out of order and I will not entertain motions to that effect. However, if you've sat here as I have, you know that sometimes we get two-thirds of the way through quite a good presentation before we find out whether the delegate is or is not for the amendment. To be most effective in your presentation, I would urge you to let the delegates know from the very beginning which way you're leaning.

Having no further discussion, I would at this time call on Delegate Sakima, the chairman of this standing committee, to give us a resume of Committee Proposal No. 7 and the committee report thereto.

DELEGATE SAKIMA: Mr. Chairman, I rise to speak in favor of this proposal. First, I would like to thank the members of the committee who worked long hours--in fact, we worked on a Sunday to arrive at the decisions. We spent many hours coming to our final decision, and many times the issues in local government were so complex that it required many hours of patient deliberation. However, I believe that the proposal before you provides a solution to the questions raised about the authority of local governments and the division of power between the counties and the State. In arriving at these

recommendations, the committee examined the current responsibilities of both the State and the counties. Unlike other states, Hawaii has a highly centralized form of government, with many of the essential services provided by the State. This centralized form of government has made possible equitable treatment of all residents without regard to their residence in the State.

Consequently, Article VII reflects a division of authority which recognizes the State's authority to set policy relating to the creation and responsibilities of the counties. This approach has provided for a clear division of authority without ambiguity. But, Mr. Chairman, we must also give due regard to the development of county governments. Our island formation has provided logical local government units which share similar community interest. In many ways, the State's assumption of traditional county services in the past two decades has made it easier for the counties to become a strong and more viable form of government.

As a result, many proposals referred to your Committee reflected a stronger role for the counties in certain areas. Many of these proposals suggested an alternative plan for allocating power and responsibility between the counties and the State. This is especially true of areas where both the State and the counties share responsibility. But in scrutinizing these proposals, your Committee kept as its central goal the requirement that any change to authority must promote more effective delivery of services.

Our examination of the record shows that the present method of allowing the State to allocate powers to the counties has not presented any major problems. Generally, the record supports the conclusion that the legislature has been very responsive to the needs of the counties. The state allocation of authority to the counties is generally practiced in many states, even those where the counties have more responsibility.

The overall satisfactory record with the current system of allocation leads your Committee to believe that the thrust of Article VII should be embodied in our recommendations. It is for this reason that many of the sections of Article VII, especially sections 1 and 2, have been retained.

There was interest in revising these two sections, which provide for the constitutional recognition of counties and for creating residual powers; however, the committee preferred the present system because of the clear division of authority currently provided. The possible revisions left too many questions unanswered. Your Committee was not totally convinced that vesting the counties with residual authority would not create undue hardship on the current division of responsibility for lawmaking. No clear answer was given on its effect if the proposal was recommended.

There was no consensus among legal counsels available to the committee on the practical effect of granting counties residual authority. In fact, it is possible that a grant of such authority--which offers the counties all powers and responsibilities specifically not denied to them by the Constitution, charter or statute--would serve to inhibit the legislature from passing a state law once a particular county has previously acted.

We also took no action on the constitutional recognition of counties because the language offered to your Committee for consideration was identical to that currently embodied in our state law. Your Committee, however, did make substantial revisions in two areas where the State and counties share responsibility. These two areas are the real property tax and the designation of urban lands.

Mr. Chairman, our real property system is currently managed by both the State and counties. Principal responsibilities for valuation and collections are currently delegated under the law to the State, while the counties are required to set the rate that will be charged to property owners. The revenues derived from this tax are needed to fund operations and programs of the counties. For many years, this shared responsibility has been a sore point between counties and the State.

What your Committee has decided to do is to give the counties sole responsibility for the real property tax system. We have concluded that this current shared responsibility has led to confusion and lack of accountability between the State and counties. The voter no longer knows what level of government is responsible for the real property tax bite.

Moreover, continuance of the present system is unfair to the counties as they are responsible for county affairs but have no control over their major source of income. It is hoped that with this responsibility there will be more accountability and more efficient use of the real property tax. It is further hoped that this will lead to more independence for counties in their areas of interest.

Our final recommendation would provide that state designation of urban land be done with the approval of the county. Our current land-conversion policy requires the state Land Use Commission to designate lands as agricultural, rural, conservation and urban. Once an urban designation is given, it falls under the jurisdiction of the county where the land is located.

The proposal recognizes the growing importance of land management. This proposal will add an additional check against unnecessary urbanization and will further help develop a stronger working relationship between the counties and the State in the land-conversion process.

These are the substantial amendments that your Committee offers to this Convention. Thank you very much.

CHAIRMAN: Thank you, Delegate Sakima. Is there any further discussion on Committee Proposal No. 7? Delegate Shon.

DELEGATE SHON: Mr. Chairman, I rise to speak in favor of section 1 of this report, but with one important regret. The committee was unable to resolve the problem of guaranteeing the full political and human rights of the people of Kalawao.

This is not, however, because the committee members weren't concerned. A primary difficulty arose, in my opinion, in attempting to deal with local government in terms of powers and structure, while at the same time trying to protect human rights. As you may know, Kalawao is in fact a county, but not in the sense of an independent, revenue-generating, service-delivering political subdivision. It has no self-government. Administration of Kalawao is handled by the state Department of Health. There is a certain tension between attempting to deal with human rights in a quasi-independent political subdivision and attempting to deal with county powers; this showed itself again and again as the committee debated such issues as constitutional recognition of the counties by name, inclusion of the concept of charter counties, and ratification of the current status of counties. It came up again and again.

Regrettably, this tension between the human rights aspect and county powers was too great to overcome. Perhaps such concerns could have best been met if the proposals had also been referred to the bill of rights committee.

Mr. Chairman, I think it is imperative that the record reflect the deep commitment and concern of our government for the human rights of all our citizens. The people of Kalawao are caught between being more than recipients of a public health program yet less than a full-fledged county. It is my hope that sensitivity and understanding at the state level will be able to resolve their need for self-government in a fair and equitable manner.

CHAIRMAN: Thank you. Is there any further discussion? Delegate McCall.

DELEGATE McCALL: Mr. Chairman, in regard to the whole proposal and especially the part on taxation and finance, due to potential conflicts discovered after the committee took their action, I would like to ask that the record show the following: that it is understood that as a result of the transfer of real property taxation powers to the counties, it was not intended that where properties are now taxed or fees paid in lieu of real property taxes that those properties be subject to double taxation.

CHAIRMAN: Thank you. Is there any further discussion? Being none, we will move on to Amendment No. 1, "Local Self-Government; Charter." The Chair recognizes Delegate Wurdeman.

DELEGATE WURDEMAN: Mr. Chairman, I would like to amend Committee Proposal No. 7. Going back to the Constitution, Section 2 of Article VII is amended by changing

paragraph 3 to read: "A law shall only qualify as a general law if it is applicable to all counties by reason of the provisions of this section."

DELEGATE RACHEL LEE: Mr. Chairman, I second that motion.

CHAIRMAN: It has been moved and seconded that we adopt the amendment to Committee Proposal No. 7 changing the last paragraph of Section 2 of Article VII to read: "A law shall only qualify as a general law if it is applicable to all counties by reason of the provisions of this section." Delegate Wurdeman, do you wish to speak to your motion?

DELEGATE WURDEMAN: Thank you. In its broadest sense, the term "general law" designates that area of law which deals with the formation, construction and interpretation of law that is concerned with the main or overall characteristics of law in Hawaii's society.

In 1968 the constitutional convention set up a charter system for counties. The charter's supremacy in the counties was subject to the legislature passing general laws regulating counties. Because of this concept of regulation, it can be safely stated that laws should be applicable to all counties under general law--or the term general law is not being used correctly.

Your Standing Committee Report No. 42 states that under the allocated powers method, powers are granted by the State to local governments. This method of power allocation is consistent with a majority of states across the nation. Presently the Constitution allows the legislature to reallocate powers and functions only by general law. A similar limitation on legislative power was recently passed by the Convention with Delegate Waihee's motion granting a certain amount of autonomy to the board of education.

We would hope that should this amendment go into the Constitution, the legislature will not choose to circumvent this limitation on legislative powers in the same manner that they have circumvented the existing limitation on their power in Article VII. By this I mean the disguising of special laws applicable to only one county, by prefacing them with arbitrary classifications. For example, take the case of a law applicable to all persons in counties of over 200,000 people. We all know that in reality this law applies only to the 80 percent of the state population living on the Island of Oahu, yet the present constitutional language allows this to be called a general law. While this may be legally correct, it is logically absurd.

In the larger states, an exception has been accepted by the courts to the basic principle that "general" laws have to be applicable to everyone. This exception arises when counties or cities are categorized reasonably by such criteria as population. Thus, in California "counties of over 200,000 people" would include a wide range of jurisdictions, from San Diego to Sacramento. I wonder if the delegates realize that a general law that is applicable to one county of over 200,000 should also be applicable to counties of less than 35,000, or counties composed of more than two populated islands, or counties of over 1,200 square miles, or even counties with an active volcano.

I'd like to use an example here. In 1969, Act 78 was passed which exempted certain employees from civil service. It reads as follows: "In any county with a population of 100,000 or more, the legislative body thereof may appoint and fix the salaries of not more than six additional employees who shall be exempt from civil service and the position classification plan." This was applied to a county of more than 100,000.

I am suggesting that if the universal principles underlying Act 78 were beneficial to counties of more than 100,000, they would seem equally applicable to counties of less than 100,000 population.

"...A law is a general one where it relates to persons, entities, or things as a class, or operates equally or alike upon all of a class, omitting no person, entity, or thing belonging to the class."*

*50 Am. Jur., Statutes, sec. 6, cited by Att'y Gen. Ops. No. 61-36 at p. 2 (March 17, 1961).

What I am asking you, my fellow delegates, is that we insure the usage of general law as originally intended. Fair and equal is important. We can accomplish this by clarifying it in our Constitution through my amendment. Thank you.

CHAIRMAN: Thank you. Delegate Sakima.

DELEGATE SAKIMA: Mr. Chairman, I speak against the amendment. I would just say that many of these requests for general laws come from the counties themselves. This is why the legislature passes these laws; it's not that it wants to, but some counties want to be exempted from certain things that pertain to counties of maybe 100,000 or more. But I have a legal opinion from the attorney general, given in 1965, which says that "[i]f the Legislature finds with reasonable grounds therefor, that there are substantial and rational differences in the situation or condition existing in the different counties which bear a direct and reasonable relation to the objects and purposes of particular legislation, and accordingly by a proper classification (be it population or otherwise but not by specific reference to any particular political subdivision) makes such legislation applicable only to the City and County of Honolulu or to the neighbor island counties, we are of the opinion that such legislation would not be violative of the general law provision in the Constitution."*

CHAIRMAN: Thank you, Delegate Sakima. Is there any further discussion on this amendment? Delegate Izu.

DELEGATE IZU: Mr. Chairman, I rise to speak against the amendment. To define general laws as those which apply to all counties is arbitrary and not based on logic or reason. It has been contended that under the present definition of general law, the city and county has been consistently discriminated against. I submit to you that those laws which classify according to population do not discriminate but rather recognize the differences among the counties. It is generally recognized that the more diverse the units of local government the greater the need for classification. The great disparity between the City and County of Honolulu with a population of 700,000 and the next most populated county, the County of Hawaii, with only one-tenth that population exemplifies this need for classification. With the State having only one political subdivision which can be classified as metropolitan, it is unreasonable to define general laws as those only applicable to all counties, as this would prevent legislation that addresses itself to metropolitan concerns.

We must remember that Hawaii is a highly centralized state, and therefore many functions and powers are reserved to the State. For example, personnel laws are reserved to the State even in relation to county government personnel. To prohibit the legislature from enacting personnel laws which deal with the problem of metropolitan areas is inhibiting. On the other hand, the solution to such a problem may have an adverse impact on the more rural areas. For example, the law regulating the work hours of firefighters recognizes differences in the numbers of personnel and the unique circumstances which firefighters in low-population areas work under; therefore the numbers of work hours are different for firefighters in counties with less than 100,000 population. Indeed, as the previous speaker mentioned, it is often the case that the county affected by the classification is the strongest proponent of such laws. Act 35 of the 1970 legislature was classified by a population of over 100,000. The standing committee report of that bill stated that "... the Mayor of the City and County of Honolulu has indicated his support... [and] the City and County Planning Department also strongly favors the passage of this bill." The standing committee report attached to Act 181 of 1970 states that the purpose of the bill is to "give effect to certain of the policies arrived at by the Civil Service directors of the State and the several Counties at their conference in Hilo..." The point I'm trying to make is that a law based on classification is not in and of itself bad. As a matter of fact, it is often desirable.

Under our current Constitution, the legislature is prohibited from enacting special laws. In several cases across the nation and in Hawaii, the courts have ruled that classification based on population may be valid but certainly not conclusively so. The classification adopted cannot be capricious but must be based on some reason and must have regard

*Att'y Gen. Ops. No. 65-9 at p. 10 (April 1, 1965).

to the character of the subject matter of the legislation. Where there has been no relation between the subject and the size of population, as in such cases as Chandler v. City of Louisville and Conlin v. Board of Supervisors of City and County of San Francisco, the courts have ruled that those pieces of legislation were indeed special, thereby unconstitutional. However, the courts have upheld laws for which classifications were founded on reasonable and valid bases. Some statements by courts include the following: From Pennsylvania: "This section does not prohibit a proper classification of the subjects of legislation, especially when such classification is a necessity, in order to properly deal with the subject matter and prevent the laws from operating unjustly." California was cited by the author of this amendment but let me read what one of the California courts stated: "Legislative classification which is founded on reason and is unlimited in operation is not objectionable as special legislation or as lacking in uniformity of operation even though it applies to only one county."

There are others, Mr. Chairman. I'd like to bring up a case that I often hear about, and that's about the automobile dealers of Oahu being unfairly treated because the law requires a bond of \$25,000 if the license is for a county with a population of 200,000 or more, but only \$15,000 for a dealer in a county of less than 200,000. Let me first of all state that this statute dates back to 1959 and has never yet been challenged as a special law. Prior to the time of enactment, licensing of motor vehicle dealers was a county function. When the State took over that responsibility, it merely enacted what was in county provisions at that time. Aside from that fact, I believe there is good reason for the differential in bonds required; a metropolitan area naturally generates a higher volume of business and, therefore, there is greater chance for suits against the dealer. Also, the chances of dealing in stolen cars are much greater in densely populated areas. These, Mr. Chairman, are merely examples of the different situations that exist between metropolitan and rural areas, which illustrate that a law is justified as general law even though it applies to only one county.

For the reasons stated above, I believe our present constitutional language is good and should be retained. I urge all of you to vote down this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Izu. Is there any further discussion? Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to speak in support and in favor of this amendment. I believe the record is clear that there have been a number of occasions in which the City and County of Honolulu has indeed been burdened by being the only 100,000-or-more-population county. In connection with the bond dealer law to which Delegate Izu made reference, Act 92 of 1978 covers the same subject matter, and I believe that it is a glaring example of the kind of questionable legislation we're talking about. Under the provisions of this law, each "new motor vehicle dealer receiving a license" is required to "keep in force a bond to the motor vehicle industry licensing board in the penal sum of \$25,000 if the license is for a county with a population of 200,000 or more and \$15,000 if the license is for any county with a population of less than 200,000" and each "used motor vehicle dealer" is required to "give and keep in force a bond to the board in the penal sum of \$10,000" if the license is for a county with 200,000 or more and only \$2,000 if it is for a county with a population with less than 200,000.

I urge the delegates to support this amendment because I believe it is needed to bring the Constitution into line with today's thinking--that is, equal treatment for all counties by our state legislature. I believe the time for responsive government is now and all of the people of Hawaii should be together as one, as one they are equal. Thank you.

CHAIRMAN: Thank you, Delegate Campbell. Is there any further discussion? There being none, are you ready for the question? I will read the amendment to Article VII, Section 2, which states: "A law shall only qualify as a general law if it is applicable to all counties by reason of the provisions of this section."

All those in favor of the amendment, would you raise your hands. Thank you. Opposed, same sign. The amendment fails.

We are now on Amendment No. 2, entitled "Taxation and Finance," by Delegate Izu. Delegate Izu.

DELEGATE IZU: Mr. Chairman, I move to amend Committee Proposal No. 7 by changing Section 3 to read: "The taxing power shall be reserved to the State except so much thereof as may be delegated by the legislature to the political subdivisions; provided that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, except the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions."

DELEGATE SAKIMA: Mr. Chairman, I second the motion.

CHAIRMAN: The motion as read by Delegate Izu has been moved and seconded. Delegate Izu, would you like to speak to your motion?

DELEGATE IZU: Thank you, Mr. Chairman. I speak in favor of the amendment as I believe it will clarify the intent of the Committee on Local Government. As Standing Committee Report No. 42 states, the intent of the Committee on Local Government is to give all functions, powers and duties relating to the taxation of real property to the counties. However, subsequent to the time of decision-making of the committee and the drafting of the committee proposal, a question was raised as to whether or not the word "levy" is all-inclusive; specifically, the question was raised as to whether it includes the power to exempt property from all or a portion of the tax.

The latest edition of Black's Law Dictionary defines the word "levy" in terms of taxation as: "...the legislative function and declaration of the subject and rate or amount of taxation..." and so forth. According to Black's, the word "levy" in terms of taxation is defined as its broadest function. This definition appears to concur with what I believe was the committee's intent in the use of the word "levy." However, in view of the fact that this word caused some concern, I propose this amendment to make it clear that all the functions, powers and duties relating to the taxation of real property shall be exercised by the counties.

This amendment also excepts the county of Kalawao from the power of taxing real property.

CHAIRMAN: Thank you, Delegate Izu. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak in favor of the amendment. Yesterday your Committee on Taxation and Finance held its first decision-making session at which time it took up the recommendation contained in Standing Committee Report No. 42 insofar as the report addressed the question of taxation and finance. I might add that there were several joint referrals to the local government committee and taxation and finance in the area of tax and finance as it relates to local government. After full deliberation on this matter, the committee voted to support the concept of turning over the real property tax program exclusively to the counties. This particular amendment, Amendment No. 2, appears to best accomplish this purpose. On behalf of the members of the Committee on Taxation and Finance, we urge you support this amendment and vote in favor of it.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Shon.

DELEGATE SHON: Mr. Chairman, since the intent of this amendment really is to clarify the language in the original proposal, I'll speak in favor of it and leave my remarks as to the merits of such a catastrophe to Amendment No. 5.

CHAIRMAN: Thank you, Delegate Shon. Delegate De Soto.

DELEGATE DE SOTO: Point of inquiry. May I ask why Kalawao was excluded?

CHAIRMAN: To whom are you addressing your question?

DELEGATE DE SOTO: To whoever wants to yield. I thought yesterday that the question was to be first presented to the Chair and then the Chair would direct the question to whomever--the movant would be the assumption.

CHAIRMAN: You must direct the question, and the delegate to whom you are addressing it, to the Chair, and then I will direct the question.

DELEGATE DE SOTO: May I ask of the movant?

CHAIRMAN: Yes, you may. Delegate Izu, would you yield to that question?

DELEGATE IZU: May I ask Delegate Barr to answer that?

DELEGATE BARR: I can answer that question for the delegate. Kalawao is administratively handled by the Department of Health. It does not have any county government of any description of its own. They would like to have some input on some things but they are not, it appears, going to get that. However, they certainly are not--the people in Kalawao--not at this time prepared to take over full functioning of a county government, including the property tax. If we were going to do that to the people in Kalawao, we would probably have no choice but to make them a part of the County of Maui. Now, I'm not sure we're unwilling to do that, but that's not the issue at this point. The point is that Kalawao at this time has no county government that can inherit these functions of property tax. I would like to finish, while I have the floor, a couple of comments about--

CHAIRMAN: Delegate Barr, unless Delegate De Soto yields, you may not.

DELEGATE BARR: As a matter of fact, if you check your Robert's Rules, the answerer of the question is the one who has the floor and gets charged for the time speaking, not the asker.

CHAIRMAN: Well, we weren't charging people with time speaking. We were trying to be informal and expedite the matter. However, if you insist, continue your presentation.

DELEGATE BARR: I just wanted to make the comment that while I'm counting on this group to vote for this, I don't think I therefore want to make a long speech. I would like to emphasize how extremely important the counties--the county governments, the county officials and those who are close to county governments--feel that this particular issue is. This amendment will give us the language that will give us a power we feel is very, very important. I plead with all of the delegates--please back us up on this one.

CHAIRMAN: Thank you very much. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I have another question. If you would allow me to direct my question to Delegate Barr, I would like to know why we have to give constitutional basis to clearly outline or exempt Kalawao when, because of their circumstances, they are already exempt. Being by nature a suspicious person, I am looking at whether or not there will be any patients there in ten years and the area would then, under this clause, be exempt from any kind of levy of taxes.

CHAIRMAN: Delegate Barr, would you yield?

DELEGATE BARR: Yes. Kalawao is an unusual situation as you are aware. We don't make a great number of distinctions in Hawaii government among the levels of municipality. We just have the one category--county. We call Kalawao a county although it has no direct governmental relationship in the way it operates with any of the other counties. So in order for the law to apply just to those counties which in fact operate as municipalities, we must say "except the county of Kalawao." It's because the same word is used--county--but the reality of the area is different.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Mr. Chairman, first of all I would like to thank the movant of the amendment for the clarification in language. Although the committee report does outline, I think, the reasons that this was done, I think that Delegate Izu is to be complimented for her observance and for making the language very clear, which is what this amendment does.

Because I'm not sure whether we're going to get the chance to speak for the concept or whether we're just speaking for another concept under the other amendment, I would also like to say that I too would like to urge that all of the delegates give very serious

consideration to giving these powers to the counties. I am again reminded of my age when I say this because I have come full circle. Over 20 years ago I first got into local government service under a system where complete power in real property taxing was in the hands of the State--even to the statutory amount that each county could rate. I can well recall that in the County of Hawaii our statutory limit was \$1,200,000.

I have watched this continued progress in the area of home rule over these years, and one of the reasons that I ran for the constitutional convention was to see that real property taxation completed its circle and I can rest in peace. I see Delegate Waihee smiling, which means I'm going to vote with him, I hope.

I would also like to say that I don't feel it was necessary to put this in the Constitution because the legislature did have the power to do this. But they were willing to go so far and not far enough. Therefore, I do ask your support to make the complete responsibility for real property tax--the revenues of which go exclusively to the counties--the responsibility of the county government. In the interest of responsible government, the taxation power and the taxes that are derived from this power should rest squarely with the local government units. If there's any further rise in real property assessed values and in taxation, the people will know where to go to put their concerns. I urge your support of this amendment.

CHAIRMAN: Thank you, Delegate Hale. Any further discussion? Delegate Lacy.

DELEGATE LACY: I would like to direct a question to the Chair and maybe the movant could answer. As I read the wording of this amendment, it implies that a county could not turn down this gift if they didn't want it. Is that correct?

CHAIRMAN: Delegate Izu, would you yield to that question?

DELEGATE IZU: Yes, I'll yield. My understanding of this is that the counties will have the power to tax, and I believe that they will have the power not to tax.

CHAIRMAN: Does that answer your question?

DELEGATE LACY: Partially. Then would the State retain and service the county as it does now if the county desired not to take on this responsibility? It's going to cost the counties money in some cases.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, may I attempt to answer that question?

CHAIRMAN: You may.

DELEGATE DONALD CHING: I think, as Delegate Izu said, all it is is a permissive power that the State has granted to the counties. If one of the four counties chose not to impose a real property tax, they just drop the whole thing; they don't get into the assessment or the collection of real property taxes. It's as simple as that.

CHAIRMAN: Thank you. Delegate Hale, you're speaking for the second time.

DELEGATE HALE: All right. I think his question is in need of an answer that goes beyond what has been said. I doubt very much that the counties would drop a real property tax that is over 80 percent of their revenue. The question as I understood it by Delegate Lacy was that if the counties did not want to take on the assessing and collecting of real property taxes, would they have to? It is my understanding that this is mandatory--that if there is to be a real property tax, the counties will take this power and responsibility. I'd like to say that the Hawaii State Association of Counties which represents the four counties of this State, has unanimously gone on record for this. It is my understanding that every county has asked for it.

I'd also like to say, being a former member of the Hawaii State Association of Counties, that we did ask for this many, many years ago. Again, it has finally come to pass. I would like to urge the delegates to vote for this so that we can make a more responsible government.

CHAIRMAN: Thank you. Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, delegates of the Convention, the County of Kauai asks your support on this proposal here. I think I can speak for the "friendly county," the City and County of Honolulu which is also friendly to the County of Kauai, and also ask your support.

CHAIRMAN: Thank you. Any further discussion? Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I wish to speak for the motion and simply echo the eloquent statements by the previous speakers for the amendment. However, I wish to add one point, and I wish this to be in the record. In the act of the transferring of taxing powers from the State to the counties, I think it should be known that it is the intent of the committee for the real property that's now provided special exemptions in the State, that the counties thereby receiving the taxing powers will provide special consideration for those particular exemptions, and that it is not the intent of the particular counties to provide double taxation.

CHAIRMAN: Thank you, Delegate Souki. Seeing no further-- Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I don't speak for or against the amendment. I do raise a question. I know that in the meeting of the tax and finance committee this morning, one of the neighbor island delegates asked whether or not this language would make it mandatory. He was concerned about the possible additional cost of collection. The figure was \$600,000 or perhaps quite a bit more. The way it specifically is worded-- this is the first time I've had occasion to see it--it says that the "...powers...duties relating to the taxation... shall be exercised exclusively by the counties..." That would indicate to me that if one of the counties should decide not to do it, the State could not exercise any power in relation to real property on that island, and that would mean there would be no one who would have the power to exercise or to make any real property taxes. Therefore, if any one of the neighbor islands is concerned about that, it would perhaps be a point that should be corrected.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I have a question. I see we're giving the local governments the right to set their own tax. Now, what if they became derelict and didn't collect enough taxes? We're giving the State a lot of responsibilities in human rights and other areas. If the county governments became lax, would the State have to come in and supply the necessary money to take care of the projects that the counties couldn't handle?

CHAIRMAN: Delegate Crozier, I take it you are addressing that to the Chair, and therefore the Chair will attempt to answer it. I'm sure that you could be correct in certain instances. However, I don't see this as a valid happening unless you have no faith in your county government at all. If you have a problem in that area, I'd say you've got a problem with this amendment.

There being no further discussion, the question then is on Amendment No. 2, which reads: "The taxing power shall be reserved to the State except so much thereof as may be delegated by the legislature to the political subdivisions; provided that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, except the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions."

All those in favor of the amendment, would you raise your right hands. Thank you. All those opposed, the same sign. The motion passes.

Moving on to Amendment No. 3 amending Committee Proposal No. 7, "Taxation and Finance" by Delegate Alan Kimball, which concerns the levying of a general excise tax. The Chair recognizes Delegate Kimball.

DELEGATE KIMBALL: Mr. Chairman, I move to amend Article VII, Section 3, basically in accordance with the amendment just passed--it can be properly worded. The amendment is to grant to the counties the power to levy a general excise tax.

DELEGATE HALE: Second the motion.

CHAIRMAN: The motion has been moved and seconded. Would you care to speak to your motion?

DELEGATE KIMBALL: Yes, Mr. Chairman, and I'd like to reserve the right to speak last.

CHAIRMAN: You may. Proceed.

DELEGATE KIMBALL: This amendment would grant the counties the power to levy a general excise tax, up to 25 percent of the rate which the State levies. At the present time, the counties would be able to levy a maximum tax of 1 percent at the retail level, and 0.125 percent on wholesaling, intermediate services and manufacturing.

At this time, I would like to highlight the control features built into this amendment. (1) This amendment only grants to the counties the power to levy a general excise tax. It does not require those counties to levy that tax, it only gives them the authority. (2) This tax is an excise tax, it is not a sales tax. It also has special features which will make it avoid the regressive nature of a sales tax. (3) The county councils must take affirmative action to implement this tax. (4) It sets a ceiling on the rate; that ceiling is tied to and effectively controlled by the State's overall taxing authority.

Committee Proposal No. 7 reserves taxing power to the State, except that provided by this Constitution or delegated by the legislature. The committee proposal and this amendment only delegate to the counties specific taxing powers. This method of specific delegation is consistent with our chosen allocation method of assigning powers between the State and its counties. The specific allocation of the general excise tax will not interfere with the allocated method of granting powers to the counties. The granting of taxing authority is a better alternative than guaranteed grants-in-aid. Taxing authority provides for increased ability for financial planning and greater fiscal and political responsibility.

The goal of this amendment is not to provide the counties with increased revenues; the goal is to provide a diversified taxing authority. We must recognize that even the State with its unlimited taxing authority cannot be self-sufficient because of its increasing reliance on federal grants-in-aid. We therefore cannot expect our counties to be financially self-sufficient, regardless of how much taxing authority we give them.

Committee Proposal No. 7 recognizes the need to establish constitutional taxing authority for the counties with its recommendation on real property tax. For the following reasons, the counties need a diversified taxing authority, including a general excise tax: (1) to provide the counties with a guaranteed minimum revenue base for financial planning; (2) to provide the counties with the flexibility to balance their revenue sources to meet increasing and diversified needs; (3) the general excise tax has the best revenue potential in both dollar amounts and population base, extending beyond residents alone.

I realize that the general excise tax authority was reviewed and not approved by our local government committee. But this amendment is being made because of its importance to all of us and its importance to our counties. We should carefully consider this amendment here in the Committee of the Whole. Thank you very much.

CHAIRMAN: Thank you. Delegate Sakima.

DELEGATE SAKIMA: Mr. Chairman, I speak in opposition to the amendment. As was stated by the previous speaker, the local government committee did receive an identical proposal. We discussed it and did not approve for--there are two reasons that come to mind at this time. One, we are going to be adding taxes to the same people; and two, in this day and age when people are antitax, we're afraid that in putting this proposition to the people, they would vote it down.

CHAIRMAN: Thank you, Delegate Sakima. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, on behalf of the Committee on Taxation and Finance, I rise to speak against the amendment, particularly that portion that relates

to general excise tax. This subject was also discussed at yesterday's decision-making meeting--

DELEGATE KIMBALL: Point of order, Mr. Chairman. Can the delegate speak on behalf of the entire committee?

CHAIRMAN: He can unless they object.

DELEGATE KIMBALL: Thank you.

DELEGATE LEWIS: The purpose of my reporting is just to give some information to the other delegates. I think it might be helpful to know the results of the committee's deliberations so that it can help them in making a judgment as to whether to vote for or against this. By a vote of 22 to 0, the committee voted against this amendment.

CHAIRMAN: Thank you, Delegate Lewis. Is there any further discussion? Delegate Barr.

DELEGATE BARR: Mr. Chairman, for my good friend from downtown, may I mention that we of the taxation and finance committee specifically authorized our chairman to speak for us, in unison.

CHAIRMAN: Thank you, Delegate Barr. Is there any further discussion on the amendment? Delegate Hale.

DELEGATE HALE: I would like to speak in favor of the amendment. It appears, Delegate Kimball, that that kind of a vote in the taxation and finance committee indicates that it doesn't have any chance of passage. Therefore, I cannot hurt you. But I would like the record to show that I do believe in and I have always fought for as much responsible government as possible. I have great faith in our county governments just as I have in our state government and just as I still have today in our Constitutional Convention.

I feel that we have over the years given more and more taxing power to the counties. This is in line with that continued role in the direction of responsible self-determination for the local people of a county. I can recall when the legislature in its wisdom--about '57, I think it was--gave the counties authority to levy a county fuel tax. There was a cry that the counties would levy a tax that would make the cost of fuel so high that nobody could buy gasoline. Although the tax on fuel is high, it is not the responsibility or fault of the counties because our state tax and federal tax are also high. But it did enable the counties to levy a tax to improve their roads. This was very, very important because before that time we used to have to go begging, hands outstretched to the legislature, to please give us some pork barrel projects so that we could fix the roads in our local counties. Most of the road maintenance problems have now been solved because counties have been able to take care of their problems through this kind of tax. I think probably at this stage of the game each county has a different county tax, which is good because each county has different problems in the area of roads.

The Island of Hawaii, which is almost twice as large as the whole state put together [sic], has a tremendous problem in the area of roads, and therefore our tax is high. But the people of our county have never indicated dissatisfaction with the tax that was earmarked for road construction and maintenance because roads are one of our major local problems. I would like to say that just giving authority to the counties to raise a general excise tax of one cent, which is what it means right now, does not mean at all in this case that the counties have to do it. It would be, I think, a tool of responsible government for the legislature to use, to tell the counties--all right, if you need additional revenues, you may tax. Let your people pay for the local services you need rather than coming to us. I would think that this would be something the present legislature would like, and that those members of the Convention who have dealt with the legislature would see that it would make it easier for them to deal with local problems.

At the present stage, I think it's realistic to expect that possibly only the City and County of Honolulu will levy such a tax. I think that the problem is not whether they will levy but whether they should have the power to levy. This is a much better way to approach Delegate Wurdeman's problem of general laws--give the power to all counties. Let those counties that need it and can use it and can justify it, let them raise the tax

if they dare in an election year. I say let's make our county governments responsive and responsible. Those of you who have questions about your local government and its functioning and the type of people you have and the decisions they make--give them the responsibility and then the electorate can decide wisely at the polls. I feel that this is a very good amendment. I would certainly urge you--and one other thing: the Hawaii State Association of Counties also has this in their program, and even though the other counties probably don't want to levy this tax at this time, they have unanimously gotten behind this concept and requested it and it was turned down. I urge you to consider giving this power to the counties.

CHAIRMAN: Thank you, Delegate Hale. Is there any further discussion? Delegate Kimball.

DELEGATE KIMBALL: Mr. Chairman, I don't want to belabor the point, because it is quite obvious that there are not enough votes for this amendment. I would just like to say that maybe I could get a membership card into Delegate Crozier's Panasonic Club. I don't think that I am jogging into the wind. Thank you.

CHAIRMAN: Ready for the question? All those who are in favor of this amendment, would you raise your right hand, please. All those opposed, same sign. The motion fails.

At this time, the Chair will call a 3-minute administrative recess. Please be back on the floor in 3 minutes.

At 2:52 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:03 p.m.

CHAIRMAN: Will the Committee of the Whole come to order. Before the recess we were discussing Committee Proposal No. 7 and had acted on Amendment No. 3. Will the delegates at this time take out Amendment No. 4, also by Delegate Kimball, and would you please note that this has been withdrawn.

Moving along with our business, we are to take up Amendment No. 5, "Taxation and Finance." The Chair recognizes Delegate Shon.

DELEGATE SHON: Mr. Chairman, I move that Committee Proposal No. 7 be amended by deleting all amendments to the current constitutional language in Section 3 of Article VII and returning it to as it was.

DELEGATE VILLAVERDE: Second.

CHAIRMAN: It has been moved and seconded that the proposal be amended by deleting all amendments and returning Section 3 of Article VII to its original language. Would the delegate speak to his motion.

DELEGATE SHON: Yes, and I reserve the right to speak last on this. Mr. Chairman and fellow delegates, real property taxation is not a simple issue. It's not just handing over assessments or rate structures; it's very complex. It is, among other things, a major tool for the implementation of state planning, something which this Convention has endorsed repeatedly--state planning, especially for the preservation of agricultural lands. It should not be capriciously or carelessly tampered with. And yet, fellow delegates, I wonder how many of you have taken the time to read the real property tax law in Chapter 246 of the Hawaii Revised Statutes.

After the committee passed this proposal, I asked several members of the committee: Did you know that this will completely eliminate Chapter 246? No, I didn't know that... what's Chapter 246? is that something dealing with real property? Do you know what is in Chapter 246? Do you know the powers that you are granting the counties? Let me summarize some of the provisions that would be voided if you approve the proposed change.

No. 1--a reform of what is known as the Pittsburgh Plan land law. The Pittsburgh Plan had provisions for highest and best land use, which was a major stimulant to speculation and development. This very recently--in what I would consider a major victory--

was changed. However, there is no guarantee that if we grant the power of real property taxation to the counties, that highest and best use will not creep back, county by county. I wonder how many of you were aware of that?

No. 2--preferred treatments for lands that are dedicated for agricultural use. This is a major encouragement to the long-term use of agricultural land. There is no guarantee that if we pass the power to the counties, this provision will not be adversely tampered with.

No. 3--a special rollback tax imposed upon owners who convert agricultural lands to urban use. This is a major deterrent to urbanization, one which has had to fight for survival again and again. Happily, in the legislature with 76 members, efforts to delete this portion have been fought back. But there is no guarantee that the smaller number on the city council will be able to resist the pressures to remove this deterrent to urbanization of our agricultural lands. Quoting from Mr. Fred Bennion from the Tax Foundation of Hawaii, "Action by Con Con committees proposing to transfer real property tax administration to the counties comes as a shock. It is strange that the committees would bow to the wishes of the local officials, for all other witnesses testified in opposition to the transfer." Further explaining his objections, Mr. Bennion noted, "The counties could, if they wish, have different definitions of real property. They could tax electric, gas and telephone utilities, which are now not taxed under real property and which could result in higher utility rates." This could set up a classification system whereby different types of property would pay more or less than other types, would have different sets of ratios of assessment to market value, different provisions for dedication of agricultural land, as I mentioned, and different exemptions for homes and for persons affected with leprosy, the blind, the deaf, the totally disabled, veterans, low- and moderate-income housing, schools, colleges, hospitals, nursing homes, churches and cemeteries.

This is the kind of awesome power we are transferring away from the State, away from the ability of the state government to plan in terms of taxation as a major tool. This clearly goes beyond a mere transfer of administrative responsibility; it has impacts on social policies. I wonder if the members of the committee on health and welfare realize that while they were attempting to strengthen our commitment to provide services--the commitment of the State of Hawaii to provide services--that the Committee on Local Government was transferring a major tool of such a social policy to the counties. I wonder if the counties are prepared to deal with such policy considerations. I wonder if we've checked into whether or not the counties are prepared to deal with social policy.

Mr. Chairman, beyond these brief examples I fear that the State will be unable to promote newer programs and technologies. In the field of energy, for example, the State pioneered efforts to develop alternate energy, to promote the installation of solar water heaters. How did they do this? By granting a tax exemption. The counties were not in the forefront on this--this was the State. I ask you--are the counties now going to be pioneering and put up the money for studies and promotion of new technology? A strong case could be made, fellow delegates, that this could cripple our state government.

I ask you to consider who is asking for the transfer, also. Is it the people of the counties? Or county government? This is not a home-rule or grass-roots issue. It is a conflict between institutions and bureaucracies, one centralized institution versus several uncoordinated institutions. Please think not of what a particular government would prefer; instead consider the benefits that would be lost to all the people of Hawaii if such a transfer is allowed to cripple the ability of the State to plan for a better future. I ask you again: Have you read Chapter 246? Do you know what's in it? Do you know the kinds of powers you are decentralizing, taking away from the State? This is not--the counties can tax also. This is exclusive power, exclusive.

CHAIRMAN: Thank you, Delegate Shon. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I'd like to speak against the amendment. I have only two things to say. One, if the counties get the power that Delegate Shon said they would have, that power would be given to the people, who should have that power because the powers assigned to land use and those problems should reside with the people of each county and not with the State.

The second point I'd like to make is that in the final analysis, whether the county governments asked for this or not, the people will decide if we put it on the ballot.

CHAIRMAN: Thank you, Delegate Hale. Delegate Hokama.

DELEGATE HOKAMA: Mr. Chairman and members, I rise to speak against the amendment. I speak in favor of transferring the entire real property tax program to the counties. In addition to being consistent with trends toward greater local self-government, the transfer proposal is an idea whose time has come. The county governments have told us that they are willing to take on the responsibility and they have presented solid arguments reinforcing their request. Rather than repeating those arguments at this time, members, permit me to take a few moments to discuss the concerns which were expressed in our deliberations.

Point No. 1--The concern over the loss of exemptions. In all our discussions, members and Mr. Chairman, we have not heard any talk of a county drastically amending the present types of exemptions. Practically speaking, the pressure would be on extending or raising exemptions. This does not mean that the county councils will not adjust exemptions in the context of other measures of tax relief such as a circuit breaker approach, for example. I should think we would want the county councils to take a fresh look at the real property tax. We have got to realize that the real property tax is the single most important local tax of the counties. Since exemptions affect the real property tax base and have a direct impact on local revenues, each county should have the authority to judge which exemptions are appropriate in the context of its own financial condition. The county councils, not the legislature, are better able to assess local conditions and determine whether an exemption would serve a worthwhile purpose within that affected county.

Before I leave the subject of exemptions, members, let me address some concerns which have been brought to my attention. Exemptions for state lands: the State is clearly the sovereign; the counties are creatures of the State. In no way can a lesser government entity tax a sovereign. Thus I do not view this concern as a legitimate problem. I do not think that the question of exempting a person or group from paying a real property tax should have any bearing on who administers the tax. That is the main issue before us this afternoon. The legislature presently has responsibility for granting exemptions, and under this proposal the county councils would be the ones responsible. If either legislative body were to remove an exemption which could be translated into higher operating costs and higher utility bills for the taxpayer, you may be assured that the people would be well aware of when and where that action originated.

Point No. 2--The concern over the loss of uniformity. To my way of thinking, the claim that uniformity is desirable is overstated. The question of equalization of assessments between counties called for under present policies is not nearly as important in Hawaii as some people would have others believe. For one thing, even with uniform assessment, the end result of taxation is not the same since each county has a different tax rate. For another thing, members, the overbearing need for assessment equalization seems to be unique to the mainland because it is there that properties may be subject to assessment by several different units of government. This is not true, of course, in Hawaii.

Finally, the claim that grants-in-aid to the counties could not be equitably apportioned without uniformity cannot be supported. The 50 states do not have a uniform tax structure and yet the federal government is still able to apportion federal revenues by the various formulas which measure need and tax relief.

Point No. 3--The concern over the repeal of full-disclosure provisions. Some delegates have expressed concern over the possible loss of full-disclosure provisions, such as the "Florida Plan" enacted by the 1976 legislature. The supposed purpose of this law was to make the public fully aware of any action the county council might take to increase revenues derived from real property taxes by raising the real property tax rate. While I am confident that the counties will continue to act responsibly and openly on all matters relating to the real property tax program, the need to continue the Florida Plan will be rendered moot if the entire program is transferred to the counties. No longer would responsibility for the program be split. Our people would be better able to pinpoint responsibility, putting an end to buck-passing between the State and the counties.

Mr. Chairman and members, I firmly believe and I hope a majority of my colleagues here today also believe that the time has come for favorable action on our part and on the part of the public to recognize and accept the counties' position for what it truly is:

as a sincere desire to be responsible and accountable for a program that has not been responsive under divided authority. The counties have said they are willing to assume the necessary responsibilities. The counties have also said that they are willing to do the job expected of them in bringing about necessary program reforms and in seeing that property owners continue to be treated in a fair, equitable and reasonable manner. They have said they can get the job done. And, most importantly I think, we have all seen evidence at this Convention that the counties are sincere, they are united and they are working as one on this petition.

For these reasons, Mr. Chairman and colleagues, I urge you to join me in voting down this amendment.

CHAIRMAN: Thank you, Delegate Hokama. Delegate McCall.

DELEGATE McCALL: Mr. Chairman, I rise in opposition to the amendment. I certainly will not try to repeat all that Delegate Hokama has already covered. He's covered most of the points. I did want to mention that what Delegate Shon says has been the power is very much true. But it just comes down to a matter of--do you believe that the government closest to the people affected should or should not have some say in their future.

CHAIRMAN: Thank you, Delegate McCall. Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, I only want to respond to the statement made by Delegate Hokama. He said that he was speaking against this proposal in order to put an end to buck-passing between the State and the counties. Under the present grant system, which I was studying the other day, where the State now gives the counties about \$50 million between operating funds and CIP projects, I'm afraid that Delegate Hokama's wish may come true.

CHAIRMAN: Thank you. Delegate Blake.

DELEGATE BLAKE: Listening to Delegate Shon back here, I think--I'm not sure he has enlightened all of you on what he spoke about. But I notice he's deeply concerned and he made one statement there--I just want him to know that new things don't all originate in the state government. He spoke about solar systems. I'd like to tell him that a good many years back I saw more solar systems on the Island of Kauai, by people living in the county, than any emphasis that was made by the state people to start solar systems. So, this is not a new idea. I just want to remind him that many new ideas have been generated in the counties and the State has picked them up. The reason the State picks them up is because the State is funded to do this job. I urge all of you to vote down the proposal.

CHAIRMAN: Thank you, Delegate Blake. Delegate de Costa.

DELEGATE DE COSTA: Mr. Chairman, I'd like to back up the statement that Delegate Shon made. Not being a gambler, I don't want to take a chance on throwing this to the counties when we know that the State did a pretty good job. Thank you.

CHAIRMAN: Thank you, delegate. Delegate Chang.

DELEGATE CHANG: Mr. Chairman, a quorum of the Committee on Environment, Agriculture, Conservation and Land being present this morning, the committee directed me as chairman to express its alarm that the taxation and finance provisions in Committee Proposal No. 7 will detrimentally affect state resource management policies, such as in sections 246-10 and 12 of the Hawaii Revised Statutes relating to the dedication of agricultural lands and tax rollback penalties.

CHAIRMAN: Your concern is duly noted. Thank you. Delegate Izu.

DELEGATE IZU: Mr. Chairman, I rise to speak against the amendment. I believe that the granting of power to the counties to tax real property should be given the full support of this Convention. The reasons are many and some were outlined by my colleague from the County of Maui. But I'd like to summarize four of them.

1. While county governments are completely responsible and accountable for the administration of local affairs, the counties do not have complete authority over the real

property tax function, which is the backbone of county finances. The counties presently only have power to set the tax rate, which is only one facet of the total process and one which comes very late in the procedural sequence.

2. By placing total responsibility for the real property tax program with the counties, public confusion as to who or which level of government is responsible for the real property tax bite would be eliminated and responsibility pinpointed, putting an end to buck-passing between the State and the counties.

3. County administration of the real property tax is consistent with home rule.

4. There are certain program elements which do not involve issues of statewide concern and/or which do not lend themselves to single statewide solutions. For example, the nature of the tax base differs among the various counties; 1 percent of Oahu's tax base is in agricultural lands while 30 percent of the Big Island's lands are designated for agricultural use. Under the present situation, uniform application of legislation dealing with the dedication of agricultural lands would have a minimal potential impact on Oahu but could be devastating to Hawaii county. What this illustrates is the fact that the different economic bases and needs of the counties cannot be addressed with statewide real property provisions. What helps the Big Island to develop may promote unwanted effects on Oahu, or vice versa.

These are but some of the reasons why the State Constitution should be amended to allow the counties exclusive power to enact, levy and administer the tax on real property located within their respective jurisdictions.

Before I close, I'd like to just toss this out to the delegates in answer to what the introducer of the amendment has said. He said several times that there is no guarantee if the real property tax function is turned over completely to the counties--there is no guarantee that we will retain such things as highest and best use, and dedicated lands for agricultural use. I submit to the members here that by statute there is no guarantee that the State will continue to retain these either.

CHAIRMAN: Thank you, Delegate Izu. Delegate Yoshimura, if I may interject for one moment prior to your speaking, I would ask the delegates in their presentations to as much as possible cease to use the personal names of delegates. "The previous speaker," "the delegate who moved," etc. are much more acceptable, and I think will move the deliberations along much more smoothly. Now, Delegate Yoshimura, please proceed.

DELEGATE YOSHIMURA: Mr. Chairman, I'd like to speak for the amendment as I share the concerns of the mover. Aside from the testimony that the mover made, let the record show that I am not in favor of shifting the exclusive power of real property taxation to the counties. I foresee only a shifting of the problems of real property to the counties, with the added cost to the property owners. I believe there may be a disruption in providing the best service to the people if taxation of real property is shifted to the counties, as it brings taxation closer to the political arena, which is more susceptible to changes. Thank you.

CHAIRMAN: Thank you, Delegate Yoshimura. Delegate Villaverde.

DELEGATE VILLAVERDE: Mr. Chairman, it's been very, very surprising that some people have shifted from committee action--complaints regarding the budget. I speak in favor of this particular amendment of Delegate Shon. We've had complaints regarding self-government--more self-government, home rule. Let's lean toward more home rule because the people are deserving of home rule. And yet I question the responsibility of this concept, that various counties and one county that I live in--I question the responsibility they are at this time experiencing--letting the people there experience. We have complaints regarding road maintenance, we have complaints regarding the CIP, as the delegate from the Hilo district has mentioned--the lady delegate there. And she also compared the problems during her tenure. The committee report states that the counties, should they desire additional revenues, have the power to raise that added revenue through real property taxation, by increasing the rates.

Increasing the rates is a key situation. Many of you have talked sympathetically about Proposition 13 in California, regarding reducing the tax burden there of the people.

And here we're complaining again regarding this tax problem. Definitely, we're going to have more costs imposed upon the people of the Big Island, and other counties as well. Some counties are no problem--I'm not mentioning these counties because they are self-sustaining--bully for them. But the other counties that think they can accept the responsibility--they are not accepting that responsibility.

Now we get to the facts here regarding moneys, revenues and so forth. The question is whether the counties should have the privilege of imposing additional taxes in the area of real property. Let's cover the area of state grants. Unlike tax revenues which directly relate to the individual counties, grants-in-aid and other state grants, such as the capital improvement projects--that is, CIP--are simply moneys from the State to the counties based on need and may be administered under a fixed formula. The most recent grant-in-aid system from the State to the counties was established in 1965 under Act 155, an omnibus tax reform measure. This act, section 248-6 of the Hawaii Revised Statutes, reduced previous county subsidies and was in conjunction with Act 97 of that same year, which transferred a number of county functions to the State--this to alleviate the problems of the counties. Although amended in 1972 to administer the grants-in-aid by a formula based on civilian population and taxable real property, it was necessary to amend it again the next year. Another act, 114 of 1973, provided for state assistance at least equal to the cash value of state assistance distributed to the counties in the fiscal year which began on July 1, 1971. The grant-in-aid provisions of the bill were developed with consideration of its specific impacts on the State's entitlement to federal revenue sharing funds under the Revenue Sharing Act. Retention of the 1972 formula would have progressively reduced state assistance to the neighbor island counties, which it did.

The increase in property tax revenues plus federal revenue sharing has decreased the relative importance to the counties of state grants from excise tax sharing. Grants are used to balance inequalities of ability to finance local needs and match state/county interest of particular projects. The Commission on Organization of Government (COG) report recommended a dual approach to meet inequities of need and resource, specifically as between the counties and the State and Honolulu and the neighbor island counties. It goes on to say that federal moneys--the State continues to receive 1/3 of each allocation and 2/3 are distributed to their local governments according to a formula. And if we are complaining we are not getting enough money, we are. The question is--these additional moneys will not enhance the people's pockets--but the question here is, where will that money go? Is it going to go for problems that the counties cannot resolve at the expense of the taxpayers as they have been responsible for in some cases in the various counties? This is a very important question.

It also says in the COG report that counties "...generally are in good financial shape although there are no signs of abatement in the disparity between Honolulu and the Neighbor Island Counties in population, employment, and economic resources and therefore, the ability to support a full level of services."* The delegates here should consider this area, that rather than decentralization of situations such as the real property tax, our legislators here in the State of Hawaii and particularly the neighbor islands have been very effective in providing for us. And if the councilmen who have been coming here begging--like the lady delegate from the Big Island said--with arms outstretched and begging, I don't think it's been that way. We've been getting our share and we in communities in various parts of the Big Island have been very, very highly satisfied with the type of improvements that we've been getting, particularly in the 3rd district. I think we have one of the most improved districts and therefore I don't see any need for the counties to have this responsibility--to have the authority to tax real property given to them. I therefore ask the delegates to consider the amendment that Delegate Shon has introduced.

CHAIRMAN: Thank you, Delegate Villaverde. Delegate Andrews.

DELEGATE ANDREWS: Mr. Chairman, I speak against the amendment. I do not understand the concerns of those who say that they are troubled by the changes in laws

*Government Organization Commission, Report to the Ninth State Legislature of the Commission on Organization of Government (Honolulu: 1977), p.49.

regarding land use or that they are worried about the continued urbanization of our state lands. It seems to me that these functions under state control are only one step more removed from the people. If we place these types of functions and the management of these functions back with the local governments, it will bring about more input from the people who are affected by them and hopefully their desires will be met.

I believe that doing this will help to preserve our lands--our conservation lands, our agricultural lands--and all lands will be brought to function within the desires of the people. I believe that these desires are in the form of conservation. And it's for this reason, for the reason that I believe in conservation and for better land management, that I speak for this function to be returned to the counties.

CHAIRMAN: Thank you. Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I wish to speak against the amendment. I want to alert the delegates here that the intent of the section providing for the exclusive power of real property taxation is not so that the counties can increase their revenue or increase their taxing powers. It is to provide for better management of the taxing power, for more accountability. It does not, of course, preclude increasing the taxes, but I think we all must be aware that the closer the political unit is to the people, the more difficult it is to raise taxes. As the previous delegate stated, when you're once removed, it makes it a little easier. But if you're with the public and if you're directly represented as per council--and believe me, I have worked with the councils, I have lobbied with them--you find it most difficult to raise taxes. I do not foresee a major problem there.

I also want to alert the delegates: it has been mentioned by previous delegates that taking away the power of real property taxation and management from the State might lead to capricious and callous practices in land management. I wish to refute that because we are the same people--the State and the counties. The counties make up the State. And I don't think you would find more prudent and more wise and more sagacious people in the State than you do in the county. We're one people, we're one State. That's all, Mr. Chairman.

CHAIRMAN: Thank you, delegate. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I don't know whether I'm speaking for or against the amendment, but I'm just going to add to the confusion. I feel like we're at the Boston Tea Party; people are trying to get control of taxation without representation--that's the basic concept right here. So, I'm kind of for the counties getting control of that power--but then on the same token, I'm kind of afraid of a council that could be leaning one special way-- I don't want to use the word "control"--strike that. They could be used by a select group for the advantage of that select group and some people might get hurt unfairly. Thank you.

CHAIRMAN: Thank you, Delegate Crozier. Any further discussion?

DELEGATE VILLAVERDE: Mr. Chairman, may I speak for my second and last time?

CHAIRMAN: Delegate Villaverde, there are delegates who want to speak for the first time. If you want to stand by, I'll give you a go at it. Delegate Chun.

DELEGATE CHUN: Mr. Chairman, I'd like to speak for the amendment. I see a problem that will come up with the counties having this taxing power. I see that the drive in all counties is to somehow maximize the revenues they will be getting, which can be done in three ways actually. You can have less exemptions, or you can increase the tax base, or you can increase the tax rate. Tax rates are very politically hazardous, so I don't see tax rates being used to increase the budget of a county. Where I see the increases coming is in the tax base. How do you increase the tax base? You have to develop the county.

Now, if the counties move in the direction of more development, it will fly directly in the face of the growth management that we've already passed here in the Constitutional Convention. It is going to require that the counties increase their tax base. You can be assured that the counties will not increase rates. They will look to another source that is not as politically dangerous. Thank you.

CHAIRMAN: Thank you, Delegate Chun. Delegate Chung.

DELEGATE CHUNG: Mr. Chairman, may I just share my feelings about this amendment. At the moment I'm inclined to favor the amendment. I'm not completely knowledgeable about taxation but after listening to the views of the delegates, certain key words strike me. The words by the delegate from Hawaii--"political arena"...the battle will be closer to the political arena on a county level. In a small township or small area, the political arena can be vicious and devastating. The infighting can be a torturous thing. We all know that human beings, in the quest for power or for money, breed evil. That's basically a philosophical statement. In the quest for power or money, which is all that is needed, it will bring about the breakdown of harmony in the cooperative process; it will break down harmony, the coordination of whatever planning operation shall be hopefully implemented in the gathering of money, if the power shall be so transferred.

In the long run, I envision chaos; I envision a lot of unhappiness. I just somehow feel that our quest for money will cause a lot of pilikia. For one thing, we have to be concerned about the tax we hope to someday apply on the visitor industry. If each county has its own power to tax the tourist problem, it will really hurt the statewide problem of trying to coordinate the rates and the programs, hopefully, if we want to someday have a tourist tax. You can see the problem if each county has the authority on its own, county by county, to levy this. The grant-in-aid formula may be disrupted if each county has its own power to tax or to develop whatever program it has, which may disrupt the coordinated legislative program.

This is why, Mr. Chairman, I have grave doubts. I'm not too sure. I wish I had more answers. I really don't know exactly how to vote on this, to tell the truth.

CHAIRMAN: Thank you. Delegate Kojima.

DELEGATE KOJIMA: Mr. Chairman, I speak for the amendment. I simply have more confidence in the state government in levying taxes than in the county governments. Thank you.

CHAIRMAN: Thank you. Delegate Sterling.

DELEGATE STERLING: I would like to speak against the amendment. In our county, the County of Hawaii, it is the county council that has to face the daily problems. It is the county council that gets all the phone calls and complaints. It is the county council that has to appear before the public in public hearings and other hearings that are held to explain certain positions, or why they can't get certain things, or why other things have to be placed on priorities. He, the councilman, is in daily contact--he or she--with his constituents. He can't say, I can't answer that until the next legislature. He's the one who must make the decisions every day. I think this is what we mean when we speak of home rule.

Again, like everyone else, we have our checks and balances. He has to run for office--he or she has to run for office again. He's committed to do the best he can for his people. But I think we're losing sight of the implementation of any program, that it is the elected person who must answer. In this case, when we say home rule, he has to answer in a day-by-day situation. He meets head-on, face-to-face, and he can't duck it. Therefore, I urge my colleagues to vote against this amendment. Thank you very much.

CHAIRMAN: Delegate Hironaka.

DELEGATE HIRONAKA: Mr. Chairman, I wish to speak for the amendment. Since it seems that some of us are undecided, I decided to say something. Besides all the arguments, I think we should realize that this has far-reaching effects, much more than I think may be seen on the surface. I would just--on the premise that to entrust this very important issue to 76 people rather than to 9 people, like in our council, I would think it's better. The other thing is--I'd like to see a better Hawaii, not just a better Maui.

CHAIRMAN: Thank you, Delegate Hironaka.

DELEGATE WURDEMAN: Point of information.

CHAIRMAN: Delegate Wurdeman.

DELEGATE WURDEMAN: Our last proposal, moved by Delegate Izu and voted on, seems--there seems to be a contradiction here because Delegate Shon is now bringing back the original wording of Section 3. I'm assuming that if we've already voted on one amendment, this other one is out of order.

CHAIRMAN: The Chair accepts your point. Delegate McCall.

DELEGATE McCALL: Mr. Chairman, just a couple of final comments after listening to the various speeches. It disturbs me very much that there has been so much talk throughout this Convention about bringing government closer to the people and making it more responsible to the people. And then when a move is made positively in that direction, suddenly we begin to think that taxes will immediately rise and that chaos will ensue. Thank you.

CHAIRMAN: Thank you. Delegate Villaverde.

DELEGATE VILLAVERDE: Mr. Chairman, respecting--

CHAIRMAN: Excuse me, Delegate Villaverde, would you yield to Delegate Tam, who has not spoken?

DELEGATE VILLAVERDE: Yes, Mr. Chairman.

DELEGATE TAM: Mr. Chairman, I'll yield to the delegate from the Big Island.

CHAIRMAN: Will one of you speak, please?

DELEGATE WURDEMAN: Point of inquiry.

CHAIRMAN: Delegate Wurdeman.

DELEGATE WURDEMAN: My other statement was on a point of information. Now I guess I am asking the question. Haven't we already passed this? Is this out of order?

CHAIRMAN: It is the ruling of the Chair that the amendment offered by Delegate Shon is not out of order and that we are acting on his amendment as stated before this discussion started about 45 minutes ago. What is your--

DELEGATE O'TOOLE: Point of information. On Delegate Wurdeman's point, it was my impression that the first amendment by Delegate Izu was more of a housekeeping type to correct the committee proposal. Therefore, I notice that even the movant of this amendment voted for that--

DELEGATE BARR: Point of order. The matter has been settled.

CHAIRMAN: I think it has, Delegate Barr, yes. Delegate Tam, would you speak to the issue, please, which is the amendment.

DELEGATE TAM: Mr. Chairman, I would like to speak against the amendment. To be very brief, I would just like to point out to those who have been speaking for this amendment that things have been brought up at this Convention because problems have arisen. I just remind the delegates of what happened about two years ago when it was undertaken--with respect to this real property tax matter--when the assessments were lowered from 70 percent to 60 percent, and of the resultant confusion and the problems that that brought, to the counties especially. Thank you.

CHAIRMAN: Delegate Villaverde.

DELEGATE VILLAVERDE: Again I'd like to speak for the amendment and bring to the delegates' memory some historical facts. When statements to the effect that--of the delegate from west Hawaii--that we would like to make the county council more responsible to the people, the question is--I wonder how close is the present council to the people. I'm appalled at the various responses we've been having in the last few years

from the people. Seems like the people are getting further away from the supposed closeness to the county council. I think the issue here is, in general, a political issue. I also feel that there is this question of whether we have responsibility at this local level. It is very true, in answer to the delegate on my left here--can't mention his name--he questions infighting. This is a historical fact in the last few years. You can read in the papers every day that the County of Hawaii has been nearly chaotic with infighting. There is tremendous unhappiness there. I think with a larger body, with a larger concern from the State, represented by these legislators who can get together, generally speaking, and react to the needs of all the counties, who have been so experienced in all areas, such as grants-in-aid, CIPs, etc. We've never had it so good in the history of Hawaii government.

But we're concerned again with whether we should continue what has been classified as "begging." It's not begging, because the legislators have interest in their respective counties. They have to go back to their respective counties and solicit votes all over again and they have to be responsive. I'm sure they have been--with the great legislators we have had throughout the years for the County of Hawaii. There's been tremendous improvements with--we have not regressed, we have improved. Most of you have been to the Big Island, on your visitation there in the last month or so, and have impressed upon us--wow, what a great county, what great counties we have, what fantastic facilities. Doesn't that answer as to results of the CIP? I didn't hear anyone saying, what a lousy island this is--this is junk and that is junk. Everything was great, even the hospitality was great. This is reflected in the people's togetherness. However, we have this area, the arena called politics, which has not been satisfactory, which all of you have been reading about, which has been really, really bad. And you call it responsibility? I call it irresponsibility. Therefore, we should vote for this particular amendment.

CHAIRMAN: Thank you, Delegate Villaverde. Delegate Kimball.

DELEGATE KIMBALL: Mr. Chairman, I'd like to speak against the amendment. We must recognize that real property tax, and its administration, is a planning tool for land use. The original proposals presented by the Hawaii State Association of Counties included provisions for land use powers. I'd like to point out that the State will remain the power in terms of classifying land and that the granting of real property tax powers--the exclusive use of real property tax power--is consistent with the committee's proposal to provide the counties with veto power, so to speak, over the State's reclassification of land to urban. So real property tax administration is a land use tool, and your Committee on Local Government recognized that and recommended in Committee Proposal No. 7 that the counties be given not only the property tax administration but also this--what I would describe as veto power with respect to reclassification of land. Thank you.

CHAIRMAN: Thank you, Delegate Kimball. Is there any further discussion? If not--Delegate Shon.

DELEGATE SHON: I recall that not too long ago this Convention passed a motto which included the words "...the right to control our destiny." Not the right for some people to control our destiny, not the right of just Maui, just Oahu or just any subdivision. It was the right to control all our destiny, because we're all in this together.

In terms of social equity, in terms of land use, justice--these are things that are commonly attended to with real property taxation policy. And we're marching off into the dark forest of home rule. What for? Is there really a problem in terms of the counties' ability to raise taxes with real property? No. Right now the State is attempting to plan for a better future for all the islands, for all the counties. And if you'll read the state plan, there is plenty of provision for cooperation, for working together with the county governments. It is not a document based on everybody going their own way. And from the beginning in this Convention many of the things we have passed have reaffirmed our commitment to work together, to plan our future together.

Every time we turn around on this real property thing we find something else it's going to do that we hadn't thought about. A previous speaker mentioned the problem of full disclosure. That's something I hadn't even heard of. That's another problem. Last night one of the delegates was running around here, in and out, because a problem had just been discovered with public utilities. No one had thought of that earlier. Are you really willing to pass major policy powers in four directions? Away from coordination?

Away from working together to intensify whatever rivalries there may be? To intensify whatever rivalries there may be between the State and the counties? To increase the temptation of the legislature to say--well, you've got the real property tax now, so don't ask us for grants-in-aid, don't ask us to cooperate with you, don't ask us to provide programs and research for new things that everyone needs in this State, because now it's all in your bag.

I don't think that this Convention and the delegates in this Convention have really made a serious commitment to decentralize, to fractionalize our ability to work together. And yet this would be the result if we transfer all exclusive powers of real property to the counties.

In the days following the action by the local government committee, many attempts were made to dilute the language, to take away the word "exclusive." Those attempts failed. So I ask you now to reaffirm our commitment and our right to control our destiny, of the people of the State of Hawaii, and our commitment to work together, our commitment as a state to set social policy, our commitment for a better Hawaii.

CHAIRMAN: Thank you, Delegate Shon. Delegate Shinno.

DELEGATE SHINNO: Mr. Chairman, may we have a short recess?

CHAIRMAN: Delegate Shinno, I will not entertain this motion at this time, unless it is one of personal privilege, before the vote is taken.

DELEGATE SHINNO: I would like a regular recess, if I may.

DELEGATE TAIRA: I move to agree to a recess, Mr. Chairman.

CHAIRMAN: There will be a short administrative recess.

At 4:04 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:10 p.m.

CHAIRMAN: The Committee of the Whole will come back into session, please.

DELEGATE SHINNO: May we have a roll-call vote?

CHAIRMAN: So noted. The issue before this committee is Amendment No. 5, which is to delete the proposal and return to the original language of Section 3, Article VII. That section reads: "The taxing power shall be reserved to the State except so much thereof as may be delegated by the legislature to the political subdivisions, and the legislature shall have the power to apportion state revenues among the several political subdivisions."

There has been a request for a roll-call vote. Are there ten people seconding that motion? There are. Mr. Clerk, would you call the roll.

Roll call having been ordered, the motion to amend section 1 of Committee Proposal No. 7 failed to carry by a vote of 25 ayes, 65 noes and 12 excused; with Delegates Burgess, Campbell, Chang, Chu, Chun, Chung, de Costa, Fushikoshi, Goodenow, Hirata, Hironaka, Hoe, Kojima, Ledward, Nakamura, O'Toole, Penebacker, Peterson, Shinno, Shon, Silva, Takahashi, Takehara, Villaverde and Yoshimura voting yes; Delegates Alcon, Anae, Andrews, Barnard, Barnes, Barr, Blake, Blean, Cabral, Calvin Ching, Donald Ching, Haunani Ching, Crozier, DiBianco, Dyer, Ellis, Fernandes Salling, Fukunaga, Funakoshi, Hagino, Hale, Hamilton, Hanaïke, Harris, Hashimoto, Hayashida, Hino, Hokama, Hornick, Dennis Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaapu, Kaito, Kimball, Kono, Lacy, Marion Lee, Rachel Lee, Liu, Marumoto, McCall, Nozaki, Odanaka, Paty, Sakima, Sasaki, Souki, Stegmaier, Sterling, Stone, Sutton, Taira, Takemoto, Takitani, Tam, Tamayori, Waihe'e, Weatherwax, Wurdeman, Yamashita and Chairman Pulham voting no; and Delegates Laura Ching, Chong, De Soto, Eastvold, Fujimoto, Les Ihara, Lewis, Miller, Nishimoto, Okamura, Ontai and Uyehara being excused.

CHAIRMAN: The vote is 25 ayes, 65 noes, 12 excused. The amendment fails. Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I rise on a point of personal privilege.

CHAIRMAN: State your point.

DELEGATE DiBIANCO: I just wanted to thank Delegate Shon for providing us with one of the most satisfactory debates this summer.

CHAIRMAN: The next order of business for this body is consideration of Amendment No. 7, "Land Use: State and County." Delegate Hokama.

DELEGATE HOKAMA: Mr. Chairman, the clerk has handed out a new amendment under my name. The amendment that I would like to have favorable consideration on by this body is entitled "Land Use: State and County" and reads as follows: "Reclassification of land to urban use shall be subject to approval by ordinance by the county in which the land exists." I move for adoption of this.

DELEGATE WAIHEE: I second the motion, Mr. Chairman.

CHAIRMAN: I will explain to the delegates that I moved amendments 6 and 7 out of order since the original item, No. 6 by Delegate Kaito, will be considered after this. This is because it would in essence have made this one meaningless had we acted on it first; we will move to improve the section prior to keeping it or not. Therefore we will consider No. 7, "Land Use: State and County," on reclassification of land as explained by Delegate Hokama. Delegate Hokama, would you like to speak to your amendment.

DELEGATE HOKAMA: Briefly, members, this amendment will clarify what body in the county will have the approval in the reclassification of land to urban. As it states, it is by ordinance, which will in effect make both the executive and legislative branches of government on the county level come to a mutual agreement. After checking with state and county officials, state and county planners, as a long-range implementation tool for proper planning for the State and for the counties, this proposed new section under Article VII will help to implement long-range planning goals that will be of benefit to the State and to the counties.

It will also make the state and county governments, members, work in mutual agreement in the directions that they would like to implement for the citizenship of this State. It also would reinforce our position that the county has taken on state population management growth. For these few reasons, members, I ask your favorable consideration.

CHAIRMAN: Is there any further discussion? Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise in support of this amendment because I feel that it clarifies who in the county would be giving the approval. It seems to me that if we are going to delegate this authority to the counties, we should leave it with the body that would be closest to the people of the county. For these reasons, I would support Delegate Hokama's amendment.

CHAIRMAN: Thank you. Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, I rise to speak in favor of the amendment. I like this language here because, again, it fixes the responsibility on the county council and, as pointed out by the sponsor, on the executive branch. I like it because it takes the approval out of the hands of an administrative, appointed body such as the planning commission, which could very well be handling something like this.

CHAIRMAN: Thank you, Delegate Sterling. Is there any further discussion? Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, confusion time again. If they're going to reclassify lands, how can that be done with county ordinance? Must the county council vote on it or are the ordinances set up before the lands are reclassified? I wish the maker of the motion would kind of clear that up for me so I will know how to vote.

CHAIRMAN: Delegate Hokama.

DELEGATE HOKAMA: Mr. Chairman, as far as Delegate Crozier's concern--if

I read your question right--it is subject to approval by ordinance, which would be more or less of the county in which the land exists. This would give--there's no ordinance prior, this is a concurrence, with reclassification recommendations by the Land Use Commission on reclassification of land boundaries. As far as urban use, the counties do have land use permits, the rights to regulate land use permits and development. This would be under reclassification of the boundaries of agricultural lands to urban land, which would have concurrence by both levels of government.

CHAIRMAN: Thank you, Delegate Hokama. Delegate Hoe.

DELEGATE HOE: I guess this would be considered a point of inquiry. What is the chronology of a proposal of this sort? Once it's passed the state Land Use Commission the rezoning proposal goes to the council, and then what? How much time would it take for an ordinance of this sort to pass? What are the procedures? What are the steps?

CHAIRMAN: Delegate Hokama.

DELEGATE HOKAMA: To the best of my knowledge, it would depend on each county's charter, how they set up their approval of ordinances. I'm sure there would be three separate readings on three separate days. So, it would have to take that kind of reading route.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, this is a point of information I'd like to direct to the Chair and ask that it be responded to by the chairman of the committee. Was this proposal submitted and discussed in the committee?

CHAIRMAN: Delegate Sakima, would you respond to that?

DELEGATE SAKIMA: Mr. Chairman, not this particular amendment. But this was to clarify what we have in Committee Proposal No. 7.

CHAIRMAN: Does that answer your question?

DELEGATE BURGESS: Mr. Chairman, if I may also direct this question, with the Chair's permission, to the maker of the motion or to anyone else who has the answer. Is it correct that the counties now, under the existing land use laws of the State, do have control over land which is designated urban?

CHAIRMAN: Delegate McCall, do you want to respond?

DELEGATE McCALL: Yes, they do have the powers of zoning, subdivision approval and all those sorts of things within the urban area. This is a very slight change. It just gives the counties the right to refuse to accept a boundary change to urban if the state Land Use Commission should so designate or it requires joint approval. Formerly, the Land Use Commission could designate an area as urban even if the county didn't want it.

CHAIRMAN: Does that answer your question?

DELEGATE BURGESS: Mr. Chairman, if I may continue that with another question--I'm trying to find the intent and also the need for this provision. That's why, since it was not apparently discussed in the committee, that's why I would like, with the Chair's permission, to continue with some questions.

CHAIRMAN: Proceed.

DELEGATE HALE: Mr. Chairman, may I attempt to answer?

CHAIRMAN: Delegate Hale, he hasn't asked the question yet. Delegate Burgess, would you ask the question now?

DELEGATE BURGESS: Mr. Chairman, the next question is, if each of the counties now has the right to control the use of land which is designated urban by the Land Use

Commission--let's suppose that the Land Use Commission should reclassify some land as urban over the objection or against the wishes of the county--wouldn't the county still have the right to control it and therefore continue to have that particular land treated in whatever way the county deemed appropriate? In other words, doesn't the county now have complete control over urban land?

DELEGATE WAIHEE: Point of order, Mr. Chairman.

CHAIRMAN: Yes.

DELEGATE WAIHEE: Mr. Chairman, the matter before the floor is simply the addition of the language "by ordinance." Most of the questions that Delegate Burgess is bringing up perhaps could be better addressed when we decide whether or not we would like this concept adopted.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: The question I wanted to answer was the question that Delegate Burgess posed first. I really don't think it gave a clear picture. It's true that this particular wording--

CHAIRMAN: Delegate Hale, the question--

DELEGATE HALE: The first question he asked.

CHAIRMAN: --was answered to the person who asked it to his satisfaction. Now--

DELEGATE HALE: But I don't think the complete answer was given. Maybe to his--

CHAIRMAN: --maybe to your personal opinion, Delegate Hale. Now, unless you want to pose a question to the Chair, you're not in order at this time to answer a question which has already been answered.

DELEGATE HALE: May I pose a question, then, to the Chair, please, to pose to the chairman of the committee? I would like to ask the chairman of the local government committee as to what subject matter was discussed. The only thing that was not discussed was county ordinance, which is the only change. I think the answer that he gave might be a little misleading in view of the former delegate's additional questions. I just wonder if he could clarify what the local government committee really did do.

CHAIRMAN: Delegate Sakima, I believe her question--

DELEGATE SAKIMA: I didn't intend to mislead anyone. We did discuss land use, but we didn't discuss county ordinance.

CHAIRMAN: Is it my understanding that the phrase "by ordinance" was the portion which was not discussed? Is that correct?

DELEGATE SAKIMA: Right.

CHAIRMAN: And the rest of it has been. Thank you. Is there any further discussion on the amendment before us, which adds the words "by ordinance"? No further discussion, then--

DELEGATE HALE: Yes, Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: It was my understanding as a member of the local government committee that we agreed to the principle that the counties should have the power to decide whether land that was designated urban by the Land Use Commission would be under the control of the counties. By designating it urban, you are putting it under the control

of the county and therefore, my reading of this amendment is--all we are doing is to say how the county is going to do it. It's assumed that when the county approves, it would be in one of two ways: it could be by putting it to a vote on the ballot, for the people of the counties to vote for; or it could be done by the representatives of the people through county ordinance.

My reading of the purpose of this amendment is just to clarify how it is to be done. It was my impression in that committee that everyone agreed that county ordinance was the way it was to be done, but we really did not specify. So therefore, I'd like to speak in favor of the amendment because I think it clarifies the method and the language and we know what we're voting on. Thank you.

CHAIRMAN: Thank you, Delegate Hale. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I'd just like to thank the last speaker for clarifying it in my mind, and I also speak for the amendment.

CHAIRMAN: Is there any further discussion? Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, I'm speaking for the second time on the amendment before us. This has happened-- We must realize that the state Land Use Commission can initiate its own petitions. If they were to zone an area urban without this, it could impose a hardship on the county. Although it says it should be within the conformity of the county general plan--but we've had this happen where an area is zoned urban and there's nothing in the general plan as far as school busing, police systems, water systems and fire systems. This problem belongs to the county with the general plan. That's why I'm getting up the second time to explain what can happen without this kind of a protection. Thank you.

CHAIRMAN: Thank you, Delegate Sterling. I think we've discussed this. There being no further discussion, all those in favor of the amendment to Committee Proposal No. 7 as previously read, which inserts the words "by ordinance," please raise your right hands. Those opposed? The motion passes.

This brings us to the amendment numbered 6 by Delegate Kaito. It amends by deleting in its entirety the section which reads as follows: "Reclassification of land to urban use shall be subject to approval..." etc., which we just went through. Is that correct? Would you move for its adoption.

DELEGATE KAITO: Mr. Chairman, I move for its adoption.

DELEGATE TAKEHARA: I second the motion.

CHAIRMAN: The motion has been made and seconded. Would you like to speak to your motion?

DELEGATE KAITO: Mr. Chairman, I'd like to speak in favor of the amendment. My amendment would delete one of the major recommendations of the local government committee. I would like to go on record as favoring the counties having the responsibility for real property taxes. It is properly a county function and they should have control over their major source of revenue. But I am particularly disturbed by the decision to give the counties veto power over state land use decisions. This recommendation of the local government committee is contrary to the historical intent of the state land use law and also subrogates state power to the counties, a creature of the State. I'd like to elaborate.

In the 1960s when there was public concern about urban sprawl throughout the State and that valuable agricultural land would be used for these purposes, the Hawaii land use law was passed, giving the State broad authority in the protection of land. This would be accomplished through the classification of lands into four use categories: agriculture, conservation, rural and urban. In part, the need to vest the State with this responsibility stems from the lack of proper controls at the county level. However, a more compelling reason was that urbanization in a state was not a function that any one county could handle; only the state could properly provide the necessary land policies to manage state growth. The legislature was cognizant that a county was more capable

about managing urban growth, so the law provided the counties with the authority in such matters. Therefore, the legislature provided the counties with large responsibility over urban matters.

The growing trend of state responsibility for land management was further strengthened with the recent adoption of the Hawaii state plan. One major thrust of this law is to provide more of a role for the State in decisions affecting land and growth management.

Now what the committee's recommendation proposes to do is to go against this tide toward state authority; in the process it has subrogated the power of the State to the counties, who are creatures of the State. This raises some constitutional concerns and also upsets the balance of authority for land use decisions. Here the counties, who are under the control of the legislature, as expressed in Section 1 of Article VII, can overturn decisions of the Land Use Commission, which is, under the law, responsible for land management of the entire State. Can we seriously favor the counties in this issue? Can we vote in favor of the counties who will make their decisions on their own needs rather than state needs? Can we handicap the State in its effort to manage growth that will inevitably occur?

Mr. Chairman, the intent of this entire section is to override the existing authority of the current state land use law. Even the use of the word "classification" draws its meaning from the statutes rather than standing on its own, a requirement that all constitutional language must be capable of.

Those who favor this proposal point to the fact that this will provide one more safeguard to further unnecessary urbanization. But when you examine the impact this proposal will have on the State's land-conversion process, it will provide no additional protection. Under the current law, the counties, who have control over land once it is urbanized, can refuse to act on any development plans to urbanize. As a result, this unnecessary amendment is now being offered at the expense of state authority to direct the orderly management of growth of the State.

Mr. Chairman, I hope I have demonstrated to this body the deficiencies of this proposal, and I would hope my fellow delegates will join me in voting for my amendment. Thank you.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, may I speak against the amendment. Act 187 of the so-called state zoning law allows the commission to initiate any changes in a district boundary. A few years ago on our Island, the Land Use Commission--perhaps it was politics, perhaps it was personalities--initiated moves to rezone acreage that had been zoned urban back to agriculture, after the county had gone to the expense of working with certain developers to put in roads and water systems. Had this gone through, it would have cost the county some several hundred thousand dollars in taxes just because of a political situation. I think this is one of the problems that we have from an implementation standpoint--the fact that the commission can initiate its own changes.

The amendment just passed would take care of this problem and keep it from recurring, where the Land Use Commission comes in. By changing this back, we would have had the finances of Hawaii county in very bad shape, especially after committing itself to the roads, fire departments, schools, etc.

CHAIRMAN: Thank you, Delegate Sterling. Anyone else wish to speak on this particular amendment? Delegate Hagino.

DELEGATE HAGINO: Mr. Chairman, at a work session this morning, the Committee on Environment, Agriculture, Conservation and Land considered this new section. The majority of those present voted to support the land use provision contained in Committee Proposal No. 7. The committee recognizes that counties need to be able to exercise greater control over land use through their respective county policies.

Fellow delegates, I hope you will vote against this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Hagino. Delegate McCall.

DELEGATE McCALL: I'd also like to remind the delegates that the difference here is that county decisions are made by a planning commission and elected council. The state land use commission's are made by an appointed board.

CHAIRMAN: Thank you. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I rise to speak against the amendment, too. I'd like to preface, however, by saying that the whole concept that the local government committee gave, in my opinion, does not go far enough. This is really just a crumb that's thrown to the counties. "Reclassification of land to urban use shall be subject to approval by ordinance by the county in which the land exists." All we are saying is, when the Land Use Commission wants to zone land to urban--and for those of you who are so concerned about the additional urban growth, you must realize that on the county level and close to the people there is just as much concern and maybe more than there is on the state level--all we are doing is giving an additional check against urban growth by letting the people of that county, through their elected representatives, decide whether they want that urban growth or not, instead of having it pushed down their throats by the state government.

It takes no power away from the State. It really doesn't give very much power to the counties. But it's a crumb, and let's take it. I urge you to vote against this amendment.

CHAIRMAN: Thank you, Delegate Hale. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I will speak in favor of the amendment. I think the provision as recommended by the committee-- I've looked at the committee report and it's only supported by two paragraphs on the reason for this change. I find it difficult to really understand the reasoning, at least as contained in the committee report.

What this proposal by the committee does, basically, is to repeal an important part of the state land use law. I wonder if we've really thought that out in order to make an intelligent decision on whether it's a good idea. The land use law has been hailed across the country as one of the better methods of protecting, on a statewide basis, the use of lands. It gives the State authority to set broad classifications for land in four categories: conservation, urban, rural and agricultural. It does not take away the right of the counties to control the use of lands in urban designation. Right now under the existing law, the counties have exclusive and complete control over the use of all lands that are in the urban designation. So, it doesn't seem to me to really give the counties any more power. Let's suppose the Land Use Commission does, against the wishes of a county, take some land and reclassify it urban. The county is the one which then has complete and exclusive control over the use of that land. So the county is the one which ultimately has the power.

As I understand it, before any reclassification can be made by the Land Use Commission, there has to be a public hearing--and the counties would be entitled to be heard. I don't know if any classification has ever been made over the objection of a county--that is, reclassification to an urban use. I would suspect that it has never been done. So, I think the example cited by one of the delegates as a reason to oppose this amendment would not in fact be correct. I think one delegate was referring to a reclassification from urban to agricultural. This language of the committee wouldn't address that problem at all. So I guess my feeling would be that we should not do it. We're tampering with some far-reaching and well-thought-out statutes, which should not be changed in the Constitution.

CHAIRMAN: Thank you, Delegate Burgess. Further discussion? If not, are you ready for the question? The question is on Amendment No. 6 to Committee Proposal No. 7, which would delete that section on reclassification of land subject to approval by the counties by ordinance. The question then is to delete the section in its entirety. A yes vote in this case is to delete in its entirety.

Those who are in favor of the amendment numbered 6, would you raise your hands. Thank you. Those opposed, same sign. Motion fails. Having already completed No. 7, we move to Amendment No. 8, which is the final amendment to Committee Proposal No. 7. Delegate Izu.

DELEGATE IZU: Mr. Chairman, I move that Committee Proposal No. 7 be amended on page 2, lines 6 and 7, to read: "...the first of July after two full calendar years..."

DELEGATE HOKAMA: Second the motion.

CHAIRMAN: It has been moved and seconded that we amend Committee Proposal No. 7 as read by Delegate Izu. Delegate Izu, would you speak to your motion.

DELEGATE IZU: Mr. Chairman, this effective date is in reference to section 1 of Committee Proposal No. 7 regarding the real property taxing power. The intent of the transitory provision is to provide for the orderly transfer of powers, duties and functions of the real property tax, which are now in the hands of the state government, to the counties. The counties, when testifying before the committee, stated that three years would be ample time to institute this transfer. However, it's more logical to begin at the beginning of a fiscal year rather than in January, which is the middle of the fiscal year. This was a request from the state Department of Taxation, in concurrence with the Hawaii State Association of Counties. Therefore, I ask the delegation to accept this amendment.

CHAIRMAN: Thank you. Delegate Sakima--Delegate Hale.

DELEGATE HALE: Mr. Chairman, I rise to speak for the amendment. There are some counties that have two-year elections. I think putting the duty of making a major transfer like this in January, when the new representatives would just be taking office, would be too burdensome. Therefore, I think in July of the new fiscal year after two years is good.

CHAIRMAN: Thank you, Delegate Hale. This appears to be, at this point, a house-keeping amendment to the original proposal. Is there any objection in this body to this amendment? Those then in favor of this amendment, would you signify by raising your right hands. Thank you. Opposed, same sign. There being none, the amendment passes unanimously.

At this time--yes, Delegate Sakima.

DELEGATE SAKIMA: Mr. Chairman, before I move to rise--a request from the style committee. If all of you would refer to your Amendment No. 2, we are going to make a small request, and I hope the delegate from Kauai doesn't think that we're trying to be "hydrobolic" here. On the third line, there's the word "provided"; the style committee would appreciate it if we could change that to "except." And on the fifth line, "...except the county of Kalawao," if that could be changed to "...with the exception of the county of Kalawao." If there is no objection, Mr. Chairman, I'd like to move on.

CHAIRMAN: Any objections? There being none, Delegate Sakima.

DELEGATE SAKIMA: Mr. Chairman, I move that when we rise and report, we recommend to the Convention that Committee Proposal No. 7 be adopted after the following amendments have been adopted--Amendment Nos. 2, 7 and 8.

DELEGATE PATY: Second the motion.

DELEGATE SAKIMA: Mr. Chairman, I move that our committee rise and report.

DELEGATE ALCON: Second the motion.

CHAIRMAN: It has been moved and seconded that the committee rise and report. All those in favor say aye. Opposed, no. The ayes have it, the motion is carried.

At 4:53 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on THE LEGISLATURE, REAPPORTIONMENT

Committee Proposal No. 8

(Articles III, IV [III] and XVIII [XVI])

Chairman: DELEGATE BRUCE McCALL

Monday, August 28, 1978 • Afternoon Session

The Committee of the Whole was called to order at 2:15 p.m.

Delegate Bruce McCall presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. The committee has been referred for consideration Committee Proposal No. 8 from the standing Committee on Legislature.

Before we begin, the Chair would like to remind you of the procedures to be followed by the Committee of the Whole. The Chair reminds all delegates that during the Committee of the Whole, motions for calling the previous question, for tabling, for deferring or referring to a committee are out of order.

The Committee of the Whole will consider Committee Proposal No. 8 by the numbered items of the proposal. The Chair believes that all of you have Committee Proposal No. 8 before you attached to Standing Committee Report No. 46. As we proceed, you will note that particular issues will arise in due course. Issues not covered in the proposal will be considered in the order of their appearance in the Constitution. For example, a proposed amendment to Section 1 of Article III of the Constitution will be considered first. This is the unicameral issue. Legislative salaries are in section 4 of the proposal, session scheduling in section 5, etc.

The Chair calls your attention to the amendments that were placed on the clerk's desk and referred to you in writing. These are the blue sheets. For your information and easy referral, the Chair will now tell you the order in which the amendments will come up. Number 1 will be by Delegate Cabral, entitled "Legislative Power." Number 2 by Delegate Stone, entitled "Election of Members; Term." Number 3 by Delegate Cabral that is "Legislative Commission." Number 4 by Delegate Chu, entitled "Salary; Allowances." Number 5 by Delegate Cabral, on "Sessions." Number 6 by Delegate Crozier, "Organization; Discipline; Rules; Procedure." Number 7, Delegate Chu, also on "Organization; Discipline; Rules; Procedure." Number 8 by Delegate Yamashita, beginning with the following words: "So much of the new..." and further down you'll see item 7. Number 9 by Delegate Barr, same beginning but a little further down you'll see the word "one" underlined. Number 10 by Delegate Chong, on "Reapportionment, Reapportionment Years." Number 11 by Delegate Chong, the amendment which starts with section number 11 and the words, "Sections 3, 4, 5 and 6..." Number 12 by Delegate O'Toole, entitled "1978 Senatorial Elections."

DELEGATE CABRAL: Mr. Chairman.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: Inasmuch as Delegate O'Toole has submitted a proposed amendment which is identical to the one I submitted, I would like to withdraw mine.

CHAIRMAN: Thank you, Delegate Cabral. Everybody got that? Remove the identical one on "1978 Senatorial Elections" by Delegate Cabral.

And the last one, numbered 13, entitled "National Constitutional Convention" by Delegate Laura Ching. Are there any problems? If not, just a few more procedural

rules. The Chair asks that if members of the committee have questions regarding these amendments, please ask the mover of the amendment any questions you may have during recess if at all possible; we can save some time by avoiding questions between movants and individuals who have concerns if they use the recess period. Some other reminders-- recess will be taken only when necessary and for good reason. The recesses will not be lengthy, and we ask that you please put your legal questions in writing and submit them to legal counsel. I also ask as a rule that when you rise to speak for or against the amendment, you so state your position before beginning your arguments. And I again remind the delegates of the time limitations. The clerk, as well as the Chair, will tally the number of times you speak; the limitation is twice, as you all know--the first time for 10 minutes, the second time for 5. The Chair, however, will recognize that if the movant desires to speak last to an amendment, he or she will have the option to take either the 5- or 10-minute period at the end. We also expect the movant to speak to the motion to explain the purpose of an amendment.

DELEGATE SHON: Mr. Chairman, point of information.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: Any general remarks that we might want to make in regard to the proposal, would that be after the chairman's remarks, before we get to the amendment?

CHAIRMAN: I had planned, Delegate Shon, to let the chairperson of the legislature committee speak first and then the initiators of two minority reports, but I suppose if it really doesn't fit with any amendment, we could allow some short things, although I would prefer to have the other discussion at the time an amendment is considered. Shall we play it by ear for the moment?

DELEGATE PETERSON: Mr. Chairman, point of privilege. Would it be possible, in view of the amount of time which we are spending in putting our amendments in order, for the clerk's office to give each amendment as submitted an alphabetical letter so that it can be more easily placed in some order? And for easier reference as we try and put it in order?

CHAIRMAN: Sounds quite possible. I'll discuss it with the clerk. Now that this Committee of the Whole is in session to consider Committee Proposal No. 8, may I call on Delegate Nishimoto.

DELEGATE NISHIMOTO: Mr. Chairman, I rise to speak in favor of standing Committee Proposal No. 8. The State's legislative authority is far less restrictive in Hawaii than in most other states. I believe this is so due to the trusting attitude of our people, who look to their elected officials to provide for their common good and welfare.

Mr. Chairman, your Committee on Legislature has completed a thorough examination of Article III. Your Committee held three informational meetings where majority and minority leadership members of both houses of the legislature were invited to share their views on the present legislative system and also to make recommendations in areas they felt needed improvement. Your Committee also held public hearings, at which time members of the public were allowed to testify on all matters concerning this article.

Your Committee acknowledges the need to study every facet of the legislature, from its structure to its procedures and its effective impact upon the people of the State. In addressing each of these areas, your Committee sought remedies that would aid our present legislative system so as to be more attentive to the needs of our contemporary society. In this regard, it is imperative that decisions to alter or modify our present system be carefully considered. In those areas where it was felt that changes were necessary, the committee advocates the utilization of general, as opposed to specific, guidelines.

Section 1 of Article III dealing with legislative power was not amended. Your Committee spent much time upon this section with regard to the issue of bicameralism versus unicameralism. It is your Committee's recommendation that the bicameral form of legislature be retained for this State. This recommendation is not the result of a mere refutation of those arguments in favor of unicameralism, but it is a reflection of the belief that the present system has done and continues to do the job effectively.

This is contrary to the opinion that a less costly, more efficient system of legislature is better. It must be reasonably argued that expediency and efficiency are not necessarily the measures of effectual and beneficial legislation. Any political system is a system of people. It must therefore be accepted that one's particular preference among systems may be only as worthy as those persons who participate within it.

Your Committee could not substantively accept the unicameral concept. Hawaii has experienced its share of legislative problems; however, such a drastic change appears unwarranted at this time in view of the relatively successful track record our present legislative system has attained.

Amendments to sections 2 and 3 of Article III relate to utilization of the reapportionment commission plan in determining state senatorial and representative districting. This amendment deletes the language referring to the Schedule found in Section 1 of Article XVI, which has been rendered obsolete since the reapportionment of 1973. Also relating to reapportionment, Section 4 has been placed within a new article. This action was necessitated by the provision empowering the reapportionment commission to redraw congressional districts as well as reapportioning the state legislative districts.

The committee chose to amend Section 10 of Article III by adding specific language dealing with the salary of legislators. The amendment provides for a salary plan by the legislative salary commission, to be submitted to both houses of the legislature and to the governor no later than the 40th day of the legislative session. The plan is to become effective unless disapproved by either the legislature or the governor. Any change in salary does not affect the legislature that reviews the plan.

It was felt by the committee that legislators should not be placed in the dilemma of having to vote on their own salary increase. Governor's disapproval authority was decided upon as a further scrutiny of the process. Furthermore, the salary review by the commission will take place every 8 years instead of the present 4-year interval. Your Committee wishes to express its expectation that the salary commission hold public hearings and consider other applicable legislative benefits in its deliberation.

The amendment to Section 11 of Article III calls for a mandatory recess in the legislative session of not less than five days, to fall anytime between the 20th and 40th days of the session. This recess will afford members of the legislature, as well as the public, a review period to study the bills submitted and to provide input.

Two substantial amendments have been offered to Section 13 of Article III. The first relates to a form of "sunshine" protection of the public's right to know what takes place at decision-making meetings of the legislature. It was felt that this right should be constitutionally protected rather than left to the discretion of the house or the senate.

The second amendment to Section 13 involves an attempt to control bill-introduction procedures through the device of a bill-introduction cutoff date, no sooner than the 20th day of the legislative session. This basically provides for a limitation, not necessarily in number but in time, of the bills to be introduced. In conjunction with the recess, this amendment should further aid the public in its attempts to actively follow and participate in the legislative process.

Section 16 of Article III adds a full day to the bill-review period prior to final reading. The increase is from 24 to 48 hours. It was felt that the additional time, especially at the closing days of the session, would afford the legislators and members of the public more time to review and therefore make better decisions on the bills.

Section 2 of Article XVI has been amended to provide for the staggering of terms in the senate commencing with the coming election. Under the proposed system, senators would continue to serve a 4-year term, with half of the membership up for reelection every 2 years. In order to establish the cycle, initially 13 of the 25 senators would serve 2-year terms while the remaining 12 would serve full 4-year terms. The method of selection to determine which class a senator will hold, whether the 4- or 2-year term, will be based on the number of votes received in the district. Support of the staggered term concept is based upon having a more accountable and perhaps a more responsive senate.

Mr. Chairman, these are the major issues which have been raised before the Committee

on Legislature, and the results of your Committee's deliberations are reflected in Committee Proposal No. 8. I would like to thank the members of my committee for their hard work and earnest efforts in putting this proposal together. I'd like to conclude by recommending that standing Committee Proposal No. 8 be seriously considered and voted on favorably by this Committee of the Whole. Thank you.

CHAIRMAN: Thank you, Delegate Nishimoto. Now we have three minority reports, two offered by Delegate Cabral, and if the delegate would care to speak on either or both at this time--

DELEGATE CABRAL: Yes, thank you, Mr. Chairman. Minority Report No. 6 on Committee Proposal No. 8 and Minority Report No. 7, also on Committee Proposal No. 8, were submitted by a minority of the Committee on Legislature which does not concur with parts of Standing Committee Report No. 46 and Committee Proposal No. 8, which recommend retention of the bicameral system and rejection of the unicameral. In the committee report, the majority committee states that it was not convinced that a unicameral system would be more effective than the bicameral and that proponents of unicameralism failed in their burden of proof to present favorable arguments.

The minority committee also disagrees with the part of Standing Committee Report No. 46 which recommends certain changes in the setting of legislative salaries and retention of the annual legislative session. In this regard, the minority committee has submitted amendments to Committee Proposal No. 8 addressing these topics. I would at this time ask that these two minority reports be submitted to the chief clerk for inclusion in the journal. I will address in depth the arguments that will be submitted on the proposed amendments when I introduce the amendments. Thank you.

CHAIRMAN: Thank you, Delegate Cabral. Delegate Barr is the prime signer of Minority Report No. 8--so, Delegate Barr.

DELEGATE BARR: Mr. Chairman, your delegate from up-country Maui, who is grateful to God that he saw home and family yesterday, begs leave to discuss this minority report at the time the amendment comes up.

CHAIRMAN: Thank you, Delegate Barr.

DELEGATE SHON: Mr. Chairman.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: Yes, just very briefly I would like to speak generally in favor of the committee's work. First of all I'd like to say that I was one of those who did express reservations about the effect of the resolution on future work of the committee and other committees. I'd like to say now that was unfounded.

Secondly, I'd like to say that I found that the chairman and the leadership were open, cooperative and willing to work with all members of the committee, and I think this was excellent decision-making. And third I think that there are several features of this which really go a long way in improving the legislative process and they have been outlined by the chairman. They include the 5-day recess, which I think is a big plus, not only for legislators but for the public to review the various bills that have been introduced; the open meeting provision, which I think reaffirms our commitment to open government; and the change in the 24-hour rule to 48 hours, which is a significant doubling of the time in which legislators and the public can review final drafts. This particularly addresses one of the problems dealing with the conference committee. Now there would be twice as much time to review what the conference committee comes out with, and this was really one of the key problems in the past--that there wasn't enough time.

So in summary, Mr. Chairman, I think that the work of the committee will make the legislature more deliberative, more cautious, more informed, and more accessible to the public.

CHAIRMAN: Thank you, Delegate Shon. I think that was--well, perhaps a slight bending of the rules, but I'm sure the committee chairman and all the members appreciate that very much.

I believe it's now in order to begin discussion of Committee Proposal No. 8, which would include making, or offering amendments, and I believe we should take up Amendment No. 1 by Delegate Cabral.

DELEGATE CABRAL: Mr. Chairman, at this time I move to amend Committee Proposal No. 8 by submitting this amendment, and at this time I would like to ask, Mr. Chairman, that we consider just the first portion, which addresses itself to the legislative power, or Section 1 of Article III. I think that consideration of the other parts of my Amendment No. 1 would be moot if and when the fate of that part, Section 1, becomes deliberate. So I would move that Section 1 of Article III be amended by deleting the words "two houses, a senate and a house of representatives" and inserting "one house called the senate." I move for the favorable adoption of this section of Amendment No. 1.

CHAIRMAN: Is there a second?

DELEGATE BARR: I second the motion.

DELEGATE CABRAL: May I speak to my amendment?

CHAIRMAN: Proceed.

DELEGATE CABRAL: I will, Mr. Chairman, request the right to speak first and last on my motion to close the debate. I would at this time call the delegation's attention to the minority report, which urges all the delegates to further deliberate and come forth with a constitutional amendment providing for a unicameral legislature. The basic argument is that the merits of the bicameral system versus the unicameral system have never been truly presented and debated. During the committee's review of the proposals that addressed a unicameral form of government, it was the burden of the proponents to present arguments in support of the unicameral system. But I submit that there were no arguments presented supporting retention of the bicameral system, not in toto.

I call attention to the fact that the 1968 constitutional convention also deliberated on the merits of the bicameral and unicameral systems. Matter of fact, the majority report of this present Convention used very similar words to those used in the 1968 report, words that were extracted from the 1968 committee report; and I would quote from page 2 of Standing Committee Report No. 46, the fourth paragraph, taken almost verbatim from the 1968 text: "From the testimony presented by witnesses and upon deliberations had on this matter of unicameralism versus bicameralism, your Committee is not convinced that unicameralism is a more effective legislative structure than bicameralism in the context of today's political development in Hawaii." An almost verbatim quote from the 1968 standing committee report.

I further call to your attention that the 1968 constitutional convention did support retention of a bicameral legislative system, but it was also recommended that certain modifications in view of prevailing criticisms be instituted. "Criticisms of the bicameral system may be generally classified into two major categories: (1) those pertaining to visibility, accountability and opportunities for public participation in the legislative process; and (2) those contributing to the cumbersomeness and expense of legislative operations. The Committee believes that these problems are capable of being resolved within the bicameral system."* Now I ask you--10 years later we are looking at those same problems and nothing has been done about them by the legislature. So I believe it's going to have to be up to this Convention to effect any kind of change--one that would make government a little more visible to all the people of the State of Hawaii and one that would be a little bit more responsive to the people of Hawaii.

There were numerous arguments presented in the 1968 constitutional convention and, while the current majority report maintains that the arguments used in 1968 are as valid today as they were then, I think they failed to emphasize that public dismay with our present governmental system was forgotten or overlooked; the people of Hawaii today

*Hawaii, Citizens Committee to Advise the Senate on Legislative Process, Report of the Citizens Advisory Committee on Legislative Process (Honolulu: 1967), p.4.

are looking forward to this body to provide them the opportunity of voting on this very delicate issue and to determine whether they should be able to choose in the governmental system. So I ask all of you to consider very stringently that perhaps the argument to retain a bicameral system was not favorably presented by those proponents of a bicameral system. Thank you.

DELEGATE HAMILTON: Mr. Chairman.

CHAIRMAN: Delegate Hamilton.

DELEGATE HAMILTON: Mr. Chairman, I rise to speak in favor of the amendment. I do so even though it violates advice my mother gave me long ago never to waste my time shaking trees on which there are no peaches. It even contradicts my father who sent me to college with the admonition never to guard an inside straight.

Nevertheless, the fact remains that--as a matter of principle to me, I feel that unicameralism does deserve more consideration than it has received and I'm a strong advocate of it. The truth of the matter is that bicameralism, as far as state legislatures are concerned, is an idea whose day has passed. Bicameralism of course originated in the social order of the late Middle Ages, when it was necessary to have several elements in the seat of the parliamentary system to represent the different classes of society. And so we began to develop the idea of the estate, with one estate representing the upper nobility, a second the lower nobility and so on. But the essence as it developed from that point into bicameralism was that always there was more than one thing to be represented.

De Montesquieu defended bicameralism because without it the aristocracy would not be able to protect itself. There is a story attributed to Washington at our own constitutional convention--and quite likely the story is--where he poured his hot tea from the cup into a saucer to cool it; the hot tea represented the passions of the undisciplined masses as they did their work through the lower house, and the saucer represented the cooling effect of the senate. To my colleagues who have served in either or both houses, I really don't think of the senate as the saucer. But the point is, even in our U.S. Constitution, bicameralism entered it only by way of compromise--the so-called Connecticut Compromise--and it was necessary in order to get agreement because the states felt that they must have equal representation; and it still makes a kind of sense on the national level, where you have states represented by equal votes in one house and population in the lower house. But it no longer makes any sense in terms of state government, because by constitutional decision there is only one thing that can be represented and if there is only one thing that can be represented, you need only one house to represent it.

Finally, people have tried to analyze the various methods for those who still favor the retention of bicameralism at the state level and I think there's nothing insidious about these motives. They're in self-interest and this is perfectly normal and legitimate in our society. But the one thing that the various organizations have in common is not whom they may represent, for both workers and management are represented by groups who favor bicameralism, but rather on the fact that they are organizations the success of which is determined by how successful they are in getting what they want from the legislature; and these are also organizations which have the professional skill, and can afford the professional skill, to understand and operate in the complicated, unnecessarily complex bicameral arena.

It is for these reasons, plus many others which have already been noted, that I urge you to support this amendment.

CHAIRMAN: Thank you.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I rise to speak in favor of the amendment and against the concept. I cannot match Delegate Hamilton's eloquence but I would like to make points of my own, the first of which is one that you've heard from me before--which is that in my opinion we have a duty to provide the public with a choice in this matter and that we should allow the public to decide whether unicameralism or bicameralism is the form

of government it feels would best govern it. It's obviously been an issue before the people of the State of Hawaii for a long time since, as Delegate Cabral pointed out, this matter was debated with some furor back as far as 1968, and I'm sure before then.

It would seem, therefore, that it has passed its test of time and certainly it is entitled to its day in court before the general public. As far as the concept of unicameralism goes, I've always had my doubts about it; and my participation in this Convention--and the way in which I have seen this Convention dominated by outside influences--gives me great pause to think whether or not unicameralism would be in the best interests of the people of the State of Hawaii. That, however, would be my decision to make in the ballot booth on election day were this matter to be placed before the public as I think it should be. Thank you.

CHAIRMAN: Thank you.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I rise to speak against the amendment. I believe very strongly that as a delegate to this Constitutional Convention I should reflect the views of my constituents if I am aware of them. While I was campaigning, I had six points on which I asked the voters specifically for their opinions. And of the six, one was on the question of a unicameral legislature, and it was the only one of the six issues that I did not find an overwhelming majority of my constituents in favor of. Although I spent many hours explaining to people the difference between the bicameral system and the unicameral system--and I think the best example is between what we have on the county level and what we have on the state level--and people did understand the issue, yet in spite of that they were not for it.

My own private survey--which covered about 600 people, with questionnaires that were passed out and returned to me--indicated that about 49 percent of the people were for it and 51 percent were against it; therefore I feel no mandate to fight hard in this Convention even for putting it on the ballot. I feel that, on issues where the people have overwhelmingly indicated they were for a proposal, that I do have an obligation to see that it is put on the ballot. I would very much hate to see our whole legislative system overturned by a little over 50 percent of the people. I don't think that that would be a good thing for the State of Hawaii.

I have no mandate and therefore I have been able to look at this question quite objectively. In a legislative body, organization is most important because the power of committee chairmen is generally more significant than it is, say, in our Constitutional Convention. Committee chairmen control the scheduling of public hearings, discussions, agenda-making and generally the way a committee is run, and whether or not decisions will be made on proposals that are put before that committee.

Leadership is most important and I have become convinced--somewhat from the example of my experience here, although I have also acted in a unicameral body in the county system--but I have become convinced more recently because of my experience here that, when leadership can be imposed upon a body with such expediency and under such undemocratic procedures, it is a very dangerous thing. And I feel, then, that having two houses with two steps of leadership is a real protection for the people because leadership being what it is, you will very seldom have the leaders of one house agreeing 100 percent with the leaders of the other house. And the people then will have two avenues through which they can get their concerns heard.

I would also like to say that luckily in this Constitutional Convention we have the protection of the people because no matter what has gone on here, or what will go on here, or what decisions we make, or what proposals we put before the people, they still have to be voted upon by the people. And this is a unicameral body. That would not be true in a unicameral legislature.

I would like to say that the argument that a unicameral body is more responsive and more responsible, I don't think has been proven by the facts here or in many of our unicameral county councils. This body has yet to prove it to me. It would be a very

good issue, I think, for the initiative process because the people would be able to debate pro and con; the issue could be discussed objectively--by the legislature if we have the indirect process--and it could then be publicized, with all the pros and cons and the people then would have a chance, after full discussion and full debate, to vote on it. I do not see that we have an obligation to put this issue on the ballot. My own observation has been that overwhelmingly the people who were elected to this Constitutional Convention were not elected to do that; I don't feel that I was elected to come here and do that. And I think we're going to have enough minor problems, or minor changes, in our Constitution--and hopefully some real major changes in the way our state government operates--for the people to deliberate upon in this coming election. I would hate to confuse the issue with an overwhelming proposal to change the entire system and go for a unicameral body.

I appreciate your indulgence and I'm glad for once I seem to be on the majority side.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE DENNIS IHARA: Mr. Chairman.

CHAIRMAN: Delegate Ihara.

DELEGATE DENNIS IHARA: I also speak against the amendment. I took a poll of the constituents in my area and I am here to represent them; and a majority of them feel that they prefer the bicameral system. We talk about unicameral structure but, in terms of better checks and balances, going through two houses would make for better checks and balances.

In this Convention, for example, things are moving so fast that many times when we hope to look at an issue more carefully it's very difficult. I feel that going through two bodies would allow more time to adequately study and discuss the problems.

I also feel that in a bicameral structure the argument that the body is less accountable to the voters is legitimate, but it's not really the system that is weak--it's the procedure. And I feel that procedural matters can always be easily changed. For that reason I speak against the amendment.

CHAIRMAN: Thank you, Delegate Ihara. Delegate Ching.

DELEGATE HAUNANI CHING: Mr. Chairman, I rise to speak against the amendment. The purpose of any legislature is to ascertain what the law ought to be, to determine not what the will of the people commands but what the reason of the people, the common consciousness, demands. The legislature must be constructed so as to best fulfill this purpose. It should require research, reasoning, a balancing of opinions and interests, the classification of facts and the generalization of principles. I feel that the present two-house system in Hawaii serves this purpose.

Mr. Chairman, in evaluating the unicameral legislature of Nebraska and Hawaii's bicameral system, one must keep in mind the demographic and governmental responsibility differences between the two states. First of all, Hawaii's population has the distinction of being highly urban with a more dense population, while Nebraska, being comparatively rural, has a widely dispersed population. Secondly, Hawaii's government system is highly centralized, with most of the governmental services under the State's jurisdiction. The bulk of Hawaii's revenue accrues to the State through income taxes, general excise taxes and others, while the counties are allowed the revenues of only one major tax--the real property tax. On the other hand, Nebraska is patterned after most other states, giving local jurisdictions the major responsibilities in administering the education and welfare programs of the state. These differences illustrate the fact that the two states, Nebraska and Hawaii, and their legislative systems are remarkably diverse.

Mr. Chairman, in our deliberations we should give these socio-economic differences thorough consideration, and we should be cautious about making any assumptions concerning the transfer of a unicameral system from one political environment, like Nebraska's, to another, such as Hawaii's. As stated in the committee report, "...the proponents of unicameralism bear the burden of proof to show that bicameralism should not be retained and...they have fallen short of that burden."

It can be said that the problems of the bicameral system may also appear in the unicameral system; yet the proponents of unicameralism cannot prove that their system will not be just as devious as they perceive the bicameral system to be. The integrity of any system is dependent upon the individuals involved in the process. "Thus," the Tax Foundation of Hawaii rightly states, "any argument that a unicameral system is the panacea to Hawaii's problems cannot be accepted; it may well be just a placebo."

In Nebraska in 1934, when the proposal for unicameralism was placed on the ballot, the clerk of the Nebraska legislature stated that the voters would have voted for anything other than what they had, even if it meant having three houses. Public disenchantment with the then two-house system was so strong that any change would have been better than what they had. I am hopeful that this will not be the case in Hawaii.

In closing, I would like to quote from the opening day address of the speaker of the state house of representatives, James H. Wakatsuki, on January 21, 1976: "...[T]here are those who still clamor for a drastic change. And, therefore, one really begins to wonder why? Are they succumbing to the temporary pressures of popular notions, or popular passions and impulses? Or, are they riding the waves of glamour attached to change, no matter what price the consequence?"

"Ladies and gentlemen, I submit that change for the sake of change is not the answer to solving...problems...." Thank you.

CHAIRMAN: Thank you.

DELEGATE NISHIMOTO: Mr. Chairman.

CHAIRMAN: Delegate Nishimoto.

DELEGATE NISHIMOTO: Mr. Chairman, I rise to speak in opposition to this amendment. In a study of all state legislatures conducted by the Citizens Conference on State Legislatures, Hawaii was ranked an overall seventh. Nebraska, the only unicameral state legislature, was ranked below Hawaii, in ninth place. Now in three of the five areas composing the overall ranking, Hawaii was ahead of Nebraska and--if I may quote from the evaluation report: "The seventh-ranked legislature in this study is Hawaii. Although one of the smallest states, Hawaii has taken the lead among legislatures in a number of important respects."

"Hawaii has the most openly accessible, the most comprehensible, and least complex legislative system in the nation. Though not the smallest legislature, its fifty-one-member House and twenty-five-member Senate make thoughtful deliberation and rational organization possible and operative."

Therefore, in my opinion and evidently in the opinion of the majority in the committee, this clearly indicates that our state legislative system has worked and continues to work. Consequently, the committee membership did place on the movant and the proponents of change the burden of proving that moving to a single-body system will serve the people of Hawaii better than the present system.

For these reasons, Mr. Chairman, I oppose this amendment.

CHAIRMAN: Thank you. If there are no further speakers, Delegate Cabral--

DELEGATE VILLAVERDE: Mr. Chairman, I'd like to make my input before the last speaker. I speak in opposition to the amendment advocating a one-house legislature. The structure of our legislature, like legislatures throughout the 50 states, is to provide a decision-making framework which is open and responsive, an elected body which best represents and reflects the interests, views and values of its citizens, which are often in conflict, and to reconcile these divergent interests and arrive at solutions that are reasonable and just. The Citizens Conference on State Legislatures, as brought up earlier, has observed that there is no single ideal legislative structure. In commenting on the adoption of unicameralism, Professor Malcolm E. Jewell of the University of Kentucky stated that the Nebraska experiment is "of limited value as an example for other states because Nebraska is a state with a small population that has largely escaped the problems of metropolitan growth and ethnic diversity that are familiar to the more industrial states."

What may be good for Nebraska would not, in my opinion, be good for Hawaii. "Legislative politics in Nebraska are low-pressure, nonpartisan, and orderly; but this is not primarily a consequence of unicameralism. It is difficult to envisage how unicameralism would work if it were transplanted to California, Florida, or New York; it might have a different effect in each state."

Hawaii, with its diverse ethnic population, unique economy and a per capita income different from Nebraska, has always operated under a bicameral system, and to date the proponents of unicameralism have failed to show that our bicameral system has not responded adequately to the needs of the citizenry or has become so antiquated that a drastic change in our governmental structure is in order. To the contrary, after much deliberation on the issue of a one- or two-house legislature, the 1968 constitutional convention wisely determined that the bicameral system should be retained in Hawaii.

Two of the most commonly used arguments advocating unicameralism are: first, it will be more economical; and second, unicameralism will be more efficient. Yet there is no guarantee that such costs will in fact be diminished. A unicameral system is not immune from doubling or tripling the costs of a bicameral system. The costs will ultimately be dependent on the decision of the legislators themselves. By cutting down the number of legislators, the costs may be diminished, but the real issue on this point is whether we want to lessen the ability of minority groups within our community from being represented in our legislature. In other words, adequate minority representation would be sacrificed for the sake of economy.

Our bicameralism system is a deliberative process, as it should be. When legislation is being formulated and argued within a two-body system, all points of views--whether they are in the majority or minority, whether reasonable or unreasonable--have a greater opportunity of being heard and considered. There is no question in my mind that such interaction and interplay of ideas from all walks of life will be dramatically reduced in a single-house situation. The hallmark of our democratic process is not efficiency, but rather full participation and adequate deliberations. We currently provide for the people of Hawaii a system of checks and balances in the two-body system. To believe that a unicameral body would be devoid of disagreements and delays is like an ostrich with his head in the sand, refusing to face and accept the fact of reality. In spite of evidence that unicameralism would not provide meaningful and substantial improvements to our existing bicameral system, there is still a clamor for a one-body system.

It is my firm belief that Hawaii's bicameral system has been and will continue to be responsive to the social, economical and political needs of our great State. Our past legislative history will attest to this fact, and the results of what we are doing and what we have done in the past few months or weeks attest to the fact that we are trying, not for the sake of change, not for the sake of reform, but to provide for our people here in the State of Hawaii. If you want to call it streamlining, if you want to call it a system to provide changes, these are changes that will provide a better State of Hawaii.

CHAIRMAN: Thank you. Delegate Kimball.

DELEGATE KIMBALL: Mr. Chairman, I rise to speak in favor of the amendment. The reasons for adopting a unicameral legislature all point to greater service of the public interest in terms of both greater accountability and better legislation. Adoption of a unicameral legislature will enhance the public's ability to follow the progress of bills. Presently, if a bill is introduced in both houses, as many are, one must follow its progress in both houses; if both bills pass, one must determine which bill crossed over first and remains alive. Since a bill is often amended in a different manner in each house, there will be a senate version and a house version of the same substantive bill. If the house version passes first, the senate will act on the house bill and will generally do so by amending the house bill to conform with the senate's version. This process becomes a maze to be deciphered, as is often the case, and only serves to confuse public and legislator alike, as the exact status of the bill is often unknown.

Often one house of the legislature is not aware of the status of its bill as it travels through the maze of the other house. This poses a difficult and challenging problem for the legislature and the public alike--to follow the progress of the bill concisely and accurately. Legislative events are too complex and difficult to be understood by those unfa-

miliar with the intricate details of legislative processes. Thus there will be a lessening of public interest in the legislature as people become frustrated by the legislative maze. This promotes poor participation and can only result in a decrease and alienation of public interest.

A unicameral system will promote greater participation and public accountability. No longer will legislators be able to point the finger at the other body as the one responsible for killing legislation. Also, no longer will one body of the legislature be able to pass a bill knowing full well that the other house will kill it. Under a unicameral system the public will know who is truly responsible for the rejection or passage of a bill, just as we have gone on record in this unicameral body for the rejection or acceptance of proposed amendments in a roll-call situation.

A unicameral legislature will also improve the process of deliberation. Because of the need to provide time for a bill to pass both houses as well as the conference committee, the legislative session becomes rather stymied; each house has a limited amount of time to hold public hearings and have full and complete dialogue in committee decision-making. A unicameral legislature will eliminate the cross-over deadline, the duplication of public hearings and the conference committee meeting, thus leaving more of the legislative session for deliberation on each of the issues before it. Presently, the legislature has three deadlines: first, the crossover; second, the passage of bills from one house to the other; and third, the conference committee. This results in a rash of last-minute decision-making, revising and amending, and committee-report writing. I contend that this does not facilitate the writing of good laws nor of good committee reports when the legislative intent of each statute is reviewed by the judiciary. A unicameral legislature will avoid the last-minute rush and the competitive jockeying for position since there will be no other incentive and no need to delay for better positioning or by holding a bill as hostage for tradeoff between houses.

The conference committee is a necessary evil of the two-house legislative system, to mediate differences between the versions of a bill. I submit to you that a committee-of-the-whole situation in a unicameral body would be a better alternative in mediating differences between legislators. Because of the shortness of time, the respective bodies are left with a take-it-or-leave-it proposal with respect to the conference committee draft, which deliberation few legislators participate in. Without input from the public at large, including government agencies, the full implications of amendments made by the conference committee may never be realized until it is too late. A unicameral legislature would eliminate the conference committee, whose workings are often obscured from public and legislator scrutiny.

For these reasons and for the purpose of providing better representation for the State of Hawaii, I urge my fellow delegates to vote for adoption of a unicameral legislative body. Thank you.

CHAIRMAN: Thank you, Delegate Kimball.

DELEGATE OKAMURA: Mr. Chairman.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: I rise to speak against the amendment. I'm not going to reiterate what has been said; all I want to say is that I think our system has worked very well. Hawaii has been hailed as one of the leaders in progressive legislation. We were the first to pass legislation for an ombudsman, for the ERA, we have the most progressive legislation on social welfare as well as labor-related legislation, among a few. To the proponents of unicameralism, I ask--what has Nebraska come up with in terms of progressive legislation? Thank you.

CHAIRMAN: Thank you, Delegate Okamura.

DELEGATE CHU: Mr. Chairman.

CHAIRMAN: Delegate Chu.

DELEGATE CHU: I have honestly had a difficult time deciding on this issue, but

I will at this time speak against the amendment because I am hoping that the bicameral system could provide sufficient safeguards in our legislative process. It is also my hope that the committee in fact had full debate before they came to this recommendation rather than expect the proponents to come forth with the burden of proof. I think it is the duty of all delegates to consider and weigh all of the factors, pro and con, in an issue such as this.

One persuasive factor that swayed me in taking a position in favor of a bicameral legislature is that we have a highly centralized executive branch and our attempts at distributing the centralization in the executive branch have failed. Therefore I believe it is important for us to maintain a bicameral legislature to act as a check against this strong executive branch. A bicameral legislature as it is today will continue to allow minority views and it would hopefully be less subject to the control of a single interest group.

The form is not as important to me as the procedures for allowing openness and citizen participation, which are areas I hope to address in the amended proposal coming up.

CHAIRMAN: Thank you, Delegate Chu.

DELEGATE HARRIS: Mr. Chairman.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: Since we've determined there are no peaches on the tree, I see no sense in continuing to shake it, on the one hand, or trying to chop it down on the other. I speak in favor of voting on the issue.

CHAIRMAN: I'm afraid that's out of order since it was not a motion. But if there are no further comments, Delegate Cabral.

DELEGATE CABRAL: Thank you, Mr. Chairman. I'm not going to belabor the arguments that have been presented by the minority members of the Committee on Legislature since these are contained in Minority Report No. 6. I would, however, just call to your attention that of all the testimony received during the public hearings, only one witness, or member, testified against the unicameral system or spoke in favor of the bicameral system.

I would, however, like to quote testimony that was given by Nelson K. Doi, the lieutenant governor of Hawaii, and I quote an extract from his testimony: "I firmly believe that a unicameral system would facilitate achievement of the intended purposes of the legislature far better than a bicameral system, because it would create a climate and attitude that would foster more meaningful public participation in the legislative process and would attract candidates who would welcome service under those conditions...."

"I am well aware that structure itself may not be sufficient to resolve the problems of any legislature--that people ultimately determine its quality. But I am convinced that a unicameral legislature would be a change for the better and we ought to be seeking better ways of doing things."

I will also quote from a communique received from the mayor of the City and County of Honolulu, Frank F. Fasi. "... [A] unicameral legislature would eliminate the need for the 'third house,' the conference committee. These ad hoc organizations have all too frequently thwarted the intent of legislation and have been the source of proposals that have been self-serving. As examples, I need only mention the pay raise and pension bill fiasco of a few years ago.

"I urge a full consideration of the proposals by your committee and strongly recommend that the subject be placed before the electorate for their consideration. The voters of our State should have the opportunity to be heard on this most important matter."

I submit that Nelson K. Doi is not just a novice or neophyte in politics. He's been a very astute legislator as well as a judge, and I think he speaks with wisdom; and I would remind you, as pointed out by Delegate Hale, that the polls and surveys taken,

though representing a very borderline kind of survey--51 percent against, 49 percent for, and vice versa--I think it presents a need, more so, for this body to put that question before the electorate and let them decide on the merits of a unicameral versus bicameral legislature.

Therefore, I again ask you to seriously consider that we are here as delegates to represent our constituents. We are not legislating, and I think we owe it to the electorate of the State of Hawaii to let them vote on this most important and delicate issue. Therefore, I urge your support in passing and adopting this amendment.

Thank you very much.

CHAIRMAN: Thank you, Delegate Cabral. We will now be voting on amendment No. 1 to Committee Proposal No. 8, which amends Section 1 of Article III, under "Legislative Power," to read as follows: "Section 1. The legislative power of the State shall be vested in a legislature, which shall consist of one house called the senate. Such power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the Constitution of the United States."

DELEGATE CABRAL: Mr. Chairman, I would move for a roll-call vote.

CHAIRMAN: Are there 10 seconds? So ordered. A roll-call vote will be taken. You understand, delegates, that we only discussed the first portion of the total amendment. That's what we'll be voting on right now.

Roll call having been ordered, the motion failed to carry by a vote of 19 ayes, 75 noes and 8 excused; with Delegates Barnes, Barr, Blake, Burgess, Cabral, DiBianco, Dyer, Eastvold, Goodenow, Hamilton, Hornick, Kimball, Lacy, Rachel Lee, Liu, Marumoto, Miller, Odanaka and Takitani voting aye; Delegates Alcon, Anae, Andrews, Barnard, Campbell, Chang, Calvin Ching, Donald Ching, Haunani Ching, Chong, Chu, Chun, Chung, Crozier, de Costa, De Soto, Fernandes Salling, Fujimoto, Fukunaga, Fushikoshi, Hale, Hanaike, Harris, Hashimoto, Hayashida, Hirata, Hironaka, Hoe, Hokama, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaapu, Kaito, Kojima, Kono, Ledward, Marion Lee, Lewis, Nakamura, Nishimoto, Okamura, Ontai, O'Toole, Paty, Penebacker, Peterson, Pulham, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Sterling, Stone, Taira, Takahashi, Takehara, Takemoto, Tam, Tamayori, Uyehara, Villaverde Waihee, Weatherwax, Wurdeman, Yamashita, Yoshimura and Chairman McCall voting no; and Delegates Blean, Laura Ching, Ellis, Funakoshi, Hagino, Hino, Nozaki and Sutton being excused.

CHAIRMAN: The vote being 19 ayes, 75 noes and 8 excused, the amendment is defeated. Delegate Cabral, would you like to comment on section 2 of your amendment?

DELEGATE CABRAL: Mr. Chairman, I withdraw section 2 on consideration of Amendment No. 1.

CHAIRMAN: Thank you, Delegate Cabral. Now if we can move on to the next amendment, that Amendment is No. 2 by Delegate Stone, regarding the election of legislative members. Delegate Stone.

DELEGATE STONE: Thank you, Mr. Chairman. Mr. Chairman and fellow delegates, I wish to offer an amendment to Committee Proposal No. 8. I respectfully request that Section 5 of Article III be amended by adding after the last sentence the following: "No members of the legislature shall serve more than a total of twelve years."

CHAIRMAN: Is there a second to the motion?

DELEGATE CROZIER: I second it.

CHAIRMAN: I'm not going to read the whole thing. You all have it in front of you. But I will repeat the motion, which is that Section 5 of Article III be amended by adding to the end of the section the following: "No members of the legislature shall serve more than a total of twelve years." Delegate Stone, do you wish to speak to your motion?

DELEGATE STONE: Yes, Mr. Chairman, I respectfully ask that I be permitted to speak first and last. I offer this amendment for the following reasons: One, in my

canvassing for election to Con Con from east Kaimuki, more than half--about 60 percent--of my constituents asked me to obtain your support to limit the terms of legislators. Sixty-four percent of the voters polled statewide in February 1978 in a survey sponsored by First Hawaiian Bank wanted the terms of legislators limited.

Presently, 13 members of the state senate and 7 members of the state house of representatives will be seeking reelection who have 12 or more years of service in the state legislature. Most of these 20 legislators--13 senators and 7 representatives--on the onset and during each campaign, acquire without much difficulty large amounts of contributions to finance their highly organized and professionally handled campaign publicity. Such situations make one wonder whom these legislators are committed to and in whom they are interested. Some of these legislators have become highly sophisticated, hard to reach when the legislature is in session. They are no longer championing or expounding the philosophies and beliefs of their beginnings.

A state legislature with less than a 25-percent-membership turnover after each biennial election for the house and each 4-year election for the senate, causes itself to have a strange sense of propriety, to act as a powerblock and display oligarchic leadership. Commensurately, fellow delegates, if we do not encourage at least a 25-percent transfusion of new blood, there will be a continuing onset in the legislature of cases of tired blood and insensitivity to such major problems as the rising crime rate, absentee and nonresident takeover of the hotel industry, inequality of services to the elderly in the various counties, insufficient control of Hawaii's population and resources and the excessive inflation in real estate, making it most difficult for keiki o ka 'aina, the children of the land, to purchase their homes.

For the aforesaid reasons, I urge you to vote yes. Thank you for your attention.

CHAIRMAN: Thank you, Delegate Stone.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I would like to move to amend this amendment by changing the word "twelve" to "eight."

CHAIRMAN: Is there a second to the motion?

DELEGATE PULHAM: I second it.

CHAIRMAN: The motion has been made and seconded that the word "twelve" be substituted by the word "eight." So the amendment would read: "No members of the legislature shall serve more than a total of eight years."

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I would like to speak for my amendment to the amendment, and then later I would like to speak for the concept of the amendment as proposed by the previous speaker. I believe that there should be a limitation on terms--but I'll go into that later. I think the key is how many years we are going to limit it. I'd just like to say that we are proposing to limit the terms of the governor to eight years--two consecutive terms of four years each. In the case of the senators, this would be the same--two consecutive terms of four years each. In the case of the members of the house of representatives, it would be four consecutive terms of two years each. I think eight years is plenty of time for a person to serve in a public capacity, making policy or administering the affairs of our State. And then I think it's time for a changeover.

But more particularly, I would like to address the matter of eight years as a way of stopping the legislature from liberalizing and continually liberalizing the retirement system for their own benefit. By a continuous service of eight years, unless that person was very good and could convince the electorate to put that person in another position--elected position--in the State, which would be possible, that person would not be serving in the legislature to serve that person's own interest in the retirement system.

Inasmuch as ten years of elective service enables an elected person of any area in this State or county to qualify for a retirement pension that is almost twice as much as the average state employee gets--and to qualify for that pension at the end of their ten-year period of service, no matter what their age--I really think that if we're going to have a limitation on terms, we should be realistic and put it at eight years. Thank you.

CHAIRMAN: Thank you. Is there anyone who wishes to speak on the amendment to the amendment? Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman. I'd like to speak against the amendment to the amendment. Although I share the concerns of the delegate on the other side of the room, I don't think we should be making constitutional law to limit how long people run--just so they cannot collect retirement. I think the retirement should be structured some other way, not in this manner.

CHAIRMAN: Thank you, Delegate Crozier.

DELEGATE HOKAMA: Mr. Chairman.

CHAIRMAN: Delegate Hokama.

DELEGATE HOKAMA: Mr. Chairman and members, I rise to speak against the proposed amendment to the amendment and the original amendment. I speak against the amendment because I see a paradox in imposing such a limitation on our legislators. The paradox that I speak of is in reference to our society's search for highly qualified and experienced individuals and the emphasis that we place on securing these individuals, whether it be in business or in government.

To illustrate, Mr. Chairman and members, I would like to make an analogy between the legislator and the master craftsman. It takes many years of training and practice for a person to progress from the role of apprentice to master craftsman. In order to encourage this development, the apprentice is rewarded for exhibiting various traits such as productivity and high quality work. The process is lengthy and much patience is needed by both student and instructor if the product is to reach the highest standard of excellence. It is not until the apprentice has mastered all facets of the trade and can utilize them to fashion a product of such exacting quality that establishes it as a masterpiece, that the title and recognition of master craftsman is bestowed upon him.

I believe, members and Mr. Chairman, that the knowledge and expertise required by a legislator in order to draft model legislation is comparable to that of a master craftsman. I feel that, like the master craftsman, a good legislator is the result of many years of hard work and exposure to the political and legislative processes. And also like the craftsman, the legislator who exhibits faulty or shabby workmanship will not survive, for the people will not be duped by second-class work.

Therefore, members, we should not penalize the experienced and highly qualified legislator by putting such a limitation on him. In actuality, it is not he who suffers the most but rather the people of the State and of his district if we should deny them the services of such an individual. For these reasons, my fellow delegates, I urge you to join me in voting down these two amendments.

CHAIRMAN: Thank you.

DELEGATE KONO: Mr. Chairman.

CHAIRMAN: Delegate Kono.

DELEGATE KONO: I have a point of information for the original movant. Was the intent to limit terms to 12 years for each house of the legislature? Or would that be just for one branch of the legislature?

CHAIRMAN: As I read it, I believe it's quite clear that it's 12 years in the legislature, total--but now 8 years total in the legislature.

DELEGATE KONO: Thank you very much. In that event, I'd like to speak against

the amendment to the amendment to limit the term to eight years. I think that's too short a period of time although I do believe, in general, in the concept of a total limitation.

CHAIRMAN: Thank you, Delegate Kono. If there are no more comments on the amendment to the amendment which--

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: If that's the interpretation--and I didn't realize it and I'm glad that the previous delegate brought it up--I'd like to withdraw my amendment because I am not for that either then, if that is-- If that is the intention--could we ask the mover of the original amendment, was that his intention?

DELEGATE STONE: That's the way I wrote it and that's the way I want it interpreted.

DELEGATE HALE: Thank you. I think this is the difficulty--if I may just give a reason, Mr. Chairman--the difficulty, that when we have 13 amendments put before us within five minutes of convening a session, it's impossible for us to give full consideration to these amendments, and although it was in a proposal at the very beginning, I'm not a member of the executive committee, and I was very impressed with this proposal when it first went in. But with 835 proposals to study, no one of us can be expert on all of them. I wish perhaps that I had heard that explanation before I made my amendment or my amendment would not have been made. And although I may look as though I do not know what I am doing, I'll have to admit that in this case I did not; and I also realize that most of us are going to be in that same position before we get through 13 amendments today, because there has been no time for consideration and study of these amendments.

I am withdrawing my amendment with the approval of a second.

CHAIRMAN: I don't believe we can technically withdraw.

DELEGATE HALE: If there's no objection from the body, you can.

CHAIRMAN: If there is no objection, then the amendment to the amendment is withdrawn. We are now back to the original amendment, which reads: "No members of the legislature shall serve more than a total of twelve years." Is there anyone else who wishes to speak?

DELEGATE HARRIS: Mr. Chairman.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: I'd like to speak in favor of the amendment. I must admit I'm looking with some humor on the contention that the community is going through a difficult search for qualified candidates to serve them in the legislature. It seems to me, if anything we're overwhelmed by highly qualified prospective legislators, as I'm sure at least 30 of this delegation will agree.

We've already determined that there should be a limitation on the number of terms for the governor. I think all the logic that we applied to that situation applies here and I think we would be very hypocritical if we voted otherwise in this situation. I think it's clear that, at least on the Island of Kauai, I have a firm mandate to push for a proposal such as this, and I intend to back the amendment. Thank you.

CHAIRMAN: Thank you, Delegate Harris.

DELEGATE HORNICK: Mr. Chairman.

CHAIRMAN: Delegate Hornick.

DELEGATE HORNICK: At the risk of becoming very unpopular, I'd like to move for an amendment to the amendment.

CHAIRMAN: That's proper since the other one has been withdrawn.

DELEGATE HORNICK: I'd like to amend the amendment to include, following "twelve years," the words "in succession." So the total amendment would now read: "No members of the legislature shall serve more than a total of twelve years in succession."

CHAIRMAN: "In succession," is it?

DELEGATE HORNICK: Yes, "in succession."

CHAIRMAN: Is there a second to the motion?

DELEGATE HALE: I second it.

DELEGATE YAMASHITA: Mr. Chairman, may I make a humble suggestion that it might make better sense to put "a total of twelve consecutive years."

DELEGATE HORNICK: I'm not adversely opposed to Delegate Yamashita's suggestion, Mr. Chairman.

CHAIRMAN: It has been moved and seconded that we amend the original motion to read: "No members of the legislature shall serve more than a total of twelve consecutive years." Is that agreeable?

DELEGATE HORNICK: Yes, that's fine.

CHAIRMAN: Okay, will you speak to your motion, Delegate Hornick?

DELEGATE HORNICK: Yes, please. I like the concept, in all fields, of requiring people to regain a different perspective. I'm not in favor of necessarily turning any person out of a chosen field of endeavor after having put in a certain number of years of service. I think that would be akin to mandatory retirement. However, I do think it's very healthy for people to take a break and gain another perspective. I think that's why we put our teachers on sabbatical every seven years and I think that idea is an appropriate one for our legislators.

CHAIRMAN: Thank you, Delegate Hornick. Anyone else wish to speak to the question?

DELEGATE CHONG: Mr. Chairman.

CHAIRMAN: Delegate Chong.

DELEGATE CHONG: I speak against this amendment. There has been much negative sentiment against incumbents. May I remind you they are only incumbents because their constituents vote for them. The newcomer, although fresh to the scene, may not necessarily mean their views would be best for the interest of the State. Rather than incumbent versus newcomer, a race based on quality and issues would serve as an excellent base for election. There has been sentiment against incumbents, and if the sentiment is the true feeling, their constituents should be the first to dump them.

However, if there is an elected and effective legislator in my district, I certainly would like to have the privilege of his continued service. Thank you.

CHAIRMAN: Thank you, Delegate Chong. Although I think yours was quite proper, you bordered on an area of speaking on something that wasn't quite what the amendment was and other members have done the same thing. I would caution the members to please speak on the specific subject. If it's twelve versus eight, that should be the subject we talk about. Are there any more comments or discussion on the question?

DELEGATE MILLER: Mr. Chairman.

CHAIRMAN: Delegate Miller.

DELEGATE MILLER: I am confused a little. I guess I'm asking Delegate Hornick for her interpretation. It says "twelve consecutive years," but suppose a legislator takes a break. Does this mean that he has a new lease on life, to serve more years?

CHAIRMAN: I don't think it's necessary for the delegate to answer that, I think the Chair can answer. Unless someone disagrees with my interpretation, he can take a break of a year and then serve another 12 years thereafter.

Is there anyone else who wishes to speak on the word "consecutive"? Delegate Miller.

DELEGATE MILLER: I think I need some help here, so I'll turn to the maker of the motion. Is this satisfactory with your motion? Would you please speak to a break in these 12 consecutive years?

DELEGATE STONE: I'm sorry, I do not accept the amendment.

CHAIRMAN: Is there anyone else who wishes to speak on the amendment to insert the word "consecutive" between "twelve" and "years"? If not, all those in favor of the amendment, please raise your right hands. All those opposed? The motion fails.

DELEGATE HALE: May we have a division of the house, Mr. Chairman? Delegates put their hands up and down, and others are moving around.

CHAIRMAN: Delegate Hale, the no vote was nearly twice as many, so do you still want a division of the house? The vote was 35 noes and 17 ayes. The question now before the house is--

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: Point of information, please. Would this be retroactive? I mean, the people who already have 12 years will not be eligible for election this year? I would like that clarified, please.

CHAIRMAN: Well, that's what it says. I don't believe that--

DELEGATE HALE: Point of information or clarification, Mr. Chairman. It couldn't possibly, because this has to be voted upon by the people in that election.

CHAIRMAN: That's right, I was going to say that it has to be accepted first and I'm sure--unless we want to get legal advice--I'm sure the interpretation would be that those people who were elected would serve their terms at this time.

The question before the body is--

DELEGATE CROZIER: Mr. Chairman.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: I have some kind of point--would all the people who are running for office--can they vote on this? Or would that be a conflict of interest?

CHAIRMAN: I certainly don't think it's a conflict of interest. I think we're all here--well, each person has to follow his own conscience on that.

DELEGATE TAIRA: Mr. Chairman, point of information.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: I'm a 16-year veteran of the legislature. Do I have a conflict, or can I speak?

CHAIRMAN: I'm not going to make any determinations on conflict of interest. It's up to the individual.

DELEGATE TAIRA: I reluctantly speak against this amendment and I do so because I think that if the voters who put legislators into office, whether it's the senate or the

house--I think they have the good judgment to turn those incumbents down when the time comes. If that doesn't happen, the legislator's own family will get after him or her to take it easy and give up the hard work of being a legislator, and if that doesn't happen, after listening to all the debates and arguments within the body of the house or the senate, you do get what is called tired blood, and at that time you quit. Thank you very much.

CHAIRMAN: Thank you, Delegate Taira. If there are no other--

DELEGATE KONO: Mr. Chairman.

CHAIRMAN: Delegate Kono.

DELEGATE KONO: I'd like to speak for the motion enthusiastically. I think this is one of the few things I've seen in this Convention that could result in greater accountability in our legislature. I think that anybody running for office should take the position very seriously, and I think if there was a 12-year limitation they would think twice about entering into a political career early in their lives--which is not to say that a young person should not consider doing it. But what it would do is take away the professional aspect attached to the legislature, and I think that we've adopted and accepted the concept in Hawaii of a part-time legislator, in the sense that people can maintain outside jobs and not be full-time legislators.

However, if we continue to have legislators serving for 15, 20, 25 or 30 years, then in effect we've done away with that concept and we really have a professional legislature that is dominated by people who have been in office for long periods of time. I do have some reservations because I do recognize that some legislators are very excellent; I have seen examples of this type of individual at this Convention. But overall I think that this would result in a better and more accountable legislature. I would hope--and I do think--that this kind of amendment would result in people who would have goals and objectives, a direction in which they would like to see the State move and the wish to implement it in a short period of time. I don't think it takes 15 years to develop a conception of what Hawaii should be and put it into practice, and I think that if people would approach concerns in the legislature and serving the public with this attitude, that we would see more accountability and greater responsiveness to the public's desires. Thank you.

CHAIRMAN: Thank you, Delegate Kono.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: Yes, I rise to speak in favor of the motion. If, as one of the previous speakers indicated, the people of the State of Hawaii are wise enough to determine who their legislators should be, they're certainly wise enough to determine whether or not they should serve for 12 years or less.

CHAIRMAN: Thank you.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I rise to speak in favor of the motion also, and it's on a different plane this time. My amendment tackled the matter of the pension. Upon consideration, I feel that maybe that will be attacked in another proposal or another amendment that may come out later on. So therefore I'd like to bring up the other reason that I think we should put a limit on the service of people in the legislature.

For one, I'd like to say that it was the mandate of my constituents that I support this. It was one of the six questions I asked and it got over an 85-percent response: Shall there be a limit to the terms of elected officials? And this included all of them, including the governor and the legislators. I was very happy that we put this limit on the position of governor, but I think we should also put a realistic limit on the terms of legislators.

If the argument is that experience is the most important qualification, then there

is no room for new, fresh ideas from young people because this would mean the longer a person served, the more experience that person's got--I'm trying very hard to follow the recommendation of our style committee and not use the gender that was used by a previous speaker because I don't think gender is relevant, whether we're talking about a legislator or not. That's why my delivery may not be very smooth--it's difficult to get used to it. But at any rate, I do feel that the legislature should not be full time. The executive positions of our State are full time; they administer the day-to-day affairs of our State. I cannot see, and I cannot buy the idea that we should have a professional full-time legislature. One of the problems we face in this State is--in spite of the fact that we are a very progressive state and have led the nation in many ways--we are also a very regulated state. I represent a small business person who finds some of these laws passed by our State very, very restrictive for small businesses. I think that if we encourage professionalization and encourage the length of service, we're just going to get more and more lost.

I would like to see that, for every new law we put on the books, we take off an old law. But that is not before us right now. I'd like to say that our legislature can never be professional in the sense of being trained for the position; a professional is someone who has had years of education to become knowledgeable in a field. And I say that it does not take years at a law school or a school of public administration or political science to train a lawmaker. Their only training is on-the-job training. I agree with the delegate who called it an apprenticeship, but I don't feel that that apprenticeship should be at the expense of our people in general, nor do I believe that that apprenticeship necessarily makes a better legislator.

I would just like to remind you that our governor will be limited to two terms if the people agree with us. I'd like to say that if people did not have to worry about reelection for an indefinite period of time, maybe there would be more responsibility, more feeling that they could act upon the issues as they stand and not have to satisfy a certain segment of the population that might help get them reelected over and over again.

I feel this is a very, very good amendment and I certainly hope that you will all give it your very serious consideration, and I congratulate the delegate who submitted it.

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to humbly speak against this amendment. What it does is remove the tool, the only tool that the grass roots has, which is voting for the person, the individual they seem to think will--or at least that they have confidence will represent their rights, their views. We sit here night in and night out, day in and day out, talking about accountability. I don't know how switches in individuals or switching bodies will insure accountability. I do know, however, that the people have the right to vote and to choose who they want in and who they don't want in.

When a legislator becomes ineffective insofar as representing their views, then they don't vote him in. I just worry about that. We're taking the tool out of the voters' hands--those very people we're continually speaking about. This is the only tool they have, the only way they can express their views--through the individual they see will better represent their ideas. So in that case I speak against this amendment.

CHAIRMAN: Thank you, Delegate De Soto. If there are no--

DELEGATE PULHAM: Mr. Chairman.

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: I'd like to speak in favor of the amendment and to Delegate De Soto I would like to say that I understand perfectly her concerns. I think the problem is that sometimes things get lost in the shuffle--just as a very good proposal which attacks this problem from a different angle, which would have been, I think, preferable to everyone here, was lost in the shuffle in this Convention and did not get to the committee.

Therefore, I speak in favor of Delegate Stone's proposal and I'll tell you why:

because the grass roots don't get to make those decisions we keep talking about. The problem is the awesome power of the incumbency. If you watch television these days, you are besieged by Madison Avenue-type commercials; we're selling legislators and governors and mayors like soap, and it is that bread that comes with the incumbency that will keep these people in office, whether they are good or bad--and if you think that is not true, read all the literature on it. So I'm saying to you: if we are to give our young people avenues to get into government, and a chance to serve us--yes, I would rather do other things too but I think, at this point, this is a very good amendment. It will give a person 12 years' service and then let somebody else have a chance. We did it for the governor, and there is no reason in the world that, as potential legislators or as legislators, we place ourselves on a higher plane than the governor or the president of this country. Thank you.

CHAIRMAN: Thank you, Delegate Pulham. If there are no further comments, the question before this body is Amendment No. 2, that reads: "No members of the legislature shall serve more than a total of twelve years." Delegate Stone, did you reserve--I'm sorry.

DELEGATE STONE: Mr. Chairman, may I speak last. The reason I specified 12 years, a total of 12 years, is because I wanted the legislator to choose whether he wanted to spend all of his 12 years in the house, or two terms in the house and then finish with two terms in the senate. The other reason for the 12-year figure is that I wanted this legislator to qualify under the retirement system. Also, this legislator, in exposing himself to and developing good knowledge in public administration, could possibly go on to some regular administration position, such as a deputy director or a department head, or possibly from senator run for governor.

Now to some of the rocks that were thrown here at Stone, I would like to respond: the legislators, the old-timers who were referred to as master craftsmen--if we go back to the history of craftsmanship in England, some of those master craftsmen were very dangerous, they controlled the entrances of apprenticeships. So please, let's not have the entrance of new blood controlled in the legislature.

I think this limit of terms is not out of line. This Convention has seen fit, for various reasons, to limit the number of terms that the governor may hold office. The reference was made to leave it up to the voters' good judgment. I think, with so many faces continually up for election and reelection, that some of the voters might say, there's nothing new to vote for, so why vote? I mean the machine has got it.

The last thing I would like to make reference to is that being an old-time legislator is not necessarily good. It may be good, but it also may not be so good; there may be someone better who would like a chance to get in but hasn't got the wherewithal in finances and manpower to crack the barrier of entrance into the legislature.

So if we develop a system that would allow a normal entry of new blood, I think we could increase the interest of voters in voting and participating in elections. I thank you.

CHAIRMAN: Thank you, Delegate Stone. And now the question, I will repeat--Section 5 of Article III, amending Committee Proposal No. 8. The amendment proposes to add a sentence at the end of the paragraph, to read: "No members of the legislature shall serve more than a total of twelve years."

DELEGATE HARRIS: Mr. Chairman, I'd like to request a roll-call vote.

CHAIRMAN: A roll-call vote has been requested. Are there 10 members who wish a roll-call vote? Mr. Clerk, roll-call vote is called for.

Roll call having been ordered, the motion failed to carry by a vote of 37 ayes, 57 noes and 8 excused; with Delegates Andrews, Barnes, Barr, Blake, Burgess, Cabral, Campbell, Chu, Chun, Crozier, De Soto, DiBianco, Dyer, Eastvold, Ellis, Goodenow, Hale, Hamilton, Harris, Hoe, Hornick, Kimball, Kono, Lacy, Rachel Lee, Liu, Marumoto, Miller, Nakamura, Odanaka, Ontai, Peterson, Pulham, Stegmaier, Sterling, Stone and Wurdeman voting aye; Delegates Alcon, Anae, Barnard, Chang, Calvin Ching, Donald Ching, Laura Ching, Haunani Ching, Chong, de Costa, Fujimoto, Fukunaga, Fushikoshi,

Hanaike, Hashimoto, Hino, Hirata, Hironaka, Hokama, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaito, Kojima, Ledward, Marion Lee, Lewis, Nishimoto, Nozaki, Okamura, O'Toole, Paty, Penebacker, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Taira, Takahashi, Takehara, Takemoto, Takitani, Tam, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax, Yamashita, Yoshimura and Chairman McCall voting no; and Delegates Blean, Chung, Fernandes Salling, Funakoshi, Hagino, Hayashida, Kaapu and Sutton being excused.

CHAIRMAN: The count is 37 ayes, 57 noes and 8 excused. The amendment is defeated.

DELEGATE CROZIER: Mr. Chairman, can we have a five-minute recess?

CHAIRMAN: I think it's a good idea. We'll recess for five minutes.

At 4:22 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:30 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The next amendment to be considered by this body is No. 3, entitled "Legislative Commission." Delegate Cabral.

DELEGATE CABRAL: Thank you, Mr. Chairman. At this time I would move for the adoption of Amendment No. 3 to Committee Proposal No. 8. I recommend that the proposed amendment that addresses itself to the legislative commission, as well as to Section 10 of Article III on salary, allowances and so forth, be inclusive of this motion for adoption. The reason is that the second part of the proposed amendment is attendant on the first part and correlates, so we should consider both at the same time.

CHAIRMAN: Is there a second to the motion?

DELEGATE BARR: I second it.

CHAIRMAN: The motion has been made and seconded that Article III be amended by adding a new section, to read: "There shall be a legislative commission, which shall be appointed by the governor on or before June 1, 19___, and every four years after the first commission is appointed. The legislative commission shall study legislative salary, benefits, direct or indirect, made to legislators whether by way of compensation, allowance, reimbursement, health benefits or retirement system benefits and, in addition, shall study the legislative structure, procedures, session length and all other aspects of the legislative branch. Within one hundred eighty days after its appointment, the commission shall submit to the governor recommendations for a salary and benefit plan for members of the legislature, or amendments to the state constitution, or both, and then dissolve. Upon approval by the governor, the chief election officer shall place the recommendations on the ballot at the next regularly scheduled general election for approval or disapproval by the voters and such recommendations shall not become effective until approved by the voters."

Further, Article III, Section 10, is amended to read: "The members of the legislature shall be empowered to appropriate funds for the operation of the legislature, including such supporting agencies as needed, and shall receive allowances reasonably related to expenses and a salary prescribed pursuant to Section ___."

DELEGATE CABRAL: May I speak to my motion, Mr. Chairman?

CHAIRMAN: Yes, Delegate Cabral, you may speak on your motion.

DELEGATE CABRAL: Thank you, Mr. Chairman. Section 10 of Article III currently provides that legislators shall receive a salary as prescribed by law and can therefore prescribe legislative salaries. There is also a commission on legislative salary-setting which meets every four years and is required to submit salary recommendations to the legislature and then dissolve. That is the existing provision of the Constitution.

The majority standing committee report of the legislature committee argues that

legislators are reluctant to prescribe their own salaries due to criticism from the voters, even though increases due to inflation are justified. The majority, therefore, recommends removal of the burden of the legislators to prescribe their own salaries by overt act, and that the salary plan recommended by the commission on legislative salary, meeting every eight years, shall become effective unless disapproved by the legislature or the governor.

As stated in the standing committee report, these changes remove the burden on legislators to set salaries by a deliberate act; and unless the legislature or the governor disapproves, the salary becomes effective. This, in effect, is approval by silence and removes the burden and responsibility of an elected body to the electorate.

Accountability to the public is necessary and protects the public's interest as well as subjecting the process to public scrutiny. The commission on legislative salaries meets once every eight years, as recommended by the committee proposal, and it is limited in scope to reviewing the legislators' salaries; it does not cover other areas concerning the legislature. The commission should meet more often to increase accountability to the public and should be required to study other broader aspects of the legislature. The amendment that I have offered provides that the legislative commission study new facets that address themselves to the legislature besides salary. Also, Minority Report No. 7 urges that the legislative commission, as proposed in this amendment and including the expanded duties of studying all aspects of the legislature and meeting every four years, be favorably considered.

CHAIRMAN: Thank you, Delegate Cabral. Is there any other delegate who wishes to speak on this amendment?

DELEGATE NISHIMOTO: Mr. Chairman.

CHAIRMAN: Delegate Nishimoto.

DELEGATE NISHIMOTO: Mr. Chairman, I speak in opposition to the amendment. In the first place, this amendment calls for a commission study of legislative compensation to be conducted every four years. As previously stated, our committee proposal recommends that the legislative salary commission review the salaries of the legislature every eight years instead of the four years now specified in the Constitution. The majority of the committee felt that an eight-year review allows for a substantial passage of time before examining the factors relating to salary adjustment; and therefore, this would be a better time interval in which a salary review should take place.

Secondly, this amendment would allow the commission to study all aspects of the legislative branch, and to make recommendations on all of the aspects of the legislature. This would, I assume, include such items as the conduct of legislators, methods and procedures for carrying out their duties, even the functions of staff members. These are basically internal housekeeping matters and therefore, I feel, best left to the houses of the legislature to resolve.

Another area that I feel could cause some problems is that of the implementation of the commission. This would create a cumbersome and needless institution. The task of performing such a study as this amendment suggests is impractical and unlikely to produce results of much reward. It would serve to remove the voice of the legislators from their own internal affairs and diminish the concept of a people's legislature by placing the total legislative process in the hands of a small, temporary group of so-called experts.

Finally, this amendment would require that the governor appoint the members of the commission as well as approve any recommendations it makes before those recommendations are put on the ballot. To me, this is an indirect contradiction of the separation of powers concept between the executive and legislative branches because it would provide the governor with some control over the legislative process. Therefore, I speak against this amendment.

CHAIRMAN: Thank you.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: I rise to speak against this amendment and in favor of the committee proposal, which would establish a legislative salary commission and provide general guidelines for its deliberations. The committee proposal would call for the governor to appoint a legislative salary commission on or before November 30, 1978 and every eight years thereafter, with the commission required to submit its findings to the governor and the legislature on or before the 40th day of the 1979 legislative session.

The legislature and the governor would then both have an opportunity to act on the commission's recommendation by disapproving the recommendation by concurrent resolution of the state house and senate or by action of the governor. If no action is taken, the commission's recommendation would take effect for the 1981 legislative session, and every eight years thereafter there would be another review.

As a member of the 1975 legislative salary commission, I spent over two months attending public hearings throughout the State, deliberating and then submitting the report to the legislature. Many hours were spent by this citizen commission before reaching its decision and making a recommendation to the legislature, only to have the legislature take no action on the recommendation. Apparently the legislature's failure to act on the commission's recommendation had nothing to do with the merits of the proposed salary schedule; rather, the failure to act was related to an apparent perceived negative public attitude about legislators in general, which had nothing to do with proper salary levels for legislative pay.

In my opinion, it is incumbent that legislative salaries be set at a level commensurate with legislative responsibilities, and this salary level should be reviewed periodically and adjusted for inflation and other factors which have a bearing on salary levels. The committee proposal would permit the governor to appoint a blue-ribbon salary commission representing a cross section of the people of Hawaii, which could objectively evaluate current legislative salary levels and make recommendations to the legislature. A built-in safeguard is included in the proposed language which would allow the legislature, by a concurrent resolution of both houses, or the governor to reject the commission's recommendation and prevent any proposed legislative salary adjustments from taking effect.

Mr. Chairman, I would urge other delegates to vote against this amendment and in favor of the committee proposal. Thank you.

CHAIRMAN: Thank you, Delegate Lewis. Are we ready for the question? Delegate Hale.

DELEGATE HALE: I'm not sure from reading this--and I'm talking about the committee proposal rather than the amendment--could the chairman of the committee answer whether or not this wording would give the salary commission the power to consider all the other compensations that legislators get, in making their recommendation?

CHAIRMAN: I believe the question is, will the committee proposal itself, Committee Proposal No. 8, give the commission the power to consider other benefits that the legislators receive. Is that it, Delegate Hale?

DELEGATE HALE: Yes. I've been trying to find it in the committee report--if there's anything in here on it--but there's just so much in this. Could someone point out whether the committee report would give them the power to consider this? Are we only talking about salaries or are we talking about all the benefits?

CHAIRMAN: Delegate Nishimoto.

DELEGATE NISHIMOTO: Mr. Chairman, if I might, I'd like to yield to Delegate Lewis.

DELEGATE LEWIS: In response to the question--although it does not specifically refer to these other matters, in 1975 the legislative salary commission did in fact consider these matters. They were not part of the report but obviously in arriving at a conclusion on the \$17,000 recommended salary, they did take these other factors into consideration.

DELEGATE WURDEMAN: Point of information.

CHAIRMAN: Delegate Wurdeman.

DELEGATE WURDEMAN: May I ask another question of Delegate Lewis? When they convened in 1975, did they also take into consideration the pension plan?

DELEGATE LEWIS: That's correct. In other words, they took into consideration-- although not on a formal basis, they did take into consideration--we had facts and figures given to the commission that set forth per diem allowances, that set forth the retirement system, the entire structure, both on a formalized and on an informal basis.

CHAIRMAN: Do you need more information, Delegate Wurdeman?

DELEGATE WURDEMAN: Not information, but I'd like to speak in favor of the amendment.

CHAIRMAN: Delegate Pulham, I ignored you the last time.

DELEGATE PULHAM: No, I was just going to say, in that standing committee report on page 7, paragraph 2, the second half outlines this procedure that Delegate Lewis has just covered, if the delegates would like to read it. I would yield to Delegate Wurdeman.

CHAIRMAN: Delegate Wurdeman.

DELEGATE WURDEMAN: I would just like to speak in favor of the amendment because it addresses a wide gamut of things that should be considered, and the checkpoint and safeguard built in here is that it's taken back to the people to be voted on. Thank you.

CHAIRMAN: Delegate Uyehara.

DELEGATE UYEHARA: Mr. Chairman, I would like to speak because it was my proposal that brought out the language that each legislator should be paid \$17,000, and I was planning to raise the salary from there on. The consumer price index for Honolulu was very high, so I brought it down to 4 percent each year thereafter. I realize that the language of the proposal in the standing committee report is much better than mine and I'm willing to stay with that language because of its safeguards, in which the commission provides the salary scale rather than as I had put it, and the safeguard that once the recommendation is made, the legislature may turn it down. And if the legislature doesn't turn it down, there is another safeguard that the governor may disapprove of the plan. Either of the two may act as a safeguard in giving legislators a raise.

However, my position is that I still want to give the legislators a raise. Since I am not running for any office this year, I can well say this. I feel that this will give them an opportunity to either go full time on their leisure or work part time to make up the difference in their pay. I feel that those who run for public office deserve the amount that is necessary to run. I'm beginning with \$17,000, with a 4-percent increase each year. Thank you.

CHAIRMAN: Thank you, Delegate Uyehara. Delegate Hale.

DELEGATE HALE: Mr. Chairman, this has really required some rapid decision-making, and I have a few questions before I can completely make up my mind. I gather that presently on the legislative salary commission that Delegate Lewis talked about-- that he was appointed by the governor--and that this commission has to be appointed by the governor will make no change in the recommendation here. That the governor appointed the last commission and the governor will appoint this one, and there's no recommended change in procedure--is that true?

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: That is correct, the governor appointed both commissions. The governor appointed the last one under the present system and would appoint this commission.

DELEGATE HALE: Then it occurs to me that what we have built in here is that the governor can disapprove the plan of a commission that he appoints, which is not very likely.

CHAIRMAN: Delegate Hale, are you asking a question?

DELEGATE HALE: Well, no, I guess I'm speaking for the amendment, if that's okay?

CHAIRMAN: I've been waiting for the first chance to remind the delegates that I'm going to count that sort of thing as a speech.

DELEGATE HALE: All right, Mr. Chairman. I really feel--I'm not completely satisfied with the amendment as it is here, but I am for the concept of the amendment. I think if we could think about it as a concept, perhaps we could refine it, and with a little more thought maybe leave out some of the objectionable areas that the chairman of the legislature committee mentioned--like legislative structure procedures, session length and things like that, that maybe should not be handled by a salary commission.

On the other hand, I think the idea of a legislative commission on salary appointed by the governor, with the only check being that the governor can veto it or the legislature could-- Of course, they don't have to, they could just be silent--it's probably not very likely that it would be vetoed, and I don't think that's a very honest way of approaching legislators' salaries. I much prefer the previous delegate's proposal where it's definitely specified to give them \$17,000, which is what the 1968 constitutional convention did. I think before that, legislators got only \$2,500, then in 1968 it was increased to \$12,000, which the people voted on. I think if we really want to be honest and say that legislators deserve \$17,000, then let's put it on the ballot for the people to vote on, or else let's have some mechanism like this, where whatever the legislative salary commission comes out with the people get a chance to vote on. I think it's important that the people determine the salaries of their elected officials. I just can't see elected officials determining their own salaries, particularly in view of the benefits that are here. So the concept of going back to the people--I would speak for this amendment as a first step, but I think it would be even better to actually say what the compensation should be, like in 1968 when they did put it on the ballot. I think this is a very sneaky way of giving the legislators an increase and it's not the right way to go about it. Therefore I speak for the amendment.

DELEGATE CABRAL: Mr. Chairman.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: I would like to speak for the second time on my amendment. In essence, the concept of establishing a legislative commission as enumerated in the proposed amendment is comparable in a way to the legislature's establishment of the state ombudsman's office, where that office, the ombudsman, is the watchdog of the legislature upon the executive branch and upon governmental agencies and departments.

Conversely this legislative commission, in addition to reviewing salaries and so forth, taking into consideration all the indirect and direct benefits, also reviews the makeup of the legislature, its proceedings and other matters it would deem appropriate to look at, and comes up with a proposal, to be submitted not only to the governor but also back to the electorate. And if we're talking about making government for the people and by the people, this type of proposal espouses the concept of bringing government back to the people.

In addition, it provides for another counterbalance within our governmental structure. I think it affords the governor a watchdog on the legislature, and presently there is none, so to speak. So I would say that this proposal has a lot of merit and warrants your favorable consideration. I hope you will vote in favor of it. Thank you.

CHAIRMAN: Thank you, Delegate Cabral. Delegate Cabral had reserved the right to speak last. I think we're ready for the question. The amendment reads: "Article III is amended by adding a new section to read: 'There shall be a legislative commission, which shall be appointed by the governor on or before June 1, 19__ , and every four years after the first commission is appointed. The legislative commission shall study legislative salary, benefits, direct or indirect, made to legislators whether by way of compensation, allowance, reimbursement, health benefits or retirement system benefits and, in addition, shall study the legislative structure, procedures, session length and all other aspects of the legislative branch. Within one hundred eighty days after its

appointment, the commission shall submit to the governor recommendations for a salary and benefit plan for members of the legislature, or amendments to the state constitution, or both, and then dissolve. Upon approval by the governor, the chief election officer shall place the recommendations on the ballot at the next regularly scheduled general election for approval or disapproval by the voters and such recommendations shall not become effective until approved by the voters.'

"Article III, Section 10, is amended to read: 'The members of the legislature shall be empowered to appropriate funds for the operation of the legislature, including such supporting agencies as needed, and shall receive allowances reasonably related to expenses and a salary prescribed pursuant to Section ____.'"

All those in favor of the amendment, please raise your hands. Those opposed, raise your hands. The noes have it and the amendment is defeated.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: May I rise on a point of inquiry. I was wondering whether by general consensus of the body we could waive the reading of the amendments. We have them before us in written form and it just drags out the procedure a little longer. We have to get unanimous approval, but that's one of the reasons that we insist amendments be in writing anyway, and since they're going to be lettered from here on in, there will be no question as to which amendment we're considering. Could we get a show of approval by the body?

CHAIRMAN: Why don't we do it and if anyone objects-- Would this procedure be acceptable, that we refer to each by reference to the number and if anyone objects, we will then of course read the complete statement or the portions needed. Does that seem to be acceptable?

DELEGATE NISHIMOTO: Mr. Chairman, I move that we rise and report to the Convention that we have not completed our consideration of Committee Proposal No. 8 and that we need more time to complete our work.

CHAIRMAN: Is there a second to the motion?

DELEGATE HOKAMA: I second the motion.

CHAIRMAN: It has been moved and seconded that we rise and report to the Convention that we have not completed our consideration of Committee Proposal No. 8 and that we would need more time. All those in favor of rising to advise the Convention, say aye. Those opposed, say no. The ayes have it. The motion is carried.

At 5:02 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Tuesday, August 29, 1978 • Afternoon Session

The Committee of the Whole was called to order at 1:45 p.m.

Delegate McCall presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. All recesses will be of similar short lengths. We have 11 amendments to take up. We finished 3 yesterday. The schedule doesn't include any other time for meetings of this Committee of the Whole except this afternoon, so may I ask the delegates to say what you have to say but, please, let's move as fast as possible.

We did receive one other amendment and I propose to call that 12A, to be considered immediately after Amendment No. 12.

DELEGATE CHONG: Mr. Chairman, I wish to withdraw that, please. It seems to me that it's on the same line as the other one.

CHAIRMAN: Thank you. Delegates, the amendment just numbered 12A that was put on your desks today has been withdrawn. And now we have under consideration Amendment No. 4. The Chair recognizes Delegate Chu.

DELEGATE CHU: Yes, Mr. Chairman. I move for the adoption of my amendment to Article III, Section 10, by--is it necessary for me to read this, Mr. Chairman?

CHAIRMAN: I think unless someone requires or asks that you read it, we can dispense with the reading.

DELEGATE CHU: Thank you. I would like to speak in favor of my amendment.

CHAIRMAN: I think we have to wait for a second to your amendment.

DELEGATE GOODENOW: I second it.

CHAIRMAN: All right, it has been moved and seconded.

DELEGATE CHU: Basically, what this particular amendment does is to set the salary and give a guaranteed 4-percent annual increase. This would hopefully avoid criticism that the legislative salary commission is not responsive to the people. Also, I feel that it would be desirable to have legislative salaries set for years to come, as it would then not be possible for anybody to manipulate a hefty salary increase.

As you can see from the table that is on your desks this afternoon, the amendment slowly but surely does give an increase each year, and this would fall in line with what state employees are getting now, which is generally a 5-percent-a-year raise. Not always, but generally that is what they are getting. I think that the 4 percent would be commensurate with the cost of living and is somewhat in line with the consumer price index, although the consumer price index cites a much higher percentage cost-of-living increase every year. This 4 percent, I think, is fair. It has a built-in adjustment for inflation and would avoid the painstaking process that can occur when there is an attempt to increase legislative salaries. I feel it's important to have it set permanently, and I think it's just procrastinating to keep putting it off and putting it off. This would really get it set once and for all.

CHAIRMAN: Thank you.

DELEGATE NISHIMOTO: Mr. Chairman.

CHAIRMAN: Delegate Nishimoto.

DELEGATE NISHIMOTO: I rise to speak against this amendment for several reasons. First of all, I think there is no rational basis on which the \$12,000-a-year amount was set. Also, this 4-percent annual increase--that figure does not have a rational basis either. I have seen some statements whereby the figures 5.5 to 6 percent for the cost-of-living index increase have been set forth. Also, research has shown that no other state has this system. In fact, the system that your Committee on Legislature has proposed in Section 4 of Committee Proposal No. 8 is what most states go through at the present time.

This motion also sets a figure for increases and does not really speak to the other benefits, such as retirement, pension and other fringe benefits that the legislators would receive. Therefore, I urge the delegates to vote against this motion and to consider the legislative salary commission proposed in our committee proposal. Thank you.

CHAIRMAN: Thank you, Delegate Nishimoto. Delegate Uyebara.

DELEGATE UYEHARA: Mr. Chairman, I rise to speak against the amendment and in favor of adopting Standing Committee Report No. 46 and Committee Proposal No. 8. If we are to give broad and meaningful direction to the legislative salary commission, I urge the strongest possible wording, as that set forth on page 7 of the committee report: "...your Committee urges and expects the legislative salary commission to hold public

hearings in its deliberation of the salary plan and to consider the other benefits, direct or indirect, made to legislators by way of allowance, per diem, reimbursement, health benefits and retirement benefits in the evaluation of the legislator's basic salary."

My sentiments about legislative salaries and pensions are no secret among my colleagues. This body has already considered changes in the past salary plan and a pension formula for state legislators, and felt it was inappropriate to take action on individual aspects of the plan. That well includes salary, allowances and other benefits. A legislative salary commission is the most workable mechanism for effecting some of the changes we have discussed. The commission is not required to reduce the pension formula. We are not mandating the commission to do this as a precondition to raising the legislative salary; rather, by creating a commission we recognize the importance of considering benefits as well as part and parcel of an individual's earnings. We do the same for all public employees under our collective bargaining system.

By itself the salary increase is meaningless without considering a full-time legislature, longer sessions or added duties for legislators. We have been reluctant to raise legislative salaries for fear of incurring the public wrath, regardless of the merit in arguments for such a raise. But neither pay nor pension should be divorced from the larger package of legislative responsibilities, some of which should have direct bearing on compensations and benefits. By empowering a commission to act on all aspects of the legislative plan, we recognize it as just that, a plan, a nonarbitrary figure that is easily manipulated by legislators themselves or by the whims of public sentiment. The commission format strengthens the concept of a plan by presenting all components of a pay package.

Further, the commission allows the input of all parties involved, yet its decision is still subject to check by the legislature and the governor, who will then be held accountable at the polls.

For these reasons, Mr. Chairman, I commend the Committee on Legislature for articulating its concerns and I believe the legislative salary commission provides the most workable mechanism for change in the structure of the pay package. I urge support for the adoption of Standing Committee Report No. 46 and Committee Proposal No. 8. Thank you.

CHAIRMAN: I would prefer it if you would say at the end that you preferred that the amendment be voted down, rather than speaking on the original proposal. Any other delegate wish to comment? If not, are we ready for the question?

DELEGATE HALE: No, Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Mr. Chairman, I urge the adoption of this amendment. I think this is a very reasonable response to the problem that we face in making an equitable salary for legislators. I feel that government by a commission is the worst possible government--a commission that is appointed by the governor, and their findings negated only by the governor who appointed them, or by the legislators taking positive action to reject their recommendations, which is very, very unlikely. All the legislature has to do is not do anything. The commission would never lower the present salary and I don't believe it's the intention of the committee or of any delegate here to say that legislators should get a lower salary than \$12,000, even though we are aware of differences in their retirement, their per diem benefits and their health benefits from other state employees.

I would like to say that if the legislature is afraid of the public's wrath if they increase their own salaries, as was recommended by the salary commission that was set up by the convention in 1968, then perhaps we too as Con Con delegates should be afraid of the public's wrath. Remember, the people are going to have the final say. They can vote down our whole Constitution on an emotional issue like legislators' pay. If the people are led to believe and finally come to the conclusion, as I believe, that a commission form of government takes the power away from the people, by putting it in a form where no one can get at it, where any kind of deal can be made, and the people in the final analysis have no control over the money they are going to give the legislators that they elect, I don't think the people will buy it.

In my opinion, it's a very dishonest way to go about giving legislators increases. The 1950 convention set a salary, the 1968 convention set a salary. We are now only 10 years away from the 1968 convention, and this proposal to add automatic increases to that salary, in my opinion, is a very fair and honest way to deal with legislators' salaries. I warn you, the people will have to vote on this, and on legislators' salaries, and if the legislators themselves are afraid of the issue--it's a very volatile subject. I urge you to vote for this amendment.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: I rise to speak against the amendment. In the first place, this amendment assumes that there is an automatic rise in the cost of living. We have a question, in trying to combat inflation, should we lock ourselves into a formula that adds to the inflation by going to a straight across-the-board 4-percent increase?

This idea of tying in the cost-of-living increase or the consumer price index that is put out by the bureau of labor statistics is also negotiated in the General Motors contract with automobile workers. But they have certain safeguards attached. Just coming out like this, that we have an automatic 4-percent increase, is not giving cognizance to the tremendous pressures facing the President in trying to combat inflation. The basic assumption here is that there is a basically automatic cost-of-living increase in Hawaii and I strongly speak against locking ourselves into a formula as is stated in this proposal. Thank you very much.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Chu, would you care to speak last?

DELEGATE CHU: I would simply like to say that the commission idea is troublesome to me because they really do not have direct accountability to the people, and I think that to let a commission make the decision is passing the buck. I would like to see something set so that the people will know, which would not be subject to manipulation by other bodies. So I think this is a very reasonable position and I hope you all will vote for it.

CHAIRMAN: Thank you. Are we ready for the question? If so, all those in favor of the amendment on your desk listed as Amendment No. 4, please raise your hands. All those opposed? The noes have it and the motion is lost. We will proceed to Amendment No. 5 on sessions and the Chair recognizes Delegate Cabral.

DELEGATE CABRAL: Thank you, Mr. Chairman. I won't read the listings of Amendment No. 5. I would like to call your attention to one change that I would like to make to my amendment at this time. In the third paragraph where it addresses the "period of sixty days," I would like to insert the words "75 working days" in place of "sixty." I now move, Mr. Chairman, for the adoption of the listed amendment to Committee Proposal No. 8, as it reads with the change to the session, and I shan't read it all, Mr. Chairman.

CHAIRMAN: May I have a second?

DELEGATE DiBIANCO: I second it.

CHAIRMAN: Did everyone get that straight? The third paragraph should read: "Regular sessions shall be limited to a period of 75 working days...." The Chair recognizes Delegate Cabral.

DELEGATE CABRAL: I will now speak to my motion and I would reserve the right to close debate on this particular motion. Significantly, this proposed amendment effects three changes. For one thing, in the first section it changes the convening of the legislature from annually to biennially. It also changes the opening day from the "third Wednesday in January" to the "last Wednesday in February." Of course, since it is going to be a biennial session, it recommends that the convening be in odd-numbered years.

I think it's significant to note that Hawaii's territorial legislature met as a biennial legislative body. That was up until the State Constitution became effective in 1959; sub-

sequent to Statehood, of course, we've always had annual sessions. It is believed, by myself as well as others who have worked within state departmental agencies, that a biennial session would be more efficient, effective, productive and economical. Economical to the effect that it would save a lot of tax dollars which could be diverted to other uses to improve our state economy.

A biennial session would raise the level of importance that is attached to the session, thus producing and focusing on issues and efforts, a better setting of priorities and creating positive approaches toward taking action. This would help eliminate the tendency to put off items because they can be addressed at the next session, which is only eight or nine months away. The additional respite between sessions would also afford everyone an opportunity to become more aware of the issues, be better prepared to address them and, because of these advantages, foster a greater depth in deliberations.

At present, administrative departments and department heads spend at least half of the year, every year, either preparing for, directly serving or following up on the legislative sessions. Avoiding this annual demand on the time of administrative departments would allow the public to be better served. Also, biennial sessions would eliminate the legislative overlap which now occurs. There are frequent instances when the legislature must consider amendments to laws passed in the immediately preceding session without the benefit of practical experience because, due to the frequency of sessions, actual administration of the law has not progressed very much.

Then there is the cost. Subsequent to Statehood, which started with an annual cost for the total legislative session of \$2 million, it has escalated to the present figure of approximately \$7 million annually. In effect, a biennial session could save approximately \$2 to \$6 million every other year. With a biennial session, it is believed that government agencies would have more time to implement new laws and also to determine whether the laws and regulations are working as intended. Biennial sessions should also reduce the massive number of bills and resolutions now introduced in annual sessions. Under the biennial plan, the legislature would and should be able to call itself into special session to meet any unexpected contingencies or emergencies.

It is also recommended that the biennial session be 75 working days in length. This should be a more than adequate period of time, especially if the legislature were to adopt rules limiting the number of bills introduced by each legislator and providing for recesses during the session to give legislators and the public more time to study and review bills and for legislators to check proposed legislation with their constituents.

Therefore, I ask your favorable consideration in light of the fact that a biennial session would afford more efficiency, be more economical and be more productive to the whole State of Hawaii. Thank you.

CHAIRMAN: Thank you, Delegate Cabral. Discussion?

DELEGATE IZU: Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: Mr. Chairman, I rise to speak against the proposed amendment. Mr. Chairman, one of the most striking changes in the legislative process in this century, and particularly since World War II, has been the great increase in the time which lawmakers must devote to their duties. One measure of this change is the use of biennial versus annual sessions. In the early 1940s, only four legislatures--New Jersey, New York, Rhode Island and South Carolina--met annually in regular session; by 1976, 42 were doing so. Of that total, 36 were required by their constitutions to meet annually, while the other six legislatures were invoking flexible constitutional powers granted them to reconvene at intervals during the biennium.

There are several reasons advocating annual sessions of a legislature; some of the more important are as follows:

(1) Many believe that the balance of power between the governor and the legislature may be threatened, because the legislature would not be a continuous body and would be more dependent on the executive branch. Annual sessions tend to overcome this imbalance.

(2) Annual sessions allow the budgeting and legislative processes to be more responsible to react to changes due to inflation, population shifts, the expansion of government functions, and unforeseen emergencies, which can occur every year. It should be noted that with a highly dynamic economy, as we have now, it is difficult to predict even quarterly the revenues accruing to the State.

(3) Annual sessions require more concentrated effort for studies and other interim work and therefore promote better performance.

(4) At Hawaii's 1968 constitutional convention, the Committee on Legislative Powers and Functions recommended a change to annual sessions. The committee report stated in part: "Your Committee is of the opinion that the State of Hawaii has arrived at that point in its social, economic, and political development, where the need for annual general sessions now exists. The action of other states indicates a trend toward eliminating alternating budget sessions. Since 1964, three states (Maryland, California and Kansas) have dropped restrictions limiting alternating sessions to fiscal matters, bringing the total number of states with annual general legislative sessions to fourteen. . . . [T]he spirit of the Constitution requiring a measure to be urgent for budget session consideration has been honored more in the breach than in the observance simply by marshalling sufficient votes to label any measure 'urgent.' Further, your Committee feels that the growth of the State is reflected in the growing volume of general problems presented to the legislature, and these deserve legislative attention annually rather than biennially."

I submit to you, Mr. Chairman, that the problems presented to the legislature are even more numerous today than they were 10 years ago. Laws are being passed which deal with more phases of our social and economic behavior. Since there are more administrative agencies involved in implementing such laws, legislatures have an added burden in the scrutiny of these agencies' operations in order to serve as an effective check upon arbitrary administrative action.

Our legislature is increasingly being depended upon to check the growth of administrative authority through the use of investigating committees to study the operations of administrative agencies.

Our legislature today also generally appropriates much larger sums of money than it did in previous years. This imposes upon them a greater responsibility for thoroughly screening budget requests.

Prior to Statehood, Hawaii embraced the practice of holding biennial sessions, which was later abandoned when our Constitution became effective.

When the legislature held biennial sessions, general fund expenditures amounted to roughly \$80 million annually. For this fiscal year, the legislature appropriated \$865 million of general fund revenues. Federal funds appropriated likewise increased from about \$5 million to approximately \$193 million.

The sizable increase in government spending makes annual review and evaluation of the various programs and projects of the administration, as well as those of private agencies receiving state subsidies, imperative in order to insure compliance with legislative policy and intent. Thank you.

CHAIRMAN: Thank you, Delegate Izu.

DELEGATE DiBIANCO: Point of information.

CHAIRMAN: State your point.

DELEGATE DiBIANCO: I enjoyed the speech so much I was wondering if the delegate could tell me who wrote it.

DELEGATE WAIHEE: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: I don't think this is the place to--if the delegate wants to know the answer to that, he should ask during recess.

DELEGATE DiBIANCO: Well, I wanted to know whether the delegate wrote it or if I could find out what source she got the material from. She indicated there were 42 states with annual sessions and I just want to know where this information comes from.

DELEGATE ALCON: Point of order, Mr. Chairman. I think the delegate should ask the source of information and not the person who wrote it.

DELEGATE DiBIANCO: Well, that's what I'm trying to find out. Am I talking to the source or not?

CHAIRMAN: I think your point is well taken, but your question as to the source can be answered only if the delegate wishes to respond.

DELEGATE IZU: I don't think his point was in order.

CHAIRMAN: I gather the delegate does not wish to respond. Is there any further discussion?

DELEGATE NISHIMOTO: Mr. Chairman.

CHAIRMAN: Delegate Nishimoto.

DELEGATE NISHIMOTO: I would like to concur with the remarks made by Delegate Izu. I'd also like to point out that there is one matter that is a problem here, and this is the first sentence of the amendment, which would push the opening date of the legislature back into February. If this session goes through the 75 working days, it would just run into the end of the fiscal year, which would make it impossible for the budget to be set and to be ratified by the various departments of the State. Thank you.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman. I speak in favor of the motion. I'd do anything to cut down the number of laws the legislature is pumping out now so it'll help stabilize our different agencies and departments and they can get on with their work instead of worrying about what's coming out next week. Thank you.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Yes, I thought the delegate's speech opposing the amendment was very impressive. I hadn't made up my mind until I heard the speech and then I decided I would have to vote for the amendment. The figures she gave are a tremendous increase in the cost of government--because we have annual sessions, I suppose. Maybe biennial sessions would be one way we could cut down this tremendous increase in the amount of money being appropriated, because if we appropriate the money, of course we'll have to raise it by taxes from the people. And as for the fiscal year, I think it's a very technical matter; if the legislature wants to, it can change its fiscal year. As I understand it, the federal government's fiscal year now starts on October 1st, so that's no real problem as far as passing the amendment. I speak for the amendment.

CHAIRMAN: I wonder, delegates, if this is in order. Delegate Cabral, may I ask you if you do consider this a technical problem that you wish to address by further amendment, or not?

DELEGATE CABRAL: I am most amenable to a subsequent amendment retaining the provision that legislative sessions convene the third Wednesday in January.

CHAIRMAN: But no one has actually made that amendment.

DELEGATE HALE: Mr. Chairman, may I make that amendment?

DELEGATE CABRAL: Well, for the sake of expediency, Mr. Chairman, can I consider that I did not make that change, that deletion, in my amendment?

CHAIRMAN: If no one has any objection to handling it in that manner, the Chair has no objections. Delegate Chung.

DELEGATE CHUNG: Thank you, Mr. Chairman. I speak against the amendment. I recall reading something about this matter by the former speaker of the house, Tadao Beppu. At that time he advocated annual sessions as against biennial sessions, and most of the points that were made by Delegate Izu, as I recall, were pointed out by the former speaker of the house. One thing I remember he mentioned is that the legislators are actually part time--they work only a few months out of the year--and therefore, during the session, when they come to grips with the department heads, who work full time, with the researchers and all the data, it's best that they be in session continuously every year so that they can be up on things rather than delaying one year and then they have a long way to go to catch up on all the data and in trying to deliberate. He pointed out that being up on top of things every year is important because of the complexity of government and the increased budget that is required now. Therefore, I think what the chairperson has recommended should be strongly advocated. Thank you.

CHAIRMAN: Thank you, Delegate Chung. Is there any other discussion on the motion? If not, may I recognize Delegate Cabral.

DELEGATE CABRAL: Thank you, Mr. Chairman. I would at this time like to respond to the query that was put to the floor by Delegate DiBianco, that the source of most of the speech you heard this afternoon emanated from the Hawaii Constitutional Convention Studies 1978 Article III: The Legislature (Volume I), put out by the Legislative Reference Bureau. I too perused that document and I've extracted the following data.

Arguments that have been presented pro and con, against and for biennial sessions include these--again, it's taken from the LRB publication, Hawaii Constitutional Convention Studies 1978 on the legislature. Proponents of biennial sessions argue that a biennial session would provide quality legislators and because they have the time, demands are not as great. That was the foremost favorable argument.

Second, that deliberations would be more in depth because there is more time between sessions to do a more effective job of studying issues and laws. Opponents of biennial sessions argue that the balance of power between the executive branch and the legislature is threatened in the biennial session.

Another secondary argument of opponents of the biennial session is that a biennial session is not responsive enough to changing problems--again, another redundant kind of argument. Of the states advocating a biennial system, there are at present eight states, and 42 with annual sessions. In more recent developments, Montana has just recently approved changing from an annual to a biennial session. But I think most significant is the fact that in addition to effecting efficiency, productivity and more meaningful deliberations, the pure cost savings of from \$2 to \$6 million every other year would be tantamount to diverting that kind of savings to more productive use within the State's structure--creation of jobs, effecting lower-cost housing, and so forth. These to me are the kind of returns the people ought to look to on their tax dollars.

So therefore I urge you to vote very favorably for this amendment. I think in order for the State of Hawaii to continue to be recognized as a leader in constitution reform, it's time we speak up and promote something different from what we are doing now. Thank you.

CHAIRMAN: Thank you, Delegate Cabral. Are you ready for the question? And I might repeat the change that was made on your copies, to remove "February" on the third line and reinsert "January." So the third line will now read, "...third Wednesday in January in odd-numbered years." All those in favor of the amendment raise your hands. Those opposed, same sign. The noes have it. The amendment is defeated.

DELEGATE IZU: Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: I rise to a point of personal privilege.

CHAIRMAN: State your point.

DELEGATE IZU: I appreciate the last speaker's answering the question for me but I believe that I did not tell him where I got my information, and I would appreciate it if he did not pass on that information to others.

CHAIRMAN: I think we're now ready to consider Amendment No. 6.

DELEGATE CROZIER: Mr. Chairman.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: I move for adoption of the amendment that you have numbered 6.

DELEGATE TAKITANI: I second it.

CHAIRMAN: It's been moved and seconded that Amendment No. 6 be adopted, regarding "Organization; Discipline; Rules; Procedure." Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman. I'd like to reserve the right to speak first and last and my 10-minute speech will be the last one. Basically, what this amendment does is to have each respective house drop down to only the committee of the whole. There would be no standing committees. The house would have a committee of the whole and the senate would have a committee of the whole.

Robert Kennedy has said, "Some men see things as they are and ask why. I dream of things that have never been and ask why not." Well, why not the committee of the whole? It is a tested, proven and respected tool in the legislature. There are more benefits in meeting in a committee of the whole, including increased visibility and credibility. Also, this amendment would streamline the lawmaking process and assure that class legislation got passed.

The area of our immediate concern is legislative credibility. A legislator loses credibility and public confidence each time he does not vote solely on the merits of the topic being debated, as it relates to the best interests of his constituents. A block vote demonstrates only that the legislator is willing to compromise the best interests of his constituents. Additionally, a block vote indicates that the legislator might not know the merits of the bill being debated.

The American College Dictionary defines "efficient" as "having, and using the requisite knowledge, skill and industry." So this amendment increases the efficiency of the legislature by encouraging the members to use their individual talents without fear of political backlash.

I would like to point out to each delegate that this Convention was supposed to be a people's Convention. Also, we have proposed several things which dramatically increase the leverage of our legislators. I would ask you all to adopt this proposal which brings the legislature closer to the people and assures proper visibility of the legislature's new powers.

Currently, powers in the legislature include:

- (1) The Committee chairmen have undue influence.
- (2) The legislators vote on confidence of the standing committee reports, not on actual individual knowledge of the topic matter.
- (3) Legislators are not totally accountable for their actions.
- (4) Legislators are not totally responsible for their votes.
- (5) Local communities are often separated from the process and unable to participate because of the formality of the legislature.
- (6) There is little freedom of action and little opportunity for bill enactments by individual legislators.

(7) Matters of paramount importance go to selected handfuls of people.

(8) There is no equality of votes because of in-house influences and considerations.

(9) There are over 6,300 pages of laws in our Hawaii Revised Statutes, including more than 4 million words. In addition, past legislatures have considered more than 3,000 bills and have been enacting some 200 acts of law each session. Is our past law that bad, that we have to make 200 more every session?

(10) Special interest groups can afford to lobby, while other special interest groups such as local communities and small districts cannot.

Similar results to what has happened in past legislatures could also have resulted if the legislature had been meeting in a committee of the whole. Then we could be doubly assured of quality legislation.

We are only trying to prevent legislative tampering and to insure and provide for quality lawmaking with maximum visibility and credibility.

When the people vote for a person, they are giving that person a vote of confidence, that when he makes laws, he will be doing so from the knowledge he has and from future knowledge he will pick up in research, public testimony and debate. He was not elected so that he could transfer that vote of confidence to someone else. This is what happens when there is a committee structure. Most of the research and public hearings are done by committees and those members not present must rely on the committee's report. How many of you have given a vote of confidence based on a report or have totally researched an issue? I say again, we are to vote based on knowledge, not on confidence. The other day, a major land-use change was made in this body and only two paragraphs in the committee report addressed this change.

Ladies and gentlemen, the committee system, although good in the business world, only stymies free and open debate in the most important job in our State--that is, law-making.

DELEGATE TAKITANI: Mr. Chairman.

CHAIRMAN: Delegate Takitani.

DELEGATE TAKITANI: I rise to speak in favor of this amendment. I feel this would allow each and every legislator to directly participate and listen to testimony presented to them. Each legislator could learn about the topic matter and make a decision which he himself could defend. Thus a constituent could be more assured of a knowledgeable decision on each issue by his representative.

I believe this would also help alleviate undue influence by committee chairmen. No bill would be introduced and then left to the discretion of the committee chairman. While there is recall of a bill from committee, the present system deems it an insult to the chairman instead of a privilege and right guaranteed by our State Constitution. Thus, legislators would be encouraged to work more closely together.

Lastly, I believe that this amendment would bring about a truer majority rule. True majority rule of the people can only be accomplished if each legislator becomes responsible to his constituency. Adherence to party principles would be a matter of philosophy, not convenience.

In closing, I would like to point out that the adoption or defeat of this proposal will prove that the committee of the whole can make major decisions instead of going through the standing committee. Thank you.

CHAIRMAN: Thank you, Delegate Takitani. Delegate Campbell.

DELEGATE CAMPBELL: Mr Chairman, I rise to speak in favor of the amendment. Because the house and senate have been, as the regular routine, appointing our legislators to sometimes as many as ten or more committees, we have found that as citizen's lobbyists have come to the legislature to share their knowledge, as specialists have come to the

legislature to share their expertise, they have often come upon empty halls. So the valuable information which is required in order for the legislature to make imperative decisions cannot be utilized. I think this is a failure of the system.

Secondly, I am appalled to find that very often those people who are actually assigned to chair committees in the house and the senate are not necessarily appointed because of their experience or their expertise, but purely on the basis of political considerations. At least for these two reasons, I speak in favor of this amendment.

CHAIRMAN: Thank you, Delegate Campbell.

DELEGATE SAKIMA: Mr. Chairman.

CHAIRMAN: Delegate Sakima.

DELEGATE SAKIMA: I speak against the amendment. I just pose a question: can you imagine how long it will take the legislature to get through?

CHAIRMAN: Thank you, Delegate Sakima. Delegate Sutton.

DELEGATE SUTTON: Mr. Chairman, I wish to speak briefly and echo all the other people who spoke for the amendment before me--in short, saying that first of all my experience in the legislature is that most of the issues there do get bottled up in committee. There are several committee chairmen that preclude the other representatives, especially in the house where they preclude 51 others by themselves. Currently, in the judiciary committee, one chairperson can be so strong as to keep areas such as the death penalty and other resolutions from being openly discussed.

A committee of the whole is something that we've seen as a truly basic democratic system. I urge you to support this amendment.

CHAIRMAN: Thank you, Delegate Sutton. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I also would like to support the amendment. When it was first suggested to me, I thought--oh, I don't know...but the more I thought about it, the better I liked the idea. And first of all, I'd like to congratulate Delegate Crozier who introduced this along with his two fellow delegates. It's a very hopeful sign that the young people of our community and our State can come forth with such creative, constructive suggestions. I hope that we do give it the very serious consideration that it deserves.

I think we're all aware of the fact--in spite of the fact that many of us have many interests and reasons that we ran for this Constitutional Convention, we've been able to act effectively on a real input basis on only two or three committees. Even though we might have proposals in other committees and ideas for other committees, if we're not a member of that committee, we have not been able to participate in the debate and in decisions that were made in that standing committee, within their report or in the committee proposal. Consequently, we have to spend an awful lot of time in the committee of the whole on our amendments to bring forth the ideas we had in these areas before the whole body.

I don't think it's a very democratic process that less than one-third of the membership of this body is going to make decisions that the whole body is supposed to adopt, and I have heard delegates tell me that "when in doubt, I don't think about it, I just adopt the committee report." That to me is a real copout. I think that all of us have an obligation to know exactly what is in every committee report, to be able to vote intelligently on the committee's recommendations. If a new idea has come out that was not discussed or that was buried in that committee, we should have the intelligence to decide that in this meeting.

Now, if 102 delegates can carry out committee of the whole meetings as effectively as I feel this Committee of the Whole has done, then certainly 51 delegates in the legislature--in the house--or 25 delegates in the senate should do a better job. To answer the question of how long it would take us, perhaps this would act as an informal break on the number of ideas that were introduced, which would, as a result, cut down the number of bills that were passed. As was pointed out by the introducer of this amendment, the number

of new laws that seems necessary for this State is entirely out of proportion to the number of people, the amount of money, or the problems that we face.

I'd also like to say that if there could be better legislation by having all the members of the legislature thoroughly debate all of the issues, then I think it might even be worth spending more time if necessary. There are many other reasons and I hope that, in the last 10 minutes, Delegate Crozier will go into them, but these are the things that have impressed me. I'm sure if all of you will examine your consciences and think seriously about the problem, you will see many, many advantages to this system--not bottling things up in committee, not giving undue power to a few elected representatives over the others, and giving the people a free and fair discussion of all the issues.

One other thing I would like to bring up is that the neighbor islands have a particularly hard problem when the legislature is in session because every proposal or bill is referred to a committee--it's going to go through two houses, which means two committees are going to deliberate on it, and this means added expense to anyone from a neighbor island who wants to come over and testify at the legislature. Most of the time we don't even know when these committee hearings are going to be held; you might be called in that morning for that afternoon and it wouldn't be possible to get over to even testify. I think this amendment has real merit and I do urge your consideration and recommend its adoption.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE NISHIMOTO: Mr. Chairman.

CHAIRMAN: Delegate Nishimoto.

DELEGATE NISHIMOTO: I rise to speak in opposition to this amendment. Looking back, over a month ago when the Convention was just beginning, most of us had four or five different committee meetings to attend, which consisted of informational meetings and hearings; I cannot conceive of any one delegate who would go through committee meetings and committee hearings on every issue to be brought before the Convention. I cannot see how all the time spent in these meetings--how many days and hours that would be spent at these meetings--would be profitable, as some of the other speakers have mentioned.

Our committee system is set up so as to make recommendations to the Committee of the Whole; I feel this is the only practical way to go about looking at legislation. We have gone through 800 or so proposals, and I cannot conceive of holding hearings on every proposal--800 proposals--before this whole body, yet being able to end determinations on the proposals at the set date. Therefore, Mr. Chairman, I would speak against this motion.

CHAIRMAN: Thank you, Delegate Nishimoto. Delegate Barr.

DELEGATE BARR: Yes, Mr. Chairman. I would like to rise and speak in favor of the motion. I think that time problems can be worked out, and the number of issues, of course, that would come before such a body would be fewer, no doubt, and that would probably be good. But there's one special advantage that I see in this proposal, and it's a problem that I have experienced here at the Convention. I am on several committees and I'm trying to do a number of things on those committees, but several other committees that I'm not on are involved in things that I'm very concerned about. The tendency, when we have committees, is to narrow our vision and we lose sight of the forest for the trees that we are amongst. It seems to me that the advantage of this committee of the whole concept is that all of the legislators would be exposed to all matters that come before the body, and there would be a tendency, I think, to improve perspectives and therefore make them more effective as legislators.

CHAIRMAN: Thank you, Delegate Barr. Delegate Cabral.

DELEGATE CABRAL: I speak in favor of the motion and I just ditto the words of my colleague next to me.

CHAIRMAN: Thank you, Delegate Cabral. If there are no further comments, may I call on Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman. I was going to answer the question that the delegate behind me asked, but it seems like the delegate over there answered it.

Mr. Chairman and convention delegates, you have heard the remark, "Back the chairman no matter what," and that is called unit rule. A lot of times the chairman is proposing a mediocre package and the group will back him because they are obligated to the unwritten rule of--you'd better back me or we'll cut you off. That is unit rule. The committee structure leads to unit rule. A leader is picked who can promise key leadership positions to his backers. After he becomes the leader, he fulfills his obligations to these backers by giving them those prizes--committee chairmanships. Thus he forms a pack amongst the power group. They are obligated to defend each other. If those committee prizes were not made available, then the leadership would not have undue leverage over the other legislators and the legislators then would not give up the slightest amount of this independence to get an influential spot because there are no influential positions available. Since there is no group to join, he will only gain strength by his statesmanship and, more importantly, from his constituents.

Committees are necessary in Congress where the U.S. House has over 385 members, which is too cumbersome. The 25-member state senate, which is smaller than our BORSE committee, is easily workable. The 51-member state house is not that large because they are all intelligent and highly motivated people. Presently in the legislature, the senate has 18 Democrats. There are 17 committees and one president. What is being done is that, for every majority senator, there will be a committee chairmanship. You see the obvious joke--if all 25 senators were from the majority party, you could end up with maybe a Committee on Diaper Service. More seriously, the more committees there are, the more spread out the members will be. Less members will be sitting at the committee's public hearings; at present sometimes there is only the chairman and vice-chairman taking testimony.

You have seen what has happened here because of scheduling. How many of you have grumbled about not getting to public hearings and decision-making because of conflicting scheduling. The same thing happens across the street. When a legislator misses a public hearing, even though written testimony is supplied, the member cannot really get into the issues because he is not there to hear the questions and answer them. He does not ask questions. So he cheats the person giving the testimony and he also cheats himself. Right now we have plenty of laws. We don't need many more. We probably could go five years without changing any laws and not be drastically hurt. What we need now is high-quality laws. If fewer laws came out each year, our government would be more stable; our different departments and agencies could go about their work knowing that the programs they have developed will not be changed, because right now when so many laws are being pumped out every session, one must be directed toward them. The argument that nothing would be done is wrong. What would happen is, less laws would be made--and hurrah for that.

Mr. Chairman, I humbly ask that neither a roll-call vote nor a division of the house be taken, so that each delegate can vote his conscience.

CHAIRMAN: Thank you, Delegate Crozier. I believe you asked that they not be taken? The question before the body is on Amendment No. 6. All those in favor of the amendment, please raise your hands. All those opposed to the amendment, raise your hands. The noes have it, but I must compliment Delegate Crozier in almost doing it. Mr. Clerk, may I have the tally--31 ayes and 45 noes.

DELEGATE TAKITANI: Mr. Chairman.

CHAIRMAN: Delegate Takitani.

DELEGATE TAKITANI: Point of personal privilege. I'd just like to note that the Panasonic Movement is on the rise.

DELEGATE HALE: Mr Chairman, personal privilege. I don't think I'll be around for the 1988 convention, but I sure hope that Delegate Crozier is.

CHAIRMAN: I also would like to comment on covering in one hour as many proposals as we did all yesterday afternoon. May I offer my compliments and thanks to the delegates

here. We now are taking up Amendment No. 7, also on "Organization; Discipline; Rules; Procedure." And may I recognize Delegate Chu.

DELEGATE CHU: Mr. Chairman, I would like to offer an amendment to Committee Proposal No. 8, amending Article III, Section 13, and the entire amendment is in written form before every delegate. I move for its adoption.

CHAIRMAN: Do I hear a second to the motion?

DELEGATE HALE: I second it.

CHAIRMAN: It has been moved and seconded. Delegate Chu, will you speak to your motion.

DELEGATE CHU: Yes, Mr. Chairman. I believe that all of you will agree with me that legislative process belongs to all people of the State. It is where the crossroads of the people of Hawaii meet, and I think we are fortunate that this State has a government that is accessible to the public and open. However, there is no question that it is not beyond criticism in its procedures and inadvertent last-minute passages of certain measures.

The legislature writes the laws and the Constitution governs the work of the legislature. I hope that we, as the writers and proposers of constitutional amendments, will be mindful of guaranteeing that the legislative process allow maximum open participation by citizens in electing legislative members. My amendment contains various points to that end.

First, at the end of the first paragraph in Section 13, in regard to the journal that is to be kept by each house, I have deleted the words "at the desire of one-fifth of the members present," and added the requirement that a record be included of all committee decision-making sessions, floor actions and all matters arising during public hearings. This would guarantee responsible, open action within the committee. And one can always go back to the journal to find out in the committee's deliberations how many votes went this way and how many that way, and what considerations were given to a particular measure. The ayes and noes would be automatically entered in the journal, with no required one-fifth vote of the members present.

Next--and let me just say that the third paragraph should be underlined as this is new constitutional material--the third paragraph, dealing with committee meetings, and the fourth paragraph, which expands on the third, these basically require that conference committees, decision-making committee meetings and public hearings all be open to the public. Including this in the Constitution will assure that these will always be open to the public. However, the phrase "absent a compelling reason to close the hearing" takes into consideration situations when the legislature would truly want a meeting to be closed. The legislature, I believe, has subpoena power and may at times, after investigating certain matters, at their behest, want information that may invade a person's privacy or be defamatory to public officials or to a private individual. This would guarantee that the courts would not misinterpret the section on open hearings and committee meetings, and would allow, in certain situations, that a meeting be closed.

Now, the next to the last sentence in this paragraph states: "Each house shall adopt uniform rules for such hearings and shall provide for seventy-two hours advance notice to the public for each such public hearing." The "uniform rules" referred to here only relate to the rules governing public hearings, not all rules; the present constitutional language in the first paragraph allows each house to adopt its own rules. But for public hearings, there would be the requirement of uniform rules and also a 72-hour advance notice to the public, the reason being that three days' notice would allow the public sufficient time to prepare well-thought-out testimony and to arrange for persons interested in a particular measure to appear before the legislative committee.

The last sentence in this paragraph states: "No law shall be passed by the legislature unless the substance of the law has had public hearing." This, of course, guarantees that everything would be heard and the public allowed to react to that particular measure. As I previously indicated, there is no question that there has been criticism of last-minute passages of measures, where the public has not had sufficient or adequate

input or adequate time for comment. This would guarantee some public input before any measure could be passed. This is where the public can effect governmental matters in the legislature, and I hope that the legislature will remain as open as possible. Since the legislature makes the laws, the Constitution governs the work of the legislature; so I hope that we as delegates will be mindful of and attempt to put into the Constitution the right of the people to participate fully in the legislative process.

CHAIRMAN: Thank you, Delegate Chu. Any other discussion? Delegate Odanaka.

DELEGATE ODANAKA: Mr. Chairman, I would like to speak in favor of this amendment. This amendment seems to be a compromise between the previous amendment and the present Constitution. The problem seems to be how to keep these meetings open. This amendment provides for open meetings and therefore I feel this would be beneficial to both the legislature and the public.

CHAIRMAN: Thank you, Delegate Odanaka. Delegate Barr.

DELEGATE BARR: Yes, Mr. Chairman. I would like to speak very, very briefly in favor of the amendment. Actually, what I'm impressed most with is that last sentence: "No law shall be passed by the legislature unless the substance of the law has had public hearing." It has been, in the past, a source of distress to the people of this State that laws--things get tacked on bills during conference committees that weren't discussed by the public or open to public input. That seems to be a very, very important provision.

CHAIRMAN: Thank you, Delegate Barr.

DELEGATE NISHIMOTO: Mr. Chairman.

CHAIRMAN: Delegate Nishimoto.

DELEGATE NISHIMOTO: I rise to speak against the amendment. As to the language contained in paragraph 1 of Section 13, the new language is unnecessary. A record of all committee decision-making sessions is already provided for by the state legislature. The legislative standing committees are required to submit a committee report on bills which they recommend for passage and since this recommendation is determined in the decision-making session, the committee report would reflect what occurred in these meetings and the signatures of the committee members would indicate their position or the position they took on each bill.

As to the floor record of floor actions, this is already kept in the legislative journals. Each house of the legislature keeps an official record of its proceedings and the journal contains statements prepared by the clerks and their staff which reflect all actions taken by the respective bodies.

As to the public hearings, this is already provided for by the rule of one of the two respective bodies. For example, in House Rule 11.4, the chairman of each standing committee must keep a record of public hearings and file these records with the state archives as soon as practicable after each session.

The language referring to open meetings on page 8 of Standing Committee Report No. 46, I feel, is superior, and therefore I do not think this section should be adopted. As to the language that states no law shall be passed by the legislature "unless the substance of the law has had public hearing," this is already provided for in the rules of one of the two houses. House Rule 11.9, subsection 4, provides that no bill or resolution "other than a congratulatory resolution shall be reported out of a standing committee unless it shall have received a public hearing in the House." Now the senate rules do not specifically state that a hearing is required on all bills, but Senate Rule 22, subsection 1, requires that all bills be given "diligent inquiry," which is defined to mean that a public hearing should be held for each bill.

Now as to the 72-hour-notice provision, both the house and the senate rules presently provide for notice of 24 hours before every public hearing, and it is my feeling that 48 hours is enough and that 72 hours would be in excess of what is really necessary. Thank you.

CHAIRMAN: Thank you, Delegate Nishimoto. Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I'd like to speak very briefly in favor of this amendment on two counts. First of all, I think many citizen lobbyists have had the unfortunate experience of wanting very desperately to know where a particular committee hearing is being held and, by virtue of experience, know that in the last portion of the session, very often committee matters become hurried and harried, sometimes with only a few hours' notice--sometimes perhaps only 30 or 40 minutes--as to where a particular committee is going to meet. Public notices of where these hearings are going to be are not always posted as they should be and as a result--sometimes at 2:00 or 3:00 in the morning, when these things are occurring--no one is very readily able to find out where and when they are occurring. For this reason, I think that portion of the amendment which requires 72 hours' advance notice is very significant.

Secondly, I would like to observe that rules are rules. Rules, although they do exist in each house, may be changed. Rules may not be changed if they are established in a Constitution. Furthermore, the rules as they exist do not have any sanctions or penalties for violations and therefore can be disobeyed without any sanctions being imposed.

Also, I would finally like to state that we have had the unfortunate experience of witnessing piggybacking, which I think is about the worst kind of expression of legislative action there is, and this rule, I believe, will obviate such a result. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Campbell. If there is no further discussion, Delegate Chu, do you wish to speak last?

DELEGATE CHU: I would just like to say that in the first paragraph my amendment intended to address a journal record being kept of individual decisions made within the committee, not what might be embodied as a committee report. This would reflect whether there was one vote for a particular measure or it was six or seven votes short of a majority of the committee, and I think it is important to guarantee to the people that the legislative process be open. The rules, I am aware, in the house do already provide that the substance of a law must have had a public hearing. However, I feel that the rule in the senate that the substance of the law be given "diligent inquiry" is not enough because who is to say whether or not a particular measure has been given this diligent inquiry. One can sit down and read it for 10 minutes and that may be considered diligent inquiry. I agree with Delegate Campbell, and I appreciate her remarks, in that rules may be changed and I think that it is important, as I said before, that the legislature makes the laws, but who governs the legislature? I think it's absolutely important that it be in the Constitution.

CHAIRMAN: Thank you, Delegate Chu. We are now ready for the question. All those in favor of adopting Amendment No. 7 please raise your hands. All those opposed, same sign. The noes have it and the amendment has failed to carry.

We're now up to Amendment No. 8. Delegate Yamashita--but first the Chair would like to call a short recess if there are no objections.

At 3:08 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:12 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. We now have under consideration Amendment No. 8 and I would like to recognize Delegate Yamashita.

DELEGATE YAMASHITA: Mr. Chairman, I move to amend Committee Proposal No. 8 with the amendment as submitted, which reads: "Not more than four members shall be elected from any senatorial district and only one member shall be elected from any representative district."

DELEGATE BARR: I second it.

CHAIRMAN: The motion has been made and seconded as written in Amendment No. 8. Delegate Yamashita, would you like to speak to your motion.

DELEGATE YAMASHITA: Yes, I would. May I reserve the right to speak first and last, please?

CHAIRMAN: Granted.

DELEGATE YAMASHITA: Thank you. During various public hearings--I'll try to be as brief as possible so no one falls asleep on me--during the various public hearings on unicameralism, the lack of accountability and accessibility of our legislature was a major concern. One of the major arguments expressed during these committee hearings was that bicameralism, even with its problems, was best for Hawaii, and that to dump the present system completely for something entirely different didn't seem very rational. I concurred in this argument and perhaps joined most of you yesterday in killing unicameralism. However, I believe it is my obligation to look at the present system and sincerely try to make it better and address the problems of accountability and accessibility.

I think my amendment, single-member districts in the house--I think the question is quality communication between the representative and his constituents. When thinking about this amendment, I tried to grasp how much they can handle in terms of constituents. I have talked to senators and representatives who have boasted about walking door to door and shaking hands with every single registered voter in their district, and they do that until they're blue in the face. But I question whether that's really the kind of communication we want. The population of the State is very small relative to the size of the legislature, and I think it would be rather foolish for us not to take advantage of this very unique situation. I envision breaking down our districts to the point where every representative could really know everyone in his district--if not by name, at least by face.

Basically, my amendment is an attempt to return to the concept of 1776, where everyone went to the town hall to vote, everyone knew everyone else, and they voted for their representative because they knew the fellow: they had grown up with him, they knew he was respectable, they knew he was honest and those are the reasons they voted for the person--not because he was particularly good-looking or because he ran a successful mass-media campaign. I think most of us here at the Con Con enjoyed coming from smaller districts and campaigning in smaller districts.

The second reason I think this amendment would be good is the fact of money. I feel that single-member districts--obviously because they are smaller districts--will de-emphasize the importance of money in a campaign. I'm not saying that money is not important anymore, just that this will de-emphasize its importance in a campaign. My office put together some statistics on campaign spending in multimember districts versus single-member districts and average cost differences in spending.

In 1974, the winners spent an average of \$3,142.00 in multimember districts, compared with \$1,821.00 in single-member districts. In 1976, it was \$3,289.00 compared with \$1,988.00 in single-member districts. In comparing the winners, the greatest amount spent in the primary election in 1976 in single-member districts was \$11,059.00, and in multimember districts, \$21,969.00. In the general election, in single-member districts it was \$3,178.00 compared with \$10,132.00 in multimember districts.

My question to you is--in a multimember district the winner who polled highest spent \$31,000 to get elected and to me, at least in my pocketbook, that is almost inconceivable. I also feel that single-member districts, or smaller districts, would include grass-roots campaigning. My office interviewed Charles Toguchi, a Democrat from the 23rd district, who beat out Republican George Clark. Toguchi said his campaign stressed grass-roots efforts. He said he spent less than \$100 on mass media. Every dollar that he got went into grass-roots organizing. Campaign-expenditure records show that Toguchi spent a total of \$4,000 roughly to incumbent George Clark's \$6,000. In an interview with Representative Toguchi on August 17, 1978, he brought to light some interesting observations about single-member districts. He said he is more accessible because he lives in the heart of the district and is, therefore, more visible as well.

I feel that this would also lead to accountability, because incumbents who stay in office stay because they kept in touch with their people, not because they ran again with a mass-media campaign. The most durable legislator from a single-member district is Representative Jack Suwa of the 1st district on the Big Island. When interviewed on August 2, 1978, Representative Suwa stated that factors in his durability included a need to present

himself as accessible to his constituents. He would need to be accountable since no buck-passing could occur as he is the only legislator from that district, and being part of the majority, of course, for all practical purposes, he has been able to deliver on target for his district. Representative Suwa also felt that he needed to campaign just as hard to maintain the kind of legislator-to-constituent relationship which exemplifies accessibility. He also indicated that if he were to do a bad job for his district, it would be easier to remove him and, therefore, the pressure to excel was enhanced.

In terms of money--de-emphasizing money in a campaign--I think a lot of us here, running from smaller districts, probably wouldn't be here if the district was much larger and demanded other methods of campaigning. My office also put together a poll of public opinion on single-member districts; the question was political awareness in single-member versus multimember districts. In multimember districts, 26.5 percent of the constituents knew their representatives; in single-member districts, 33.3 percent knew their representatives. So there is a slightly higher percentage in single-member districts and I think that, if nothing else, this might be an indication that maybe the whole system is wrong or maybe nothing's wrong--I don't know.

Also, 4.7 percent of the multimember district contacted their representatives, compared with 20.8 percent in single-member districts--that's 4.7 compared with 20.8. In multimember districts 58.8 percent felt their representatives were accessible, and in single-member districts, 100 percent felt that their representative was accessible.

On the other question, 65.7 percent wanted single-member or smaller districts, compared with 24.3 percent who wanted larger, multimember districts. I think this is an indication at least that the public indeed does want smaller districts. I know what's going to come out is, we're going to try to adjust the mechanics of reapportionment. I've asked the experts and they say that it can be done. There are problems, however--such as districting. There's a problem, in single-member districts, of breaking up communities, and I feel even in multimember districts you have that problem; for example, in District 24, where you have Waimanalo and Kailua spread out; or other districts--Waianae and Ewa for example, included in one district, are actually socially and economically very different. So this thing always happens--that problem happens, even in multimember districts.

The other problem is frequency of reapportionment. I know by supreme court ruling, we must reapportion every 10 years and I say, why not every five years? I see no problem in that.

Another one is provincialism and I feel that that's why I voted for a bicameral legislature. The house should be very provincial, very small districts, close to the people, and the senate should be big, statewide in orientation; I think that's the theory and the concept of a bicameral legislature.

I think the question today that we have to address is--what do we want to emphasize or focus on? Do we want to make money and convenience priorities? or, do we want to focus on and make very clear accountability and accessibility. I think the issue today is, not the mechanics of reapportionment of our State--I think what we're trying to address here, or what I'm trying to address here, is a discovery or outline, of some political and social values of our community.

I am 22 years old, and I look around in Hawaii and see a very big society. I go to the University of Hawaii, and basically it's a diploma factory. You walk into class, you hear your prof and you walk out. You don't talk to anybody. You drive down the freeway, the great big freeway, and you just want to get on and get off. You read in the newspaper about multinational corporations buying out big portions of Waikiki--

CHAIRMAN: Delegate Yamashita, I'm afraid you're about a minute over.

DELEGATE YAMASHITA: Mr. Chairman, I need just 30 seconds more.

CHAIRMAN: All right.

DELEGATE YAMASHITA: And of course we're faced with a huge government which is incomprehensible at times. You talk about the aloha spirit declining--and I hear it

all the time--and I question if maybe it's not the people, maybe it's the bigness of our system. My amendment is a very small contribution to try to make people and quality communication a priority, not just numbers and mass communication. Thank you.

CHAIRMAN: Thank you, Delegate Yamashita. The Chair would like to call a very short administrative recess at this time.

At 3:31 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:32 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

DELEGATE BARR: Mr. Chairman.

CHAIRMAN: Delegate Barr.

DELEGATE BARR: Your delegate from Makawao would like to call to your attention that Minority Report No. 8, that was given to the delegates yesterday, relates to the matter at hand insofar as we are talking about single-member districts in the house of representatives. I am aware that all my fellow delegates have read Minority Report No. 8 and have brought it with them today but, begging their indulgence, I would like to highlight a couple of the points that are in this report.

We have mentioned many times that the single-member district, being smaller, would be cheaper in campaigning. There are two major reasons for this. One, the value of the media is less in a small campaign. An islandwide newspaper doesn't offer much in a very small district. Islandwide or statewide television is a bad buy when you're dealing with 5,000 or 10,000 voters, rather than 60,000 or 70,000 as the present larger districts contain.

Secondly, a newcomer, or a relatively unknown person, has more opportunity, because of the fewer numbers, to raise the money it takes and to put forth personally and through an organization the kind of effort it takes to communicate with enough voters in his district to become known and to offer himself or herself an opportunity to compete against the incumbent, or the better known candidate.

Of course, it is also easier for a voter to keep track of a single representative, as opposed to more, at least two or more, of them in the same district; and this would, of course, make the ballot shorter, which is itself an advantage to the voter in deciding. I submit that the single-member district also will improve the two-party system. I have heard so much lip service among not only the delegates but others, that we would like to do something about the two-party system. This is something concrete we can do, because it offers a party organization the opportunity to work at putting together a majority coalition in the small district, to try to get a representative elected.

Multimember districts, I would like to call to the delegates' attention, have been used in other states--and I submit they are very subtly used this way in this State--as a form of gerrymandering, as a way of making sure that one particular socioeconomic or ethnic group dominates in the selection of the two or more members. While there has been no case in our courts here in Hawaii to demonstrate the truth of that, there have been in other states--the last one was in Alabama last year--where it was demonstrated that multimember districts were used to discriminate against blacks. There is more detail on that in the minority report.

I would like to address myself to a couple of the more common arguments that I have heard against single-member districts from my colleagues here at the Convention and one is that it is harder for a newcomer to beat an incumbent. Obviously the turnover of incumbents involves a large number of factors and the size of the district is only one. I could make no great claim that in making single-member districts, you will automatically make an incumbent member vulnerable. A good legislator quite likely tends to win reelection and that's fine and that's the way it should be; but as a matter of fact, if the legislator is weak, if he is vulnerable, if he is out of touch with his voters, the fact that there are fewer voters to deal with increases the opportunity for that newcomer, that new candidate, to convince enough voters to make the turnover.

Also, I have heard that women would have a disadvantage if we had single-member districts. I have never found any evidence of that--I think it's an assertion not based on any facts--but part of the problem is that there are so many cultural factors that have discouraged women from participating in the political process until relatively recently, that I could not offer you any reliable statistical evidence to demonstrate one way or the other. This was noted in the minority report, and I think it significant that there were 40 women elected to this Constitutional Convention and that 16 of them led their districts. They were not second, they did not get in because it was a multimember district, they led their districts and, as a matter of fact, in 6 of those 16, the second-place delegate was also a woman and, surprisingly enough, in three of those cases the third-place candidate, the first loser, was also a woman. Of course, it can rightly be noted that there were not many incumbents in the races, but I've already dealt with that matter. There are other factors that make an incumbent very strong.

Finally, I would like to look at the question of provincialism. This has been identified by some of my colleagues as harmful in single-member districts. I would like to divide this into two separate areas because it seems to involve two separate ideas, to the extent that it was a supposed harm. One of those is that there would be something narrow in the perspective--in the point of view--of a person from a single-member district. I submit that if you look at the culture of this State and the kind of relationships that we have, there is no reason whatsoever, to expect that your delegate from Makawao, for example, would be any more narrow in his perspective than your delegate from Wailuku, because as a matter of fact the very character of Maui requires that virtually everyone there regularly goes to the central area of business, of culture, of government on our Island. I think if you look at Oahu you see a very similar thing, that a large number of the people here regularly go downtown, go to Waikiki, are exposed to a wide range of cultures, of perspectives, of ideas, of attitudes, of beliefs, and in fact would have no less perspective than they would if from a small district versus a large district.

I admit to you that sometimes we country people, when we come to town--because we're afraid of all the people and the cars, and because we play on the elevators and the escalators--it may sometimes seem that our perspective is distorted; but again, as long as we're going to have the basic island units represented in the house of representatives, there would be no difference from it being Maui at large versus a small district on Maui. It would be no different in Hawaii at large versus a small district, or smaller district, on Hawaii. And the new single-member districts might offer us the opportunity to give Molokai and Lanai some representation that they don't have as effectively as they might.

The other area of provincialism I have heard discussed relates to having narrow interests, that a representative from a small district would require, in order to be elected or reelected--it would require that he push the narrow focuses of his district as compared to a representative from a larger area. I submit to you that that is not in fact a harm at all, that is a good. In my own representative district, for example, those representatives--fine men they are--are from a large city, Kahului--well, for us that's large--and the up-country people--in Kula for example, where there's a water problem, in Keanae where there's a water problem, in Hana where there's a water problem, in Kihei where there's a highway problem and so on--tend to be neglected. Yes, their problems are addressed, but the representatives do not have as great an interest in pushing those projects forward because normally they continue to be elected by the voters in Kahului. So that would be a good, not a bad, to have 51 different perspectives merged together into one multi-decision-making body in the house of representatives. I urge you to please support this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Barr.

DELEGATE OKAMURA: Mr. Chairman.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: I share many of the concerns that have been expressed by the introducer of this amendment. However, I do not feel that single-member districting is the answer and I therefore reluctantly speak against the amendment. Hawaii currently has a mixed system of apportionment, with some multimember and some single-member districts. This kind of setup is traditional to Hawaii, going back to the territorial period under the Organic Act, and I think that it has worked well.

The 1968 constitutional convention considered the apportionment system in Hawaii at great length and came out in favor of preserving the mixed system of single- and multi-member districts. The Committee on Legislative Apportionment and Districting actually had a single-member district plan drawn up for discussion purposes. After analyzing this plan, the committee rejected the creation of exclusively single-member districts because it found that no meaningful apportionment could result therefrom in Hawaii, at least in urban areas. The committee cited three main reasons for this conclusion: (1) Single-member districting unduly disrupts and divides areas where people have a substantial community of interest; in urban areas, such districting often breaks homogeneous socioeconomic enclaves that would be better represented on a multimember district basis. (2) The single-member districting system results in irrational district lines; small single-member districts in urban areas lead to a "crazy quilt" apportionment that is more open to the abuses of gerrymandering. (3) Single-member districts, especially in areas where population is changing rapidly, are subject to violent shifts in their district boundary lines at each apportionment. Such violent shifts in district lines detract from the stability desired in Hawaii's political process.

The committee also found that in certain sparsely populated rural areas, single-member districts were more desirable in order to keep such districts from becoming too large and unwieldy. Overall, there are definite demographic and other practical considerations that point to the conclusion that Hawaii is best served by a flexible, mixed system which includes both single- and multimember districts. On a more theoretical level, the single-member district concept has a certain attractiveness, in that a single representative is said to be more visible and more directly accountable to the district. On the other hand, such a representative, coming from a smaller district and more closely tied to a smaller group of people, is much more likely to have a parochial view on legislative matters. A representative from such a smaller single-member district is likely to be less competent and less qualified than he or she would have to be to win in a larger district.

In the larger multimember district, a representative has to have a wider appeal and a broader knowledge of the issues. Single-representative districts would create more problems in the area of the CIP, which is currently being abused in the legislature. In the multimember district, the heterogeneity of any particular area can be expressed. There is more than one point of access into the political process for people within that district. If a particular group is alienated from a particular representative, they have an alternative recourse through their other representatives. An example is Manoa Valley, currently being represented by three distinct representatives--Neil Abercrombie, Charles Ushijima and Republican Hiram Fong. They tend to speak for different groups in this highly heterogeneous community. Either of them alone would alienate a significant portion of the population.

Contrary to the minority report before us, I think that the two-party system is stronger under multimember districting. There would be even fewer Republicans than there are now in the legislature if each had to be the top vote-getter of his single-member district. A good example of this would be in an area such as the Big Island, where there is a multimember district for the senate with three at-large senators; the Big Island has consistently sent a Republican to the state senate. If we had single-member districts, I doubt if a single Republican would be elected. Also contrary to the minority report, I think that minority groups are better represented under the multimember system. The analogy to blacks in the South does not hold here; single-member districts only benefit minorities in highly segregated communities such as those found in many Southern cities where each ethnic area has its own political district. In more heterogeneous, integrated communities such as Honolulu, the multimember system leads to better representation for minorities in each area.

Finally, small single-member urban districts tend to make it easier for single incumbents to perpetuate their tenure. Historically we have seen that machine politics often arise in small urban wards. Previous speakers have brought out the fact that a lot of women have been elected to the Con Con. I don't think the Con Con can be used as a justifiable example, mainly on the basis that there were hardly any incumbents running and we had no general election. There were instances in which a dozen to 20 candidates were running. I would also like to point out that no woman has ever been elected from the five single-member districts in Hawaii.

Mr. Chairman, there are both practical and theoretical reasons for which to reject

the introduction of a strict single-member districting plan for the Hawaii legislature. I urge you to vote down this amendment.

CHAIRMAN: Thank you, Delegate Okamura.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: This is an issue on which I've had mixed feelings for a long time. My general feeling has been that I was against single-member districts; I won't go into the reasons, but I would like to speak for this amendment. I'd like to say that what convinced me was the speech by the introducer of the amendment and his research on the amounts of money spent in single-member districts and in multimember districts. It's a concern of mine and I have found that it is a great concern of many of the people in this Convention and in the bill of rights committee. We are recommending public financing for this reason--the cost of elections. His arguments for the costs and for responsibility have convinced me to be for this.

And incidentally, as far as the Big Island is concerned, the reason we have two Republicans--two Democrats and one Republican in the senate is that in the last election, the Democratic party made a deal with the Republican party and they didn't even put up three people for us to vote for. This time we will have and perhaps we will be able to keep the Republican home.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I also rise to speak in favor of the motion, primarily for the same reason as Delegate Hale. Cost, I think, is the most important factor here. It has reached the point, I think, in our legislative races that only those who are politically knowledgeable or are incumbents can raise sufficient money to carry on the kind of race that we see more and more in this State--\$10,000, \$15,000, \$20,000--it's getting beyond the reach of the average person to offer himself or herself for office. The only other person who can therefore run is a person who may not be politically knowledgeable but who is rich and can dip into his or her own resources in order to finance a campaign. So the rich, incumbents and the politically knowledgeable are the only ones that seem to be able to offer themselves; whereas those who are truly grass roots and are well intentioned and would like to get into politics and do their share seem to have a lot of difficulty doing so because I think it's discouraging to know before you start out in a political race that you're going to need \$15,000 just for a house seat, just to run for a house seat.

The single-member district, I think, contrary to one of the previous speeches, probably would be less easy to gerrymander than the multimember district. It's harder to wrap a smaller district around the barrier up a mountain or down a creek, and I think that the greater responsiveness of that particular legislator to his immediate neighborhood is something we really ought to look for. When you consider that in a single-member district in this State right now, we'd probably only have about 6,000 registered voters--right now a multimember or two-member district has about 10,000 to 12,000 registered voters and so a single-member district would have about 6,000--when you consider that about 50 years ago in this country 6,000 registered voters was all it took to make up a congressional district, I don't think we can say that a person coming from a community of 6,000 registered voters represents a very narrow, provincial view, or a small view of life when that was the number of votes it used to take to achieve a national office in this country. So I would urge the adoption of this motion.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Miller.

DELEGATE MILLER: Mr. Chairman, I would like to amend this amendment, the portion on not more than one member "shall be elected from any...district," by adding "two members from any senatorial district."

CHAIRMAN: I think I know what you mean. Did you mean to have it read: "Not more than two members shall be elected from any senatorial district...?"

DELEGATE MILLER: That's it.

CHAIRMAN: That would be, in the first line, changing the word "four" to "two."

DELEGATE MILLER: No, I meant this as an addition, "and two members from any senatorial district."

CHAIRMAN: The senatorial district is covered in the first part of the amendment.

DELEGATE MILLER: All right, since there are two in front of us, I'll accept that. "Not more than two members...from any senatorial district." I move for its adoption.

DELEGATE HALE: I second it.

CHAIRMAN: It has been moved and seconded that Amendment No. 8 be further amended by inserting the word "two" in place of the word "four" in the first line of the amendment.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco, I was going to allow this-- Is this a point of order?

DELEGATE DiBIANCO: I guess it is. It's a motion that I think would supersede this. I move that we divide this question and vote first on the question of one-member districts for representatives, and then take up the matter of senatorial districts. I think most of the debate so far has had to do with the representative districts and I don't want to cloud the issue and I don't think the other delegates do either. I would therefore move that we divide the question and handle the matters separately.

CHAIRMAN: Any objection to that motion?

DELEGATE UYEHARA: Mr. Chairman, I believe he is out of order because there's a motion on the floor right now.

CHAIRMAN: I think the motion is in order to divide and since there's an actual division there, I think I'll accept that motion. Is there a second to the motion? No second is required. All those in favor say aye. Opposed? Motion is carried.

We will now continue consideration of the second portion of the amendment, the portion on "only one member shall be elected from any representative district." Is there any further comment? Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman. I'd like to speak in favor of the motion. The smaller the group the representative comes from, the more accessible and accountable he is to his constituents. Just for that alone, I support the amendment.

CHAIRMAN: Thank you, Delegate Crozier.

DELEGATE NISHIMOTO: Mr. Chairman.

CHAIRMAN: Delegate Nishimoto.

DELEGATE NISHIMOTO: I rise to speak against the amendment. I speak in opposition to single-member districting for the following reasons. First, a single-member district may adversely affect the public by reducing the number of representatives per district to one; this causes a problem for individuals who have difficulty relating to a particular representative, for whatever reason. With multimember districts, there exists at least one other legislator to whom a constituent may express his desires and concerns.

Second, single-member districting tends to discourage minority parties and groups from being elected. This is a result of a strong incumbency and partisan interests which generally work to the disadvantage of newer smaller groups. In this respect, it is much more reasonable to permit an active multiparty concept to be reflected in district representation.

My third reason for opposing single-member districting is the problem of cultural

and socioeconomic groups being submerged in larger community segments as a result of arbitrary district divisions. The problem with dividing the districts into small parcels is particularly acute in the State of Hawaii, where ethnic, socioeconomic and other factors are extremely important to the people who are affected by such divisioning. Districting must be based upon statistical data and cannot possibly be accountable for these subjective values, which are really in the hearts and minds of the voters. For one small portion of a particular group to be cut off and placed within another larger constituency diminishes the minority group's significance as an active participant in the district political process.

Fourth, while it is arguable that single-member districts promote closer ties between the legislator and his constituents, it has been found that such close ties tend to place a kind of pressure upon the legislator which lessens his independence in performing. This type of close dependence is undesirable since it may lead to concerns with local issues while ignoring the broader issues facing the State. Dependence upon constituency pressure may also lead to excessive interest groups and political party influences on the legislator. Multimember districting necessitates responsiveness to a much larger constituency, as well as the actions and reflections of other district representatives.

Finally, the opportunities for partisan gerrymandering are greater in single-member districts than in multimember ones. It is much easier to be objective when planning for a large district that encompasses a wide and diverse range of social groups, as opposed to the numerous possibilities from manipulation that come from divisions of smaller sections in the same area. For these reasons, Mr. Chairman, I speak against this amendment.

CHAIRMAN: Thank you, Delegate Nishimoto.

DELEGATE TAMAYORI: Mr. Chairman.

CHAIRMAN: Delegate Tamayori.

DELEGATE TAMAYORI: I rise to speak against the amendment now before us. The most common characteristic of many "good government" reformists has been their addiction to the single-cause, single-cure formula: if we change this or adopt that, all problems will be solved. Another characteristic is their persistent belief that politics and government in Hawaii are dominated by a power-monopoly whose sole purpose is self-preservation at any cost.

The intent is, I believe, to oversimplify matters in an effort to reinforce the anger, frustration and alienation of the voter. I resent this. I believe that as a delegate, I have a responsibility not only to thoughtfully review the Constitution and recommend changes if needed, but also to encourage trust and faith in our system and in our leaders through the promotion and maintenance of reason, substance and fairness in what we do here at the Convention.

To accuse anyone, by implication, of gerrymandering or of discriminating against any minority group is totally irresponsible. I believe our legislature should and does display a broad diversity of membership that reflects to a large degree the big and small interest groups within this State. I believe that our membership has a wide rather than narrow range of ages and backgrounds that reflect both the commercial and professional. Our membership as it is now has connections with and commitments to the various ethnic, ideological, political and economic groups within the State.

Hawaii's multimember representation now provides each of us the option to choose our representative based on our own personal criteria of what and who is an effective representative or statesman. Besides, two or more members could more effectively respond to the needs of both the community and the State.

As evidenced by those seeking political office in this body alone, our present system provides more than ample encouragement to newcomers to the political scene. Single-member districts will not ensure shorter ballots; the Con Con elections are one example. Moreover, intelligent choices depend on each candidate's willingness to run an intelligent campaign on intelligent issues.

I urge you to vote against this amendment.

CHAIRMAN: Thank you, Delegate Tamayori. If there are no further comments, Delegate Yamashita, do you wish to speak again to your motion?

DELEGATE YAMASHITA: Yes, I would. I'd like to be very brief in my statement. One of the questions brought up was in terms of the problem of identifying with your representative. An example that was given was the Ushijima-Fong-Abercrombie representation, and my question is, what are we trying to emphasize here? What I've been hearing throughout this Convention is, majority rules; if someone is elected, I think that he should represent the whole group and not just those that elected him to office. I think this is an attitude that we've got to get to our representatives, that they do represent everyone. And that does not preclude someone from going to some representative in the legislature that does. He can't "identify" with him.

The second fact that was brought up was the turnover rate and that the incumbent would become very very strong and you could not remove him. My office came out with some statistics and this is a comparison rate of change of representatives in single- and multimember districts. Factors analyzed through microfilms of news articles and through interviews are listed. Only two election periods were addressed, '70-'72 and '74-'76. This is the reapportionment after public approval of a constitutional amendment in 1968, which remained unchanged through 1972, and another reapportionment by the 1973 reapportionment commission which remains unchanged until today.

In 1970-1972 there were five single-member districts and there was a turnover in District 5, Kona-South Kohala; the turnover rate was 20 percent. In multimember districts, in districts 7, 9, 13, 14, 20 and 24, there was a turnover rate of 11 percent. So what you have is turnover rates of 20 percent and 11 percent; therefore, statistically in 1970-72, there was a higher turnover rate in single-member districts.

In 1974-1976, again in single-member districts, the turnover rate in District 23 again was 20 percent. That same year the turnover rate in multimember districts 2, 5, 6, 7, 9, 12, 15, 17, 21 and 22 was 22 percent. So what I am concluding here, by my statistics, is that, saying the incumbent in a single-member district could become so entrenched in the office that he could not be removed is purely opinionated--I'm not saying that it's true and I'm not saying that it's not true, I'm just saying that my statistics say otherwise.

My final point is in the terms of the socioeconomic diversity of our State, in terms of splitting up communities. I think that area was brought up before and I would like to reiterate that Kailua and Waimanalo are presently split up and also in multimember districts; and Ewa and Waianae, which again are socially and economically very different, are split up. So the problem is always going to arise; I don't think that is a valid reason, but again I'd like to say that what we are addressing here is, we can talk about the mechanics of reapportionment until we're blue in the face but I think that the question we're dealing with is--what kind of a Hawaii do we want? What direction do we want to push it in? Bigness, like the rest of the world, and the United States? Or, do we want to keep it special and keep it small and very personal? I think this is a very small step toward that goal. Thank you.

DELEGATE EASTVOLD: Point of information, Mr. Chairman. I was going to ask the gentleman that was just speaking--did he say that Waimanalo was split up into a multimember district?

DELEGATE YAMASHITA: Yes, Waimanalo and Kailua.

DELEGATE EASTVOLD: I hate to change that, but I come from Waimanalo and the Kailua area and it is a single-member district.

DELEGATE YAMASHITA: I'm sorry, it's Kailua-Kaneohe.

CHAIRMAN: Thank you, Delegate Eastvold. We are now voting on the divided amendment which, if the other portion should not pass, would read, "...only one member shall be elected from any representative district." Is that understood?

DELEGATE BLEAN: Mr. Chairman, I feel this is very important and I'd like to call for a roll-call vote, please.

CHAIRMAN: Those in favor of a roll-call vote? We need 10 seconds. Roll-call vote is ordered.

DELEGATE DiBIANCO: Point of privilege, Mr. Chairman. Could we have the sergeant-at-arms try to locate the absent delegates for the vote since there are at least 20 missing.

DELEGATE HALE: Mr. Chairman, I move for a recess.

CHAIRMAN: We'll have a short administrative recess.

At 4:08 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:13 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The Chair finds that locating absent members is not required as long as we have a quorum, and since it obviously takes quite a bit of time, it will not be done again in this session. We are now ready to vote on the section of Amendment No. 8 which--in case the first section is not accepted--would read, "...only one member shall be elected from any representative district." Mr. Clerk, will you call the roll.

Roll call having been ordered, the motion failed to carry by a vote of 36 ayes, 52 noes and 14 excused; with Delegates Alcon, Anae, Barnes, Barr, Blake, Blean, Burgess, Cabral, Chu, Crozier, DiBianco, Dyer, Eastvold, Fernandes Salling, Funakoshi, Goodenow, Hale, Harris, Hoe, Hornick, Dennis Ihara, Kimball, Kono, Lacy, Rachel Lee, Liu, Marumoto, Miller, Odanaka, O'Toole, Peterson, Sutton, Takitani, Uyehara, Yamashita and Chairman McCall voting aye; Delegates Barnard, Campbell, Chang, Calvin Ching, Donald Ching, Chong, Chung, de Costa, Fukunaga, Fushikoshi, Hagino, Hamilton, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hokama, Les Ihara, Teruo Ihara, Ikeda, Iwamoto, Izu, Kaapu, Kaito, Kojima, Ledward, Marion Lee, Lewis, Nakamura, Nishimoto, Okamura, Penebacker, Pulham, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Sterling, Stone, Taira, Takahashi, Takehara, Takemoto, Tam, Tamayori, Villaverde, Waihee and Yoshimura voting no; and Delegates Andrews, Laura Ching, Haunani Ching, Chun, De Soto, Ellis, Fujimoto, Hanaïke, Ishikawa, Nozaki, Ontai, Paty, Weatherwax and Wurdeman being excused.

CHAIRMAN: That section of Amendment No. 8 is defeated. Now we have the first section of the same amendment, by Delegate Miller, which reads: "Not more than two members shall be elected from any senatorial district...." Delegate Miller.

DELEGATE MILLER: Mr. Chairman, very briefly because we've heard a great deal to back up this two-member senatorial district in connection with the other two amendments-- We talk about accountability and the goal of one man, one vote. It would seem that if the senatorial districts were smaller, we would be working toward that goal. There are eight senatorial districts, four of them very, very large. I live in one with 60,000 voters and the others are commensurate. These are the 4th, 5th, 6th and 7th districts.

I won't go into costs because you're all aware of postage costs, media costs and so on. Participation on the part of the officeholders in meetings--community meetings, association meetings and so on--is a real headache I'm sure--if, as in some cases, done at all. When you talk to the constituents as to who their senators are in a 60,000-voter situation, they know some but most of them sure don't know all four. We hear that the senate has the purpose of statewide outlook, but I submit that in these districts we have a good cross representation, both rural and sophisticated city. For we have Wahiawa, Waianae, Waipahu, we have Honolulu, we have Hawaii-Kai, Niu, Aina Haina, etc., so I'm sure that an all-around viewpoint would be adopted.

So for these reasons I think that a two-man senatorial district would be a big improvement on what we have now. Finally, I have consulted with some of the neighbor island people who are not involved in a four-man district, and they're not that much worried about the whole situation. In other words, it's moot with them.

CHAIRMAN: Thank you, Delegate Miller.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I speak for the amendment because I think it would be a definite asset for my Island, which is very large in size but not large in people. Two-thirds of our people live in east Hawaii, and about one-third in west Hawaii. We have three senators, all of whom come from the area of Hilo. At one time west Hawaii did have its own senator, and I think this amendment probably would allow that and it would be a good thing.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE SHON: Mr. Chairman.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: I speak in favor of this. I do not believe in single-member districts but I think that there is a distinction between the number of representatives one has, or senators, and the size of the district. I think the most positive aspect in reducing the number of senators from four to two is, not the reduction in the number of senators but the reduction in the size of the district. If I had my way, the representative districts would be the size of the Con Con districts, with two members in each. So I hope that you would all consider that the effect of this amendment--really, the primary effect--is to reduce the size of some of the larger districts. Thank you.

CHAIRMAN: Thank you, Delegate Shon. If there is no further--

DELEGATE WAIHEE: Mr. Chairman.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: I would speak against the amendment if we were--the reason I speak against it is because I'm in favor of staggering the senate terms; if we did stagger the senate terms and had no more than two members elected from any senatorial district, then in effect we would have single-member senatorial districts. For those reasons I would speak against it. If we stagger the terms under the present setup, we would in effect be implementing this amendment by having two people run at the same time.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: Yes, I would just add a note, that if we pass this amendment, we could deal with the staggering of terms in a subsequent amendment.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: I speak against the motion. I'm not going to repeat my concerns here, I don't want to reiterate what I already said. However, I'd like to respond to what Delegate Hale said about the Big Island; in effect, what would happen is that two senators would be elected from the Hilo area and one senator from the rest of the Island, and the rest of the Island includes a lot of the residents in east Hawaii, who would really have nothing in common with that senator from west Hawaii.

CHAIRMAN: Thank you, Delegate Okamura.

DELEGATE NISHIMOTO: Mr. Chairman.

CHAIRMAN: Delegate Nishimoto.

DELEGATE NISHIMOTO: I speak against this amendment. I would not like to repeat the comments I made earlier, but I'd like to note several things. First is that the committee proposal, on page 11, item 7, reads: "Not more than four members shall be elected from any district." This does not preclude a single-member or a two-member district. It just says not more than four members from any district.

And I'd also like to note that Standing Committee Report No. 46 urges the reapportionment commission to consider smaller, multimember districts and to consider four-member districts only when it is impractical to do otherwise. Therefore, they will be looking into smaller-member districts whenever the reapportionment commission meets.

CHAIRMAN: Thank you, Delegate Nishimoto.

DELEGATE PULHAM: Mr. Chairman.

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: I would rise to briefly correct the delegate in his assumption that he knows what the situation is on the Big Island, in which, I would say from some experience, he is not correct, and I did not want to leave that impression with the delegates. I'm not speaking for or against that, I'm just correcting a misrepresentation. Thank you.

DELEGATE LES IHARA: Mr. Chairman.

CHAIRMAN: Delegate Ihara.

DELEGATE LES IHARA: Point of parliamentary inquiry. First of all I'm not going to object to this amendment to the amendment, but I don't believe that it is an amendment to the amendment. It should have been in writing and submitted to this body. I think now that we have it I don't mind considering it, but it is not amending what it was originally intended to amend, and therefore, technically, I think it's out of order.

CHAIRMAN: The Chair rules that it is in order.

DELEGATE LES IHARA: Mr. Chairman, I'm not asking for a decision by the Chair. I just want to point that out so that next time I will make that point.

CHAIRMAN: Delegate Miller.

DELEGATE MILLER: Thank you, Mr. Chairman. I think that the help that would be given in senatorial districts, if the vote is favorable, far outweighs the concept of staggered terms. I'd also like to call for a roll-call vote.

CHAIRMAN: There is a request for a roll-call vote on the amendment to the amendment. Are there 10 in favor of a roll-call vote? There will be no roll-call vote. Are we ready for the question? If so, all those in favor of the amendment to the amendment--which proposes that not more than two members be elected from any senatorial district--all those in favor of the amendment to the amendment, please raise your hands. All those opposed please raise your hands. The noes have it. The amendment is defeated.

We now return to the original amendment, which reads: "Not more than four members shall be elected from any senatorial district...."

DELEGATE O'TOOLE: Mr. Chairman.

CHAIRMAN: Delegate O'Toole.

DELEGATE O'TOOLE: Point of information. Since we've discarded the second half of this amendment, the first half is the same as what is currently in the Constitution right now, as well as in the committee report.

CHAIRMAN: The Chair calls a short administrative recess.

At 4:30 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:31 p.m.

CHAIRMAN: There is a one-word difference: as far as I can see, the word "senatorial" has been inserted. So we are voting on an amendment on senatorial districts,

that the word "senatorial" be included. If there is no discussion, all those in favor of the amendment, please raise your hands--we are voting on the amendment that says, "Not more than four members shall be elected from any senatorial district." Any other questions? If not, all those in favor of the amendment, raise your hands. All those opposed? The noes have it and the amendment has been defeated.

DELEGATE BARR: Mr. Chairman.

CHAIRMAN: Delegate Barr.

DELEGATE BARR: Your delegate from the provinces would like to--since he is aware that the sense of the body is clear--withdraw Amendment No. 9 at this time.

CHAIRMAN: Thank you, Delegate Barr. We're now considering Amendment No. 10, which is rather lengthy, and I refer to Delegate Chong.

DELEGATE CHONG: I move that we adopt this amendment to the committee proposal.

CHAIRMAN: Is there a second to the motion?

DELEGATE NISHIMOTO: I second the motion.

CHAIRMAN: It has been moved and seconded. Do you wish to speak to your motion, Delegate Chong?

DELEGATE CHONG: Yes, thank you. The purpose of this amendment is to provide for: (1) placement of holdover senators, and (2) reinstatement of staggered terms for the senate. This amendment is made necessary because Committee Proposal No. 8 overlooked the possibility of a senator, upon reapportionment, being dislocated from the district in which the senator was originally elected. In such a situation, this amendment would provide that the senator need not live in the senatorial district which the senator was designated as representing, during the remainder of the term that extends past the general election at which the reapportionment plan becomes effective--because of the possibility of relocation of senators into different districts, upon reapportionment, which may result in upsetting the staggered terms of senators within a district.

The amendment also provides for a mechanism to reinstate the staggered terms of the senate. There is also an amendment to the amendment, on page 6 of this amendment--it all falls in line actually. The first sentence of the second paragraph on page 6 of this amendment would be amended to read: "If, in the first or second general election in which senators are elected after a reapportionment, the number of senators in a senatorial district whose terms would end on a date of a general election will be more than that set forth in the above paragraph, then at such general election the members of the senate shall be divided into two classes." What happened was that in the committee, we deferred a section upon legal opinion and this is the legal opinion that we need to insert in there. It's just a housekeeping matter.

CHAIRMAN: If there are no objections to the change--the Chair calls a short recess.

At 4:35 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:40 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Chong, you finished speaking on the matter, I believe. If so, is there any discussion?

DELEGATE NISHIMOTO: Mr. Chairman.

CHAIRMAN: Delegate Nishimoto.

DELEGATE NISHIMOTO: I rise to speak in favor of this amendment. The committee failed to place in the proposal any provision for holdover senators, which would come about when reapportionment is effected by the reapportionment commission, and therefore, this amendment would provide for placement of these holdover senators. Thank you.

CHAIRMAN: The Chair had a question, and I imagine that this also could be on someone else's mind. May I say what I think is meant--that in case a district was reappor- tioned in the middle of a senator's term, which would in effect disenfranchise that senator because he would be living in another district, it would not take effect until he finished his term.

DELEGATE NISHIMOTO: The districting would take effect, it's just that the senator would then be living outside of his area but would be representing that other area.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Mr. Chairman, I think this is the only opportunity I am going to have to speak against the staggered terms because I don't see any other amendment offering to keep the same system that we have here. Although I realize that this amendment probably was not put in here to address that particular problem--it's kind of a housekeeping amendment, as was said-- I'm speaking against the amendment.

CHAIRMAN: Delegate Hale, I'm going to hold you to a very short statement.

DELEGATE HALE: All right, my very short statement is that I was advised by a member of the former constitutional convention, whose judgment I respect very much, that it was put into the Constitution that all the senators would have their terms expire at the same time so that if the senate did not do a good job, the public could get rid of the rascals all at one time. I think that's a good idea, and therefore I am against staggered terms.

CHAIRMAN: Thank you.

DELEGATE HALE: And therefore I have to vote against this in order to vote against staggered terms.

CHAIRMAN: Thank you, Delegate Hale. Is there any other discussion? If not, we'll proceed with the question. All those in favor of Amendment No. 10, please raise your right hands. All those opposed, same sign. The amendment is carried. Consideration of amendment--

DELEGATE PULHAM: Mr. Chairman, point of information. Was that "as amended"?

CHAIRMAN: Excuse me?

DELEGATE PULHAM: Should that have "as amended"?

CHAIRMAN: I believe we accepted the amendment to the amendment, since no one had any objections.

DELEGATE PULHAM: Okay, as long as we did include it.

CHAIRMAN: We're now proceeding to Amendment No. 11, and the Chair recognizes Delegate Chong.

DELEGATE CHONG: Thank you. Mr. Chairman, again this--may I move to adopt this Amendment No. 11 to Committee Proposal No. 8.

CHAIRMAN: Is there a second to the motion?

DELEGATE HOKAMA: I second the motion.

DELEGATE CHONG: Again, this is only a housekeeping measure. Thank you.

CHAIRMAN: Any discussion? If not, the question--all those in favor of Amend- ment No. 11, raise your hands. Opposed, same sign. The amendment is carried.

We'll now proceed to Amendment No. 12, entitled "1978 Senatorial Elections." Delegate O'Toole.

DELEGATE O'TOOLE: Yes, I move to amend Article XVI, Section 2, with the following, and I don't really want to go into it in detail. It's right in front of us so--basically, the concept is that staggered terms would begin in 1982, and not 1978.

CHAIRMAN: Is there a second to the motion?

DELEGATE HALE: I second it.

CHAIRMAN: It has been moved and seconded. Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, I rise to speak in favor of the amendment. I want to make it clear that I am in complete support of staggered terms for the senate. However, this change in procedure should start in 1982 rather than 1978, for the following reasons:

First, it is equitable and fair to begin staggered terms in 1982. To change the term of an elective office after the filing deadline and during the middle of the campaign, which the committee proposes to do with about half of the senate seats, by cutting them to 2 years, is fundamentally unfair. Candidates would be faced with a new condition which didn't exist when they decided to run. In our multimember districts this is critical because it would give incumbents, many of whom are running, an extra added advantage over newcomers and minority candidates--in many instances women. Incumbents already have the advantages of voter familiarity, easy access to news media and an established support organization. Most newcomers don't have the resources to offset these advantages, which would help incumbents finish high in vote-getting. Therefore, the officeholders are likely to win the longer 4-year terms, which this proposition gives to the highest vote-getters. Money, as we know, plays a big role in politics. Those who win short-term seats would have to consider fund-raising fairly soon if they expect to run again in 2 years for a full-term senate seat. Those most likely to have to raise money would be the newcomers, and consequently it would be hard for them to raise the money.

If 1982 is set as the year to change the senate to staggered terms, everyone will be put on reasonable notice and can analyze the problems and prospects of running for office, knowing that the rules of the game won't be changed after it begins.

Second, precedent is only precedent, not a mandate. We need to remember that if staggered senate terms are made effective in 1978, the date of implementation will be exactly the same as the date this proposition is voted up or down by the electorate. I am aware that this kind of early change has happened before, and that as a matter of fact we are doing something similar with respect to the board of education this year--and I have some reservations about that. While our action on the board is mildly relevant to the senate's staggered-term question, as are earlier examples of such date changes, relevance and precedent need to be kept in check. They are guides only, and not the equivalent of Mosaic Law. If there is a better way to do something, is one obliged to follow the old way just because it exists? Do we have to honor prior instances of questionable judgment by repeating them?

Third, keep political factors in perspective. Making this change effective in 1978 would probably result in less-than-inspiring political scrambling and accommodation because of the limited time situation. This would occur in 1982 as well, but it would be to a lesser degree because political games are always easier to play when uncertainty is involved and the logistics of change are being worked out. The people of Hawaii are entitled to have significant changes such as this brought about in a rational, measured manner, at a pace that neither stampedes nor wearies, nor brings with it the baggage of political expediency.

In conclusion, we now have the option of establishing a reasonable future date to introduce staggered terms for the state senate. If we adopt this amendment, we will serve the causes of fairness to senatorial candidates and duty to our constituents, who deserve responsibly administered political change.

I therefore ask for your support in passing this amendment. Thank you.

CHAIRMAN: Thank you, Delegate O'Toole.

DELEGATE CHONG: Mr. Chairman.

CHAIRMAN: Delegate Chong.

DELEGATE CHONG: I rise to speak in favor of this amendment. I too am in favor of staggered terms; however, I would like to see it begin in 1982 out of complete fairness to those who turned in their filing papers on August 8th. I realize that we have no legal grounds to do this. Precedent was set in 1968--the council ran then, twice--I believe some of the senate ran twice also, in 1968. The mayor's race, I realize, was in contention at one time too. However, led by the statesman senator--now delegate here--a resolution was passed to allow the mayor again to run a 4-year term instead of cutting back on a 2-year term. My whole point here is that if a person has campaigned for a 4-year term, then he should be allowed to serve it. In 1982--they will have had notice by then that when they run then, it will be for a 2-year term or a 4-year term; but on August 8th when they turned in their papers, they had no idea that some would be serving a 2-year term, and I just don't think it's fair. Thank you.

CHAIRMAN: Thank you, Delegate Chong.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I also speak in favor of the motion. I would like to caution the delegates not to think that just because once or twice before in Hawaii's history, this type of thing--where people have run for office and have been elected and have been told after they were elected that instead of getting a 4-year term they're only getting a 3-year term--that just because this occurred in Hawaii's past means that somehow it is legal or it is not subject to constitutional attack. In my humble opinion, it is subject to constitutional attack because you are denying the right of suffrage to the electorate who elect those people to 4-year terms. When the people go into the voting booth in November, the ballot is going to say that they are electing these people to 4-year terms--they think that they are voting for these people for 4-year terms, the people who are running assume that they are running for 4-year terms--and I would imagine that in our present age you are going to see a court challenge if you do put in this "1978 Senatorial Elections" section recommended by the legislative committee. I think it's only proper that we put off staggered terms until 1982. I was very disappointed, in reading over the standing committee report, to note that they do not address themselves at all to the question of the constitutionality of what they're intending to do by having the staggered terms take effect in 1978. No reason was given for the rush--as a matter of fact, why we're choosing 1978 over 1982 wasn't discussed at all--and therefore I can only assume that it wasn't properly considered in the legislative committee. I think that now that we have it here on the floor before the Committee of the Whole, we do understand that there may be some problems. If we genuinely want to stagger the terms for senators, and I certainly do, I urge you to vote in this amendment, because otherwise all the work we do in trying to put staggered terms in effect may be for naught, and some federal district court may rule this entire matter unconstitutional. We will have wasted our time. Thank you.

CHAIRMAN: Thank you, Delegate DiBianco.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: I've been advised that perhaps I ought not to speak on this subject because it's something that is very close to me personally. However, I feel that the work of the legislative committee has been challenged. I want to tell all the members of the Convention here that the legislative committee did take up this matter, and I think just about every point that has been raised on the floor up to now was discussed; and the majority of the committee members felt that this should be put in place and put in place immediately.

It kind of makes me wonder, you know--we hear arguments about reform as far as this Convention is concerned...but, unicameralism has been turned down...now the only other thing we can do in this article, as far as reform is concerned--besides some other matters which we have already taken care of--is the matter of staggering the senate. The so-called proponents of reform are now standing up and saying, "I'm all for motherhood, but let's put it off for four years." Why? If you are for motherhood, why put it off for four years? Sure, some people are going to be shocked because they're going to come

in second, or third, or fourth and not get their 4-year term. But I just want to remind everyone here today that all the candidates running for the senate have a crack at a 4-year term. No one is denied that--all he has to do is lead the ticket.

Now what are the compelling reasons for putting it off for 4 years if we really believe in the staggering of terms? Because some candidate called you up and said, "Look, it affects me, why don't you hold it off." All the arguments that you're raising otherwise, besides the personal arguments, will hold true in 1982, just as they hold true today. If there are going to be any problems, they're going to come up in 1982 just as surely as in 1978.

Now, let me point out one other practical factor to the members of this Convention which was never brought up in the deliberations of the committee. Just imagine a 25-member senate, serving from 1979 to 1982, knowing that they're all going to be up for reelection in 1982--and I'm not even considering the reapportionment which comes in 1981 and would be effective in the 1982 election--can you imagine the kind of games that would be going on? Because, you know, four of us running from one particular district--we're going to be out there cutting each other up in the coming election. If we're going to stagger the terms, this is the time to do it. No damage can come about, legislatively, because the sessions are all over, and we're running in the election. Some have said, "Donald, you're doing it out of spite. It happened to you in 1968." No way. In 1968, sure I had a short term, I ran again in 1970 and it didn't affect me at all. In fact, just between you and me, it helped--it helped to solidify my position in my senatorial district, which is so large that it is not easy to run in. And frankly, running every two years helped me.

That's the message I want to give. Those of you who have gotten calls from candidates--and I know you've gotten calls because I've gotten calls--"Ching, you've got to have your head examined. You know you're cutting your own throat." If there is one item I'm going to be objective about, it is this item--and I plead with the members of this Convention--if you're really going to go for the concept of staggered terms, now is the time to do it. There's no better time than 1978. Motives--I've been asked this--I have no motives. I think it's right.

CHAIRMAN: Thank you, Delegate Ching.

DELEGATE OKAMURA: Mr. Chairman.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: I rise to speak against the amendment. The committee overwhelmingly voted for staggered terms and this was because it was felt that staggered terms would make the senate a much more responsible body, and if so, this will benefit the voters. So, very briefly I would like to say that having this begin with the 1978 election will inconvenience 13 individuals while benefiting all the voters of Hawaii. Thank you.

CHAIRMAN: Thank you, Delegate Okamura. Is there any other discussion?

DELEGATE KIMBALL: Mr. Chairman.

CHAIRMAN: Delegate Kimball.

DELEGATE KIMBALL: I rise to speak in favor of the amendment. As a member of the legislative committee and one who voted favorably for staggered terms, and as a person who originally believed its implementation date should be 1978, I have changed my mind and, I would like to point out, for the following reasons.

First, I had originally thought, as Delegate Okamura did, that it would only affect 13 people. But it doesn't affect only 13 people, it affects those 13 and the thousands of people who voted for them, and the people who financially supported them outside of their districts. So if we take 13 senators times, say, an average of 8,000 votes per senator, you have close to 100,000 people who will be affected by this implementation.

The second reason I believe it should be implemented in 1982 is because implementation in 1978 could affect adoption by the people of the concept of staggered terms. If I

were a candidate for the senate and I had originally signed up for a four-year term, and I knew there was a chance that I would have only a 2-year term, I would certainly consider hard about campaigning against this particular concept of staggered terms.

Also, one other reason I would like to point out is that it may be a "motherhood" issue and I am for motherhood but I'm also for family planning. Thank you.

CHAIRMAN: Thank you, Delegate Kimball. Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, just a brief rejoinder to the comment that was just made by the previous speaker. If I were running for the senate, I would have neither the time nor the audacity to come in and argue against the staggering of senate terms. You know, that would just about cinch my not going back to the senate.

CHAIRMAN: Thank you, Delegate Ching. If there are no further comments--

DELEGATE CABRAL: Mr. Chairman.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: I would speak in favor of the amendment and remind all the delegates here that if all of you voted for the more strict standards of the ethics codes for elected officials and viewed it as being a furtherance toward bringing about fairness in government, then I say that you should consider very seriously the application of the majority committee's proposal with thoughts of fairness. I believe this amendment puts it in that light, it does present a very fair viewpoint and I ask that you support it favorably. Thank you.

CHAIRMAN: Thank you, Delegate Cabral. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment. I feel that if we're going to go with the concept of staggered terms, then we ought to do it now, and that this Convention ought to be up and above any kind of politics existing around us, and we ought to, if we're going to go with this concept, implement it now when people are running and don't have an opportunity to play with their offices to insure their further election. It seems to me that all the problems pointed out that would occur in 1978 would also happen in 1982. There will be newcomers then running for short terms, there would be money being expended, and I really cannot see the difference. I don't think that we should put our obligations to this State in order to protect--we need to weigh the public interests against the interests of the people who are running, and I think the public should come out ahead.

DELEGATE BLAKE: Mr. Chairman.

CHAIRMAN: Delegate Blake.

DELEGATE BLAKE: Thank you, Mr. Chairman. For quite some time we've been speaking about--I mean, not we--the people have been speaking about the term of office for senators and that all of them will be out this year and be coming up for reelection, and I will agree with my friend on the far side there who mentioned, if you're going to shoot for it, you'll have to shoot for it this year because it's not going to hurt anyone. The way it's listed, the highest vote-getter will be given the 4-year term. I came down to this Convention to try to settle this move here, and I'm speaking against the amendment.

CHAIRMAN: Thank you, Delegate Blake.

DELEGATE VILLAVERDE: Mr. Chairman.

CHAIRMAN: Delegate Villaverde.

DELEGATE VILLAVERDE: I too would like to voice my opinion in this area regarding this particular amendment; I would like to speak against this amendment. I was very deeply involved in the committee action regarding this area of staggered terms,

and you know for those who are not on the committee, I can assure you that this was a bold move on the part of the mover for this particular 1978 effective date of this amendment to the Constitution.

You know, the press, for what it is, has been very very diligent and has been sometimes over-covering a lot of the activities of the Convention. I'm sure now the candidates who are running for the senate have been aware, for the last several days, that this particular thing was forthcoming, and I'm sure this is showing in their campaigns, to vie for the number one spot. I'm sure that now we have fairness and now we have them going back to the people and making their positions known because this is forthcoming, and we're going to have a type of campaign that is going to be very interesting and very hard fought. And for this reason I'd like to have the other delegates also consider this particular amendment on the table and vote it down. Thank you.

CHAIRMAN: Thank you, Delegate Villaverde. Delegate Hale.

DELEGATE HALE: I think I can be objective because I suppose I'm one of the few who doesn't think this is a "motherhood" issue. I really don't think that the people are that concerned about the issue of staggering senate terms and therefore I spoke previously against it. But this is a matter of making a decision of the majority that you have decided you wanted, and I think it's really presumptuous of this Convention to say that just because you're going to put this on the ballot, it is going to happen. Remember that every proposal put on the ballot has to be ratified by the public in this coming election, and if the public feels there has been unfairness, I think the public is wise enough to know what to do. I foresee that many amendments in this election will be voted down by the people. In 1968 only one amendment was voted down but it could be that this time many amendments will be voted down by the people; to presume that just because you are putting it on the ballot the people are going to adopt it, I think, is really overbearing.

I would also like to say that I have had no pressure from anyone to be for or against this, but I have heard rumors that some people who are running for the senate feel that perhaps they might not make it this time, and if you put it into effect this time they would be able to run in 2 years rather than in 4 years. Maybe that is some kind of pressure going on. I don't know, frankly, but it seems to me that what is fair is fair and that you don't change the rules in the middle of the game, and that's what you're doing here.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE PETERSON: Mr. Chairman.

CHAIRMAN: Delegate Peterson.

DELEGATE PETERSON: Thank you very much. Originally I didn't have--several delegates have stated much interest one way or the other on this subject, but I object quite strongly to some of the rationale which has been proposed on this amendment. One of the delegates said this would only inconvenience 13 people, and I think another has said to let the public interests come first. We've made quite a point in this Convention on "sunshine"--openness, proper disclosure, ethics, things of this nature. I think it's very improper to change the term of office after the time for filing. It is my understanding that the law will not permit a candidate to withdraw now, except for illness certified by a physician, and I think for us to trample on individual rights for the pleasure of the majority is certainly unfair and does not do justice to others, as delegates to this Constitutional Convention. Therefore, I urge that we vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Peterson.

DELEGATE BARR: Mr. Chairman, point of parliamentary inquiry.

CHAIRMAN: Delegate Barr, state your point.

DELEGATE BARR: In view of the fact that this entire amendment is underlined, my question is--is it appropriate for us to talk only about 1982 versus 1978, or is it also appropriate for us to talk about staggered terms?

CHAIRMAN: I think it is only appropriate to talk about 1982 versus 1978 even though all of it is underlined. I do not believe the words vary from those of the original proposal.

DELEGATE O'TOOLE: Mr. Chairman.

CHAIRMAN: Delegate O'Toole.

DELEGATE O'TOOLE: I'd like to clarify that. The only reason all of the information is underlined is because it is all new constitutional material. The only thing that differs from the committee proposal is the year, the difference in the year.

CHAIRMAN: Thank you.

DELEGATE PULHAM: Mr. Chairman.

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: Thank you. I have been sitting and listening to all this comment, as rightly I should, and as a member of that committee therefore it's the second time around. But I would just like to say that in our deliberations we are going to make arbitrary decisions in some areas--there's no way we can avoid it. If the staggered terms is a valid concern, if we are in favor of it, I would tend to agree that we are not going to hurt any more people, any larger number--candidates, citizens, whatever--in 1978 than we are in 1982. And, based on some of the testimony, we may in fact create chaos between 1978 and 1982 by putting it off and allowing it to become a political football on the floor of the legislature.

I am in favor of staggered terms, which I think are of definite benefit to the public, just as are many other items coming forthwith in this Convention, and we just have to decide when we are going to do these things. I find no valid reason we should not do it in 1978 because, as someone said, the people are going to have to vote on this, and these people running were well aware that there was a constitutional convention in progress. I did not see those people trying to help us in our deliberations previously, but it is my experience that there is a great deal of political pressure, both party and individual, being exerted on this Convention now, and I very much object to that not only in this area but in all other areas of our deliberations. And I think that if we are for the concept--if it is good for the people--then let's do it now.

Thank you. I'm speaking against this amendment.

CHAIRMAN: Thank you, Delegate Pulham.

DELEGATE OKAMURA: Mr. Chairman.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: I rise to speak against the amendment once again. I'd just like to remind the delegates that we recently passed the education proposal and in the report--the candidates for the board of education run for 4-year terms--and in the report, we specifically stated that the candidates who will be running in 1978 will serve only 2-year terms in order to implement the representation from Kauai and Maui, again for the benefit of the voters, and I think we should be consistent. Therefore, I oppose this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Okamura. Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman. Just a point of information--Delegate Okamura just stole my discussion.

CHAIRMAN: Delegate Lacy.

DELEGATE LACY: With difficulty, I'm going to have to speak in favor of the amendment, but I wanted to correct the last two speakers. It is not the same problem at all, I think, that the delegate who has had experience in the legislature has explained to us, which I appreciate. I've been listening to the arguments but, since we brought the board of education into this, it's not the same because of the legal position taken by the courts to so specify the conditions that we exist under at the present time; so we are trying to correct it and we wanted to correct it at the earliest possible time. And that was the reason--as I understood it--that the education committee did as it did. I don't think it necessarily has anything whatsoever to do with this problem right now.

CHAIRMAN: Thank you, Delegate Lacy.

DELEGATE CABRAL: Mr. Chairman.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: I rise to speak a second time in favor of the amendment. I would remind the delegation that the year 1981 is a reapportionment year and it seems most logical that we should effect the change of staggered terms following the findings of the reapportionment commission in 1981. Additionally I offer the following point of consideration: even if the majority committee proposal were to be passed by this body, it's very possible that it could go into litigation and it still may not become effective in 1978, or then possibly it could still go in effect in 1982. Thank you.

CHAIRMAN: Thank you, Delegate Cabral. If there are no further--

DELEGATE DiBIANCO: Excuse me, Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: Just one point I wanted to clarify based on what the previous speaker just said. It's my opinion that if this was declared unconstitutional because there was some problem of denying the suffrage of the electors--of those people who voted for the senators in 1978--I don't think any federal court would have the right to say, all right, we will make this effective for 1982. If they strike this down, they strike it down, and we lose staggered terms completely. That's why I urge you to accept the amendment and put off staggered terms until 1982.

CHAIRMAN: Thank you, Delegate DiBianco.

DELEGATE NISHIMOTO: Mr. Chairman.

CHAIRMAN: Delegate Nishimoto.

DELEGATE NISHIMOTO: I rise to speak against the motion. Several speakers before me have spoken about the legal matter of this amendment. The attorney general's office has informed me that it has no written opinion on this matter and also that it feels that there are no constitutional hang-ups in instituting this concept of staggered terms in 1978.

CHAIRMAN: Thank you, Delegate Nishimoto.

DELEGATE VILLAVERDE: Mr. Chairman.

CHAIRMAN: Delegate Villaverde.

DELEGATE VILLAVERDE: For the second and last time, I think every so often we get this kind of strategy about scare tactics. I feel that we should be bold and we are being bold right now--

DELEGATE DiBIANCO: Point of order.

CHAIRMAN: Delegate DiBianco, state your point.

DELEGATE DiBIANCO: That remark is entirely out of order. That's attributing an improper motive to a delegate. I thought we decided that nobody could make comments like that--especially Delegate Villaverde, who's always rising to points of order on other people.

CHAIRMAN: Accepted.

DELEGATE O'TOOLE: Mr. Chairman.

CHAIRMAN: Delegate O'Toole.

DELEGATE O'TOOLE: I wanted to respond to a couple of the comments that were

made. As far as what the delegate there was talking about--everyone having the same chance to finish first--it's like saying that every horse has an equal chance of winning the Kentucky Derby. As far as public interest is concerned, that is the reason, specifically, that I introduced this amendment, because if staggered terms are effective in 1978, what will happen is that incumbents will have the big advantage. What I want to see is everyone having the same advantage, the incumbent to stand on his record and the newcomer to challenge that record.

Also, as far as, let's say, specific candidates calling members of this Convention, I think you have to remember that some of these candidates will be benefited if staggered terms come up in 1978 and others will not. So unless the candidate really knows that he's going to finish fourth, or might not finish at all, these are the ones who would be concerned. But to some candidates it would be a big advantage if they finished first or second.

CHAIRMAN: Thank you, Delegate O'Toole. I think we're ready for the question. All those in favor--

DELEGATE CABRAL: Mr. Chairman, I move for a roll-call vote.

CHAIRMAN: All those in favor of a roll-call vote please put up your hands. Roll-call vote is in order.

DELEGATE BARR: Mr. Chairman.

CHAIRMAN: Delegate Barr.

DELEGATE BARR: If there is going to be a roll-call vote, may I explain my vote before we start? It's not as to the fact of the roll call.

CHAIRMAN: Well, I hadn't called the votes so I think it's in order.

DELEGATE BARR: Yes, I'm going to kanalua twice because I'm against staggered terms.

CHAIRMAN: Mr. Clerk, please call the roll.

Roll call having been ordered, the motion failed to carry by a vote of 28 ayes, 56 noes and 18 excused; with Delegates Alcon, Barnes, Barr, Burgess, Cabral, Campbell, Chong, Chu, DiBianco, Dyer, Hagino, Hale, Hamilton, Harris, Hirata, Hironaka, Dennis Ihara, Iwamoto, Kimball, Kono, Lacy, Liu, Marumoto, Miller, O'Toole, Peterson, Stone and Takahashi voting aye; Delegates Anae, Andrews, Barnard, Blake, Chang, Calvin Ching, Donald Ching, Chung, Crozier, de Costa, Fernandes Salling, Fujimoto, Fukunaga, Fushikoshi, Hashimoto, Hayashida, Hino, Hoe, Hokama, Hornick, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Izu, Kaito, Kojima, Ledward, Marion Lee, Lewis, Nakamura, Nishimoto, Odanaka, Okamura, Paty, Penebacker, Pulham, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Sterling, Sutton, Taira, Takehara, Takemoto, Tam, Uyehara, Villaverde, Waihee, Yamashita, Yoshimura and Chairman McCall voting no; and Delegates Blean, Laura Ching, Haunani Ching, Chun, De Soto, Eastvold, Ellis, Funakoshi, Goodenow, Hanaike, Kaapu, Rachel Lee, Nozaki, Ontai, Takitani, Tamayori, Weatherwax and Wurdeman being excused.

CHAIRMAN: The noes have it and the amendment has failed to carry. Now Amendment No. 13, "National Constitutional Convention." Delegate Laura Ching--oh, the delegate's not here. Does anyone care to move this amendment?

DELEGATE HARRIS: Mr. Chairman.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: In deference to the delegate who is not here, I will move for the amendment.

DELEGATE HOKAMA: Point of privilege, Mr. Chairman.

CHAIRMAN: Delegate Hokama.

DELEGATE HOKAMA: In all fairness to Delegate Laura Ching, I think if she feels strongly about this amendment, she can speak at Second Reading and at that time defend her position.

CHAIRMAN: However, a motion has been made. Is there a second to the motion?

DELEGATE HORNICK: I second it.

CHAIRMAN: The motion has been made and seconded.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I move we defer action on this until Second Reading.

CHAIRMAN: The motion to defer is out of order at this time. The Chair calls on Delegate Harris to speak to the motion.

DELEGATE HARRIS: That wasn't very nice. I'm afraid I have little to say. I offered the motion just in deference to Delegate Ching, and it would be my assumption that this body has considered it duly and can vote on it but I certainly don't have strong recommendations for it. Thank you.

CHAIRMAN: Thank you, Delegate Harris, for the outstanding support you gave it. However, I'm sure Delegate Ching can bring it up at Second Reading. Wait a minute-- she will not be able to bring this up at Second Reading, not the identical, or nearly identical amendment.

DELEGATE HARRIS: Mr. Chairman, I withdraw the motion.

CHAIRMAN: That requires a vote. All those who voted in the affirmative, if you agreed to allow the motion to be-- I believe I heard a second. Will you withdraw the second?

DELEGATE HORNICK: I'll withdraw the second.

CHAIRMAN: Nevertheless, we will now vote on the question of whether to allow the mover to withdraw the motion. A vote in the affirmative will allow the mover to withdraw the motion. All those in favor of withdrawing? Opposed? The ayes have it. Amendment No. 13 to Committee Proposal No. 8 has been withdrawn, and now I would like to recognize Delegate Nishimoto.

DELEGATE NISHIMOTO: Mr. Chairman, I move that we rise and report, and when we do so we report that Committee Proposal No. 8 has been approved by the Committee of the Whole as amended.

DELEGATE TAIRA: I second it.

CHAIRMAN: It has been moved and seconded that we rise and report that the Committee of the Whole has adopted Amendments No. 10 and 11 to Committee Proposal No. 8 and after the necessary copies have been printed and distributed, we recommend that the amendments be adopted by the Convention and Committee Proposal No. 8, as amended, be adopted on Second Reading. All those in favor of reporting as stated, say aye. All opposed, say no. The ayes have it and we will report as ordered. Will someone move that we rise and report?

DELEGATE SHINNO: I move that we rise and report.

CHAIRMAN: Do I have a second?

DELEGATE TAIRA: I second the motion.

CHAIRMAN: It has been moved and seconded that we rise and report. Before we vote, I would like to take the opportunity to thank the whole group. You've made my

job very easy and I appreciate it very very much. It has been moved and seconded that we rise and report. All those in favor, say aye. Those opposed? The ayes have it and the motion is carried.

At 5:33 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on THE EXECUTIVE — Executive and Administrative Offices and Departments

Committee Proposal No. 9

(Article V [IV], Section 6)

Chairman: DELEGATE JAMES SHINNO

Wednesday, August 30, 1978 • Afternoon Session

The Committee of the Whole was called to order at 1:42 p.m.

Delegate James Shinno presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The Convention has referred Committee Proposal No. 9 to this Committee of the Whole for consideration. In order to keep order on the floor, the Chair requests that the Convention abide by the following rules. The Chair requests that, as a courtesy, delegates who have the floor state on which side of the question they are speaking before debating. Delegates will be allowed to speak for 10 minutes the first time and for 5 minutes the second time. Delegates will not be allowed to yield any of their time to another delegate, and the mover of the primary amendment may request that he be allowed to speak last in debate. For expediency, the Chair requests that the delegates refrain from making any frivolous or dilatory motions calling for recess or roll-call vote. The Chair also requests that delegates refrain from making any personal comments.

We will now consider Committee Proposal No. 9. The Chair recognizes Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I rise to speak in support of Committee Proposal No. 9. The purpose of Committee Proposal No. 9 is to address the problem of duplication of functions and purposes between executive departments. Your Committee believes that changing the language of Article IV, Section 6, will mandate the executive and the legislative branches to examine and reassess existing departmental functions.

The committee's feeling was that functions, along with purpose, should form the basis for departmental organization. Our major concern was that the present language of Section 6, which bases departmental organization according to "major purposes so far as practicable," has allowed for the assignment of some offices and agencies to principal departments without sufficient consideration of whether common purposes or related functions existed. In other instances, departments or their subgroupings possessing both common purposes and related functions have not always been grouped together. One example which comes to mind pertains to those agencies that deal with environmental quality and protection. These functions are divided among the health department, the Office of Environmental Quality Control, the Environmental Quality Commission and the Department of Land and Natural Resources.

Thus our proposal would require a reassessment by the executive and legislative branches to determine whether some functions of these agencies should be combined. It would not, however, mandate that in every instance such agencies should be combined--only in those instances where there is both common purpose and related function. It is the intent of the committee that these two prerequisites be read together.

You will note that the committee also deleted the phrase "so far as practicable." We felt that in the past this phrase had been used to justify grouping dissimilar agencies or departments and that deletion of the phrase would require a closer examination of the bases upon which various departmental groupings are made.

The committee also discussed the desirability of reducing the maximum number

of principal departments from 20; presently there are 17 principal departments within the executive branch and the committee felt that leaving the maximum at 20 would allow for expansion or reduction, should the need arise.

Mr. Chairman, I would also like to note that the executive committee has passed a proposal creating a council on revenues and has recommended it to the Committee on Taxation and Finance for consideration. On behalf of the executive committee, I further recommend that Committee Proposal No. 9 be adopted. Thank you.

CHAIRMAN: Thank you, Delegate Fukunaga. Is there any further discussion? All those in favor of recommending adoption say aye. Opposed? The ayes have it. Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I move that when we rise and report, we rise and report that the Committee of the Whole has considered Committee Proposal No. 9 and that after the necessary copies have been printed and distributed, we recommend that Committee Proposal No. 9 be adopted on Second Reading.

DELEGATE SOUKI: Mr. Chairman, second the motion.

CHAIRMAN: It is moved and seconded that when we rise and report, we report that the Committee of the Whole has considered Committee Proposal No. 9 and recommends adoption on Second Reading. All those in favor of reporting say aye. All opposed, no. The motion carried.

DELEGATE FUKUNAGA: Mr. Chairman, I move that we rise and report.

DELEGATE SHON: I second the motion.

CHAIRMAN: It has been moved and seconded that the Committee of the Whole rise and report. All those in favor say aye. Those opposed? The ayes have it. The motion is carried.

At 1:53 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on THE JUDICIARY

Committee Proposal No. 10

(Article VI [V])

Chairman: DELEGATE NAOMI CAMPBELL

Wednesday, August 30, 1978 • Afternoon Session

The Committee of the Whole was called to order at 2:02 p.m.

Delegate Naomi Campbell presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The Convention has referred Committee Proposal No. 10 to this Committee of the Whole for consideration. In addition to the committee proposal, we have a number of proposed amendments to the proposal to consider. If you will follow the sequence I give you, we will arrange the proposed amendments in the following order.

Amendment No. 1 is the Campbell amendment that starts out: "The judicial power of the State shall be vested...." No. 2 is Delegate Chu's proposal that starts out the same way. No. 3 is Delegate Takitani's, beginning: "The governor shall...." No. 4 is Delegate Burgess', entitled "Appointment of Justices and Judges. The governor shall..." is the first language. No. 5, Campbell, "Election of Justices and Judges;" No. 6, Delegate Burgess', on "Tenure; Compensation; Retirement." No. 7, also by Delegate Burgess, "The Judicial Selection Commission" that starts out: "There shall be a judicial selection commission...." No. 8, by Delegate Ikeda, starts out with the word "respectively." No. 9, also by Delegate Ikeda, begins "term on the commission." No. 10, by Delegate Burgess, starts out: "Each member of the judicial commission shall be...." No. 11, by Delegate Ikeda, starts "considered and any member of the commission or his employer...." No. 12, Delegate Ikeda's, first word is "law," followed by: "The receipt and review of applications for judicial positions...." No. 13, Delegate Ikeda, beginning "duties and any matters to further the creation and operation...." No. 14, Delegate Ikeda, "upon ratification...." And lastly, Delegate Stone's, reads: "No member of the judicial commission shall receive any compensation...."

There are in addition, as you will note, two minority reports on the table, No. 9 and No. 10, and you should have them before you. Unless someone specifically makes a request that a particular amendment be read word for word by the Chair, we will dispense with the reading and try to simply give you the designation to save time. The order for consideration will be followed as we have enumerated, unless an amended order for proper reason is requested.

The Chair requests that delegates with questions respecting the amendments take the opportunity during any administrative recess we may have to ask the mover of the amendment for clarifications. The Chair also requests, as a courtesy, that when a delegate is assigned the floor, in each instance let all of us know which side of the question you are speaking on before beginning debate. As mentioned on numerous other occasions, delegates will be allowed to speak for 10 minutes the first time and 5 minutes the second time. Delegates are not permitted to yield any of their time to any other delegates. The mover of the primary amendment may request that he be allowed to speak last in the debate. Any frivolous or dilatory motions calling for recess will be declared out of order subject to an appeal.

The Chair now recognizes the chairman of the standing committee to give the body a resume of the committee report.

DELEGATE IKEDA: Thank you, Madam Chairman. Fellow delegates, I would like

to speak in favor of this Standing Committee Report No. 52 and Committee Proposal No. 10. This report is a culmination of the judiciary committee's work in public hearings and four very long decision-making sessions. We have reached the point we are at today because of the diligence of the committee members in attending all our decision-making hearings and because of the efforts of the faithful and hardworking staff.

There are several important areas of revision recommended by the committee, which I would like to review with you. First of all is an amendment recommending that the existing system of appointing justices and judges--by the governor with confirmation by the senate--be replaced by a judicial selection commission. Such a commission would respond to the concerns of many citizens and attorneys that the existing system reflects partisan politics and does not insure that a high caliber of judiciary can be maintained.

The commission would be composed of nine members, including representatives from the governor's office, persons appointed by the supreme court, the house, the senate and two members elected by the Hawaii bar. This is the Hawaii bar and not the Hawaii State Bar Association. This committee would seek out and carefully screen candidates for judicial vacancies. Upon conclusion of the group's deliberation, a list of the most qualified candidates would be submitted to the governor for review and selection. In this way the public is assured that only the candidates best qualified for a vacancy would ever be considered for judicial appointment.

Your Committee on the Judiciary has decided that the following breakdown best satisfies the interests of the public: as indicated, three persons to be appointed by the governor, two to be elected by the attorneys of the state bar, two appointed by the supreme court and one each by the state senate and house. In addition, there will of course be senate confirmation. The selection process will work in the following manner. After a list of names is submitted to the governor or chief justice, the appointing authority would have 30 days in which to make a selection. If for some reason the governor or the chief justice failed to act or rejected all the names on the list, the commission would make the selection, which must be confirmed by the senate. If the senate should reject all the names on the list within the specified time, the commission would go ahead and make the appointment without senate confirmation. It is, however, important to note that district court appointments, as now provided by statute, would remain the responsibility of the chief justice and would not be subject to senate confirmation.

The desire to eliminate political partisanship and the ability to closely scrutinize the qualifications and capabilities of nominees for vacancies in judicial offices were the genesis for this and also for the requirement of justices and judges who wish to remain in office to resubmit themselves to review by the judicial selection commission at the end of a term of office. This would insure that the qualifications of candidates for judicial office would be the paramount consideration in any retention process.

The makeup of the commission, of course, is quite important, as are their qualifications. The members are to have staggered 6-year terms of office; this staggering would allow the commission to accept new members with different points of view, while at the same time retaining others who are experienced in the appointment process. We have provided certain basic requirements as to the commission members, including: the prohibition against commission members applying for vacancies in judicial office until they have left the commission for at least 3 years; the prohibition of commission members from running for or holding political offices; and a prohibition against attorney members of the commission from appearing before nominees for judicial office in a judicial proceeding. These are all aimed at preventing conflicts or potential conflicts of interest which would otherwise neutralize the effectiveness of the commission.

One other important aspect of the commission's operation would be the matter of the confidentiality of the group's deliberations. Your Committee received much testimony from the local bar association and local attorneys as to the desirability of this feature. It was felt that confidentiality should be preserved at least as to the names of initial applicants and the deliberations thereafter.

The committee also focused on the important area of judicial qualification. It was decided that residency and citizenship requirements should be specified in the Constitution, and further that the requirement that justices and judges be licensed attorneys of the State be retained. Your Committee almost unanimously felt that these requirements would

insure that any candidate nominated for consideration for a judicial vacancy would have knowledge of our legal system and our community and its values. Because it was decided that a provision be included setting forth the practice requirement for district court judges, the requirement was added that before a person can be appointed district court judge he must have served a term of 5 years. This was previously provided by statute but is now to be included in the Constitution.

In the area of tenure, compensation and retirement, your Committee has deleted the language on specific minimum salaries. This was set back in 1968 and the committee believes it obsolete. In its place is the provision for a judicial salary commission, which would study judicial salaries on an ongoing basis and recommend amounts to the legislature for approval and action.

Other important areas of revision concern disability, retirement and removal. Contrary to the existing provision in the Constitution, the committee has proposed that the supreme court rather than the governor be given the power to discipline, retire or remove any justice or judge. This change is important if the judiciary is to remain effective, viable and independent from the other two branches of government. In addition, your Committee has proposed an amendment to allow the supreme court to exercise certain less drastic disciplinary measures of reprimand and suspension. This would give the supreme court as the disciplining authority more flexibility in dealing with disciplinary problems within the judiciary which may not warrant outright removal.

In another important area, your Committee has recommended creation of an intermediate appellate court. As indicated in our report, the supreme court at present is saddled with a tremendous increase in caseload. This has resulted in a backlog and long delays in the handling of appeals. It is your Committee's belief that this new intermediate appellate court will allow the supreme court to move more quickly and equitably in handling the present backlog as well as any increase in cases that may occur in the future.

In conjunction with the creation of this court, your Committee has included proposed language which would enable the courts, through their own rules, to establish time limits for the disposition of their cases.

The committee's final proposal deals with the transition period; that is, assuming the proposal is ratified by the voters of this State, those judges and justices who were appointed before the effective date of the amendment would be allowed to remain in office. Should they decide, however, to apply for another term when their term ends, they would have to go through the selection process outlined along with other new candidates.

All these amendments are intended to answer citizens' concerns about increasing delays in the courts, quality of the justices and judges and the overall efficiency of the judicial system. The committee proposal may not be the perfect solution--I don't believe there really is one--but I think it is, overall, an excellent package dealing with the problems I described. I would ask for your favorable consideration of Committee Proposal No. 10.

CHAIRMAN: Thank you, Delegate Ikeda. The Chair recognizes Delegate Marumoto.

DELEGATE MARUMOTO: Madam Chairman, I move for the adoption--

CHAIRMAN: Delegate Marumoto, would you wait for just a moment--

DELEGATE CHU: Madam Chairman, I would like to move for the--

CHAIRMAN: Delegate Chu, would you be seated for just a moment--we haven't arrived yet at that point. I will now ask, having heard the resume of the committee report, whether there is further discussion. The Chair recognizes Delegate Cabral.

DELEGATE CABRAL: I rise on a point of personal privilege.

CHAIRMAN: State your point.

DELEGATE CABRAL: I would like to pose the following query to the Chair: Proposed amendments numbered 8, 9, 11, 12, 13 and 14--do I understand correctly that these proposed

amendments are submitted on behalf of the Committee on the Judiciary, or as individual proposed amendments?

CHAIRMAN: Delegate Cabral, I will ask the chairman of the standing committee to answer that question. If you will yield, Delegate Ikeda?

DELEGATE IKEDA: Madam Chairman, these amendments are my own. However, they were prepared based upon a general consensus of the committee members, who felt that there were certain omissions or points of clarification needed in the committee proposal. They were not, however, approved at any particular committee meeting.

CHAIRMAN: Does that satisfy you, Delegate Cabral?

DELEGATE CABRAL: Yes, thank you very much.

CHAIRMAN: All right, we will now resume. Is there any further discussion? The Chair recognizes Delegate Chu.

DELEGATE CHU: I hope I'm right this time. Madam Chairman, I move for the adoption of Minority Report No. 9 on Committee Proposal No. 10.

CHAIRMAN: Delegate Chu, you are out of order with respect to adoption of the minority report. If you please, at this time, you may make a resume of the report to inform the delegates of its contents.

DELEGATE CHU: Madam Chairman, a minority of your Committee on Judiciary does not concur with that part of Standing Committee Report No. 52 which recommends that an intermediate appellate court be created. The minority commends the judiciary committee on the hard work and foresight that went into their committee proposal; however, the minority feels that creation of an intermediate appellate court would not be necessary at this time. The minority commends the leaders of the judiciary for bringing us to a very progressive judicial system. We recognize that there is an evergrowing congestion of cases at the appellate level in our judicial system and that the present length of time for a civil or criminal case to reach a conclusion has become inordinately long and unfair, causing injustice to various litigants.

However, we do not feel that creation of an additional level of court will solve the problem. We feel that by creating an intermediate appellate court, the judicial system will become more complicated rather than less, in that it will increase the litigation at the appellate level. There may often be cases in which an attorney, a diligent attorney, would be obligated to take a case to the highest court, which would mean he would take it first to the intermediate court and then finally to the Hawaii supreme court. The majority recommends a bypass mechanism; however, we feel that the bypass mechanism itself will create a great deal of litigation in its application. For instance, one litigant, sincerely feeling that his case is deserving of the bypass mechanism, may take his case to the supreme court; his opponent, however, may be interested in delaying final resolution of the case and may in fact argue and move for dismissal in the supreme court, with the case moving back down to the intermediate appellate court.

So there would be a great deal of time spent deciding on and applying details of the bypass mechanism. The majority of the committee should be commended for inserting a provision in the committee proposal that the courts establish time limits for the disposition of cases. However, we feel that that could still produce delays. There are potentials for delays and problems where there are "deep pockets," such as in the case of a big corporation or insurance company wherein an individual middle-class litigant has won a judgment from the insurance company and the company feels that their money would be better spent in other investments rather than paying the judgment and that it would be worth paying for attorneys to delay paying the judgment. That would create a delay, when the middle-class litigant would probably need the money as soon as possible to pay medical and other expenses. Another possible problem in the 2-tiered or double-appeals system concerns the domestic relations situation in which a particular spouse may be vindictive and recalcitrant and may purposely delay the finality of a support order or property settlement for vindictive reasons. An embittered ex-spouse may prefer to pay attorneys' fees rather than his ex-spouse. Another example --

CHAIRMAN: Delegate Chu, could you wrap it up now?

DELEGATE CHU: Yes. Another example exists in the criminal area where the public may suffer; in that a conviction may not be final yet even though the person is considered a danger to society, he is released on bail. We agree with statements made by the bar association that creation of an appellate court should be a matter of last resort and that this radical change will add work and increase costs not only in terms of the additional judges, the physical facilities and the support personnel but also in additional attorneys' fees, which the public would have to pay. The problem is that once an institution is established, there is a tendency for that institution to grow and perpetuate itself.

Therefore, this is a radical change to our legal system. There is no right to two trials. Generally you have an absolute right to your one day in court, not your days or years in court. The minority feels that creation of this additional level in the court system will create more complications, more cost and will not necessarily solve the problem. The minority therefore recommends that the supreme court be increased to seven members and be allowed to sit in panels or en banc.

CHAIRMAN: Thank you, Delegate Chu. Before we undertake discussion of each amendment separately, I will ask the delegates again whether there is any further discussion. The Chair recognizes Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, Minority Report No. 10 relates primarily to the proposed amendments starting with No. 3, and I request permission to wait to speak to that minority report as an introduction to those amendments.

CHAIRMAN: Thank you, Delegate Burgess. We will now consider Amendment No. 1, which is designated "Judiciary Power." Delegate Marumoto is recognized.

DELEGATE MARUMOTO: Madam Chairman, I move for the adoption of Amendment No. 1 to Committee Proposal No. 10 on behalf of Delegate Campbell.

DELEGATE LIU: Second the motion.

CHAIRMAN: There's a motion and second that the committee adopt Amendment No. 1. Is there any discussion? Delegate Marumoto.

DELEGATE MARUMOTO: Madam Chairman, I rise to speak in favor of this amendment on behalf of Delegate Campbell. This amendment deletes the provisions of the committee proposal which would establish an intermediate appellate court.

The introduction into our existing court system of an additional appellate court could be financially devastating to an individual who has decided to appeal his case. This is true because he would rarely feel that an appeal to an intermediate court would satisfactorily adjust his complaint and would therefore be inclined to take the matter to the supreme court for final adjudication. This means double attorney's fees and double court costs, including the prohibitive cost of transcripts required on appeal. Superimposed upon this expense would be the litigant's expense as a regular taxpayer who would have to pay the additional cost of a new court system. The individual who would be most adversely affected would be the middle-income person because he would not qualify for assistance from either the public defenders office or legal aid.

Another important consideration is that a criminal defendant who appeals his case would get out on bail pending his appeal to both courts, thereby placing in jeopardy the safety and welfare of the community for a considerably longer period of time.

The statistics available reveal only those jurisdictions with a population of 2 million or more persons have such intermediate appellate courts. The committee proposal calls for immediate establishment of an appellate court system when our population at present is only slightly in excess of 800,000.

Experts agree that there are existing means available for relieving the backlog of supreme court cases short of instituting a new appellate court, such as rendering certain decisions orally, rendering shorter decisions and using the device of writ of certiorari to refuse appeal in appropriate cases.

Based upon these considerations, Delegate Campbell strongly urges you to support this amendment. Mahalo.

CHAIRMAN: Thank you, Delegate Marumoto. The Chair recognizes Delegate DiBianco.

DELEGATE DiBIANCO: Madam Chairman, I rise to speak against the amendment and in favor of the concept of intermediate appellate courts. I don't think the issue to be decided here is whether or not Hawaii meets some sort of magical population limit and if we only had 2 million people we would therefore somehow qualify for an intermediate appellate court in our judicial system.

The test is the amount of litigation we have, and we certainly have reached the point in this State where the level of our litigation is such that our appellate system is not only bogged down but has reached the point where for all practical purposes it has ceased to function. In practical terms, cases which, 8 years ago when I first began practicing law in this State, could be taken through the appellate process in a year to a year and a half now take 4 years or more. The tragedy exists that some people die while their case is on appeal, corporations fold and dissolve while their cases are on appeal, attorneys retire from active practice while cases which they have appealed are awaiting decisions--all of this because of the delays which have been occasioned by the incredible increase in the number of cases which are appealed to the supreme court of our State.

The supreme court of our State handles appeals directly from the district court so that they are forced by law--required by law--to take in hand and consider every traffic case that is appealed to them, every misdemeanor case that is appealed to them, every small claims court and minor civil case that is appealed to them. They have no choice in the matter but to render decisions in all these matters. They cannot issue oral or short decisions because of their feeling that everyone is in fact entitled to an explanation as to why his appeal is being affirmed or denied. The supreme court has reached the point--because of the number of attorneys who have been licensed to practice in the State over the past several years--where the increase in litigation has made it impossible for them to keep up.

I think there is a basic misunderstanding as to what this intermediate appellate court is intended to accomplish. It will not be an additional level of appeal. It will be a substitute level of appeal; that is to say, this intermediate appellate court, which will presumably be broken up into panels of presumably two or three justices, will be able to hear a large number of appeals which are presently pending or being appealed to the supreme court in a shorter amount of time than the one supreme court panel, which is capable of hearing cases at the present time. The supreme court itself would not then rehear all these cases on appeal. Presumably, the way in which the legislature would utilize the intermediate appellate court--and you will notice that some flexibility is given to the legislature through this constitutional amendment to set up this intermediate appellate court in the manner that it chooses--but presumably they would follow the lead of all the other states that have intermediate appellate courts and would make appeals from the intermediate appellate to the supreme court a matter of discretion for the supreme court.

Statistics indicate that in those states only 5 percent of the cases appealed through the intermediate appellate courts subsequently are accepted by the state supreme court. The other 95 percent of the cases appealed to the intermediate appellate court go no further than that court. As for those 95 percent, they receive a very speedy and final appellate determination of the issues which they've raised. As to the remaining 5 percent which do have to go through two levels of appeal, it is true that they have a little more delay but that has to be balanced against the fact that the other 95 percent are moving much more quickly. The 5 percent that would be handled by the supreme court would include those cases in which new law is being made or in which there has been a conflict between one intermediate appellate court panel and another. So if the system works well in practice and has in fact worked well in all those states that have it, in response to the remarks made by the delegate who spoke previous to me, I just want to point out that the cost of this intermediate appellate court really amounts basically just to salaries of the court personnel, the few judges and clerks who would be involved in this intermediate appellate court.

Counterbalanced against that is the cost we have at the present time because of the delays in our appellate court system--delays that are occasioned in family court matters in which the custody of a child is kept hanging for two or three or four years, in which a defendant may linger in jail while waiting for his criminal conviction to be overturned, and which subsequently is overturned. How do we pay back that person for the two or

three years he may have stayed in jail waiting for his appeal to be decided? There are a lot of costs not necessarily measured in money--intangible costs which are affecting and hurting society right now because our appellate court system has essentially broken down, through no fault of the supreme court justices but simply because we are trying to use a 1950s system to handle 1978 litigation. It cannot work, and I urge acceptance of the intermediate appellate court system. Thank you.

CHAIRMAN: Thank you, Delegate DiBianco. The Chair recognizes Delegate Sutton.

DELEGATE SUTTON: Madam Chairman, first of all let me say that it's hard to speak right to a chairman and address you when it is in fact your proposal. I wish to speak against it. For the delegate who introduced it for you, the word she said was certiorari, and that is primarily the reason I speak against it. In fact, the supreme court having certiorari, as my other colleague who has just spoken mentioned--that the court has certain considerations as to whether it can take or cannot take a case at hand. It will not be bogged down at the higher levels by a double appeal. I speak for the appellate court. I recognize the hard work and the intention of the maker, but I urge you not to support this amendment.

CHAIRMAN: Thank you, Delegate Sutton. The Chair recognizes Delegate Waihee.

DELEGATE WAIHEE: Madam Chairman, it is my great pleasure--I knew the day would come eventually that I would join my fellow delegate from the windward side in speaking against an amendment.

CHAIRMAN: I thought you were waiting for the day you could argue against me and I couldn't answer.

DELEGATE WAIHEE: Today is indeed a double pleasure. I think, Madam Chairman, I had some concerns myself about the possible delays that an intermediate appellate court may have in the judicial process. I think the committee considered this situation and provided for it in their proposal by mandating the supreme court to establish its own rules concerning specific time limits for the processing of cases.

I believe it is the intent of this proposal that the maximum time a case could be bogged down in court would be no more than the average time now. In other words, if someone were to appeal to the appellate court and then move up to the supreme court, the intent is that this would not take any longer than the 3 or 3-1/2 years that it takes now. So what we have done here is insured that, at least for 95 percent of the cases, the time would be short. We have mandated the supreme court to establish this kind of time limit. For these reasons, Madam Chairman, I would speak against the amendment.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Villaverde is recognized.

DELEGATE VILLAVERDE: Thank you. If the delegate from the windward side would like to rule me on a point of order, I too would like to ask the delegates here to vote against this amendment. We're on the same side for a change. I too had submitted a proposal regarding this concern, as I've talked to attorneys on the Big Island who have expressed their concerns regarding the accumulation and accruing of cases that have been there for so many--well, up to two years. I've provided testimony regarding this on a compromise basis--that maybe the legislature should be the body to institute the decision to establish an intermediate appellate court.

However, the committee did get through the hearing diligently and came out with this. Therefore, I'll go with the committee report that an intermediate appellate court should be established. Thank you.

CHAIRMAN: Thank you, delegate. Is there further discussion? Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I also wish to speak against this amendment. I don't wish to echo or repeat the statements that have been very well made by previous delegates who spoke against this amendment, except to emphasize one point that was made by the chief justice when he appeared before the committee. He indicated to us that the supreme court had tried every remedy they could think of to cope with the increasing appellate workload--that is, holding summary hearings, using additional law clerks and the like. But all of this was insufficient to meet the problem of an increasing workload, which from 1970 to 1976 has almost doubled.

At the same time, although the rate at which the supreme court has actually managed to terminate cases has improved, it is still not nearly sufficient to cope with the increasing workload, which has resulted in a much longer period of time needed to dispose of appeals, which in turn means the deterioration and dilution of justice.

For these reasons I would recommend that this amendment not be approved.

CHAIRMAN: Thank you, Delegate Ikeda. Is there any further discussion? Delegate Nakamura.

DELEGATE NAKAMURA: Madam Chairman, I too am speaking in opposition to this amendment. Although a panel-sitting system may reduce the supreme court's backlog of appeals, the weakening of the law-stating function of the court outweighs this advantage. Moreover, while sitting in panels provides initial relief, it will not be effective in meeting the long-term increases in Hawaii's appellate backlog.

Therefore, should the panel system be adopted, in a few years we will be faced with the same problem of backlog and delay. The creation of an intermediate appellate court will provide a more permanent and effective way of reducing appellate congestion and delay. The American Bar Association Commission on Standards of Judicial Administration has noted that sitting in panels has "often been used as a means of transition to the establishment of an intermediate appellate court"; that such a system has often been kept in force long after the time that an intermediate appellate court should have been established; and that under these circumstances internal inconsistencies were excessively tolerated to avoid the cost of establishing an intermediate court."*

As stated earlier, the most serious drawback with the panel system is that the law-stating function of the highest court is weakened. The formulation and development of the law is the most important function of the supreme court and this function would be substantially weakened if the supreme court spoke through panels. Because different panels of the court may give different results, there is a possibility of conflicting decisions within the supreme court itself. These conflicts would require hearing en banc--

CHAIRMAN: Delegate Nakamura, I don't mean to interrupt you but this amendment to which we are addressing ourselves does not lend itself to the introduction of panels. It is simply an amendment to eliminate from the committee proposal the concept of the intermediate appellate court.

DELEGATE NAKAMURA: Could I just continue then?

CHAIRMAN: Yes, you may.

DELEGATE NAKAMURA: May I ask a question? Is there another amendment pending--

CHAIRMAN: Yes, there is.

DELEGATE NAKAMURA: Well, let me just conclude by saying that concerning all the disadvantages by not having an appellate court, probably the most viable alternative would be, in this situation--I would submit to you that someone once told me that justice delayed is justice denied--I submit to you that this appellate court would best benefit the people of our State and decrease the evergrowing backlog of cases in our courts. Mahalo.

CHAIRMAN: Thank you, Delegate Nakamura. Is there any further discussion on the amendment? If there is no further discussion, it has been moved and seconded that we adopt Delegate Campbell's Amendment No. 1. Are you ready for the question? All those in favor of Amendment No. 1, please signify by raising your right hands. All those opposed, please signify by raising your right hands. The motion is lost.

We will now move on to Amendment No. 2, which is the amendment by Delegate Chu.

*Hawaii, The Judiciary, Special Report to the 1978 Constitutional Convention (Honolulu: July 1978), p. 18.

DELEGATE CHU: Madam Chairman, I move that this Amendment No. 2 to Committee Proposal No. 10 be adopted by this group.

CHAIRMAN: Is there a second to the motion?

DELEGATE LIU: I second the motion.

CHAIRMAN: It has been moved and seconded that Delegate Chu's Amendment No. 2 be adopted. Is there any discussion? The Chair recognizes Delegate Chu.

DELEGATE CHU: Madam Chairman, this particular amendment addresses itself, again, to the problem of establishing another level of appellate courts. It also proposes that the present supreme court be expanded from five justices to a total of seven, which includes one chief justice and six associate justices.

CHAIRMAN: Delegate Chu, I wonder whether you would agree that we treat this matter ad seriatim and vote on it paragraph by paragraph since each of these paragraphs deals with a different matter.

DELEGATE CHU: All right. So Section 1 would be the first matter to be discussed.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Madam Chairman, I rise to a point of personal privilege. I don't understand legal terminology and consequently I would beg the Chair for interpretation as we go along since I'm not an attorney.

CHAIRMAN: I apologize if anything I have said is incomprehensible to any lay individual. I'll do my best to be a little more careful and explicit. The Chair was suggesting, Delegate De Soto, that in light of the fact that each of these paragraphs in Delegate Chu's amendment deals with a different area, instead of moving for adoption of the entire amendment, which is several pages and deals with several subject matters, we treat it ad seriatim, which simply means taking one paragraph and one concept at a time. If that is satisfactory, the motion on the floor at the present time then is to adopt Section 1, entitled "Judiciary Power." Would you address yourself to that first?

DELEGATE CHU: Madam Chairman--

DELEGATE LES IHARA: Point of order.

CHAIRMAN: Excuse me just a moment, Delegate Chu. The Chair recognizes Delegate Ihara.

DELEGATE LES IHARA: I believe that by voting down Amendment No. 1, that in effect we voted not to adopt section 1 of Delegate Chu's proposal. Is this correct?

CHAIRMAN: I think, Delegate Ihara, if you will let Delegate Chu explain the thrust of that paragraph, perhaps we can determine whether that or any other section in this is now moot. I believe the section with respect to the elimination of the intermediate appellate court would be moot.

DELEGATE CHU: Madam Chairman, I feel that this is all a package, a total concept. It's not merely eliminating the intermediate appellate court, it is also adding to the present supreme court. I think it is very different from Amendment No. 1 and I do not agree that it should be considered ad seriatim. I think it should be considered as a total concept in that the other sections that are changed in this particular amendment merely delete the words "intermediate appellate court judges." But I will point out the part. There is really one main paragraph in this particular proposal.

CHAIRMAN: All right, would you point out the paragraph which became moot by virtue of the first vote that we took?

DELEGATE LIU: Point of order, Madam Chairman.

CHAIRMAN: State your point, Delegate Liu.

DELEGATE LIU: None of the paragraphs in this proposed amendment are moot because this is a new concept based on the idea that we are not only eliminating the appellate court but in addition enlarging the supreme court, such that those who may have voted against the previous amendment could vote in favor of this amendment because the previous one dealt with elimination of the appellate court without any expansion of the supreme court. This, I think, is substantially different, such that those who voted against the first amendment could very well vote for this amendment, which would then make a difference. I don't think any particular section is moot.

CHAIRMAN: If that is true and it is the belief of the makers of this amendment that none of the sections are moot by virtue of the first vote, we will not deal with it ad seriatim, and the Chair will permit Delegate Chu to deal with it in toto.

DELEGATE CHU: Thank you, Madam Chairman. The major paragraph, which is the entire substance of this particular amendment, is on page 2, the first paragraph. This provides that the supreme court may sit in panels and the size and composition of the panels shall be determined in accordance with the rules of the supreme court. The panels may consist of as few as three members, of whom not more than one shall be a judge or retired justice temporarily assigned. This of course is tied in with paragraph 2 on the first page--Section 2 of Article V--which increases the number of supreme court justices from 5 to 7.

Madam Chairman, I would now like to speak on behalf of this particular amendment. I believe that we all agree that there is serious congestion, a serious backlog in the judicial system. It is not so much in the district courts or the circuit courts as it is in the supreme court, where appeals are held and cases reviewed from the district and circuit courts.

The proposal to allow the supreme court to sit in panels would allow three justices at one time to decide on a particular case, rather than five, so there would be at least double the amount of cases heard and decided at any one particular time. There have been statements made objecting to this particular proposal--that there is the possibility that one panel would disagree with another. Now this particular system has worked well in the federal appellate court system, which is the one that encompasses Hawaii and which is the one I am familiar with. They sit in panels of three justices, three judges. They decide cases. There has not been an overwhelming amount of rehearings filed because only three judges have heard the case, and as to the possibility that other justices may render a differing opinion--the judges simply do not grant the rehearing. They are very, very conservative in that respect. Realistically, the judges would not want to overturn the decision of a particular panel; they realize the importance of bringing an appeal to finality.

So it is with my objection to the creation of the intermediate appellate court. It can be said that the provision in our Constitution now, requiring the courts to establish rules providing for time limits in the disposition of cases, would in fact resolve the problem of interminable delays. It can be said that the courts will establish time limits that would in fact amount to the same amount of time as it now takes to decide an appeal. Well, it is not only the total time that it takes to resolve an appeal, it is also the number of attorney hours that go in to preparing the transcripts and preparing the arguments on appeal; it is not only the monetary costs of establishing justices and physical facilities and support staff, it is also the cost to the average citizen, the average middle-class litigant, who must pay for attorneys to defend his appeal. It can create potential disadvantages to these individuals. As I indicated, it can happen in the criminal area, it can happen in the civil area and it can happen in the area of domestic relations.

Although I do not feel that Hawaii must follow the example of other states, I believe that there should be a very hard question asked--is it justifiable for a state like Hawaii, a state as small as Hawaii, to have this double-appeals system? There's no absolute right--it is not totally universal that there would be an absolute right to one appeal, so why have the right to two appeals? There is no right to two trials, so therefore I urge this committee to adopt this amendment.

CHAIRMAN: Thank you, Delegate Chu. Is there further discussion? Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I would like to speak against the proposed

amendment. It strikes me as being pretty much a Band-Aid approach to a serious wound. The appellate backlog right now at the supreme court level is a tremendous one. If we created--or if we expanded the supreme court now and authorized the sitting in panels to cope with the backlog, and then found that it was insufficient to meet the backlog of cases, we would still be faced down the road with the necessity of creating an intermediate appellate court in any event. In that eventuality, we would also, at that point in time, have the problem of an expanded supreme court, which we really don't need. We have a supreme court now of five persons and if we expanded it to seven, the additional expense of course would be tremendous, particularly if we then had to create an intermediate appellate court.

But more serious than that, I think, is the problem of the dilution of justice if we have a panel system authorized with the supreme court, in that decisions rendered by the court would in many cases be rendered by less than the full membership of the court. If the court consists of seven members and a panel consists of three members, we would have a situation where the decision is made by a minority of the membership of the court and there could be questions as to its value as a precedent. Ours is a very young jurisdiction with respect to the existence of case precedents and lawyers in deciding cases and deciding how to proceed not only have to rely on statutory law but also on the precedents of the cases. If uncertainty results from the creation of panels, I believe it would be a very unwise alternative to elect. For those reasons, I would speak against this amendment.

CHAIRMAN: Is there further discussion on this amendment? Delegate Villaverde.

DELEGATE VILLAVERDE: Madam Chairman, I would like to speak against this amendment. After reading the handout that was given by the chief justice of the supreme court, and reading it through, I feel that the desires of the supreme court justices should be honored. But to restrict it here--particularly on page 2, as a lay person--constitutionally restrict or even add on to--and mentioning the areas of retired justices temporarily assigned, I don't concur with that particular phraseology there. But I feel that there are judges who are upcoming and there are upcoming attorneys, as Delegate DiBianco mentioned--himself, eight years and he seems to be very capable, I think--people such as those, I think these are the kinds of people who should be recognized, rather than retired justices. Not to cut down the retired justices, but they are retired, because I think they may be tired of the seat; and to list them, constitutionally--I think this particular amendment is not good, and I would vote against it.

CHAIRMAN: Thank you, is there further discussion? Delegate DiBianco.

DELEGATE DiBIANCO: Before I start my argument; I just wanted to say that if everybody keeps being this friendly with me, I'm not going to be effective anymore because I won't be able to get angry.

One point I wanted to highlight, that Delegate Ikeda touched upon, was simply this: it is true that the 9th circuit court of appeals does sit in panels and can of course come together as an entire group--what we call in the law en banc--for a proceeding before all the 9th circuit judges. However, there's a difference between what the 9th circuit court is doing and what is proposed here for the Hawaii supreme court. If the 9th circuit court of appeals has a disagreement and cannot resolve it, the litigants can always go one step higher to the U.S. supreme court. If a supreme court panel under this proposal were to have a disagreement with another supreme court panel, where do you go? You can't go any higher because you're already in the state supreme court. All you can do at that point is to convene the entire supreme court in an en banc proceeding. And as soon as you do that, you have destroyed the panels and there are no panels left to sit and hear all the cases because all of the supreme court justices who were sitting in panels now have to go into en banc sessions and resolve the problems between the two or three supreme court panels. And while all of this is going on, there are no other appeals being heard; consequently we have more delay and we've got the very same problem which the delegates who proposed this amendment were trying to solve, which we all agree we have, which is delay and a cumbersome appellate process.

So I think that this particular matter, which was discussed at great length in the judiciary committee--and quite frankly it's been discussed at great length throughout the legal community over the past several years--resolves itself into the conclusion that we do have to have an intermediate appellate court and retain the integrity of the supreme

court as one body sitting in a group of five so that they can resolve disputes with finality, and we won't have bickering among supreme court panels. Thank you.

CHAIRMAN: Thank you. Is there any further discussion? Delegate Ihara.

DELEGATE DENNIS IHARA: Madam Chairman, in echoing the sentiment of the previous delegate, the committee had discussed this at length and in fact this sitting in panels is really like the appellate court, actually--if we're talking about procedural hassles--it's just calling it by another name. I speak against this amendment.

Furthermore, there has been great discussion as to whether we need this at this particular time. But I think we're also forgetting that we are making decisions on the future of Hawaii and its judiciary system. I believe it's been shown more than adequately that the overburdened courts and great increase in caseloads make this necessary. Thank you.

CHAIRMAN: Thank you, Delegate Ihara. Is there any further discussion? Delegate Lacy.

DELEGATE LACY: I rise on a point of information. I have a question, if--

CHAIRMAN: State your point.

DELEGATE LACY: The question is--and possibly the chairman of the committee can answer it--using the appellate system or the panel system--what would be the relative times it would take to get the backlog down with each?

CHAIRMAN: Would Delegate Ikeda yield to that question?

DELEGATE IKEDA: In testimony by the chief justice, he did not indicate any timetable by which the backlog could be eliminated. I think, however, based upon the number of cases now pending and with the current delays--and the average delay in handling cases is 16.4 months in criminal appeals and 20.6 months in civil appeals--and the present rate of case disposition, I would say must be based upon the statistics, that it would probably take 3 to 4 years to work off the current backlog to a point where both the supreme and intermediate appellate courts would be reasonably abreast of their workload.

CHAIRMAN: Thank you, Delegate Ikeda. Is there any further discussion on this amendment? Delegate Chung.

DELEGATE CHUNG: I rise on a point of information also.

CHAIRMAN: State your point.

DELEGATE CHUNG: I have two questions that perhaps Delegate Ikeda could answer. I wonder if he has any figures on the composition of those cases that are pending, on the backlog.

CHAIRMAN: The nature of the cases?

DELEGATE CHUNG: Yes. How many civil cases, how many criminal cases?

CHAIRMAN: Would Delegate Ikeda yield to that? Do you have any statistics on that to answer the question? I believe the Chair can at least state this, that something like 40 percent of the cases, approximately 40 percent of the cases being appealed are criminal cases, which should give you some indicia of the extent of the backlog in the criminal arena.

DELEGATE CHUNG: Thank you, Madam Chairman. My second question is--what kind of rules are in existence now that would control the time limits for disposition of cases? I'm not too familiar--I have some idea, but are there any hard-and-fast rules now?

CHAIRMAN: Delegate Chung, I believe that one of the things that this committee proposal does is to establish that under the present system, if I am not mistaken, there

are no strict rules requiring disposition of cases by the supreme court within specified limits of time. Delegate Ikeda, would you want to indicate whether that is correct?

DELEGATE IKEDA: That is correct, Madam Chairman. The present rules provide for time limits under which an appellant--that's the person who files an appeal or the person responding to the appeal--must file what is called an opening brief and an answering brief. But they provide no time limit for the court to make the actual decision in a case.

CHAIRMAN: Thank you, Delegate Ikeda. Have your questions been satisfactorily answered, Delegate Chung?

DELEGATE CHUNG: Yes, thank you.

CHAIRMAN: You're welcome. Is there further discussion on this amendment? Delegate Nakamura.

DELEGATE NAKAMURA: I'd like to reiterate a few of my remarks. I just want to back up what Delegate Ikeda said in speaking in opposition to this amendment. Once again, it would seriously confuse the law-stating function of the supreme court--and also on the "Band-Aid" remarks that he made--I think that many of the people who testified in the public hearings who were for the panel system also stated that they could see that some time in the future an intermediate appellate court would be necessary. The backlog would grow to such an extent that it would become a needed feature in our court system. I submit to you that if that is the case, we should in fact cut down costs and install that system now.

CHAIRMAN: Delegate Liu.

DELEGATE LIU: Madam Chairman--

CHAIRMAN: Delegate Liu, may I apologize. I believe I have been consistently referring to this amendment as Delegate Chu's. I apologize for that. This bears the signature of Delegate Liu as well. You may proceed, Delegate Liu.

DELEGATE LIU: Thank you, Madam Chairman. I speak in favor of this motion. The previous speaker spoke about Band-Aid approaches to a sore wound. This sore wound also needs the right prescription. As of right now, I believe that right prescription is not to create an intermediate appellate court system. True, all those who testified did foresee some future need for that and perhaps it will come about. But I feel that the cost factor in establishing an intermediate appellate court system now will be as great if not greater than establishing it some time down the road when we do need it.

In the meantime, I feel that the proposed amendment increasing the supreme court justices to seven and allowing them to sit in panels will help to reduce the backlog that the courts are now experiencing. From the report passed out to members of the judiciary committee, and I think perhaps all of the delegation here, which was made by the judiciary of the State of Hawaii, on pages 16 and 17 it is stated that while there would "probably not be a reduction in the individual caseload of each justice," there would be a reduction in the backlog of pending cases. And they cite an American Judicature Society research project which showed that of the respondents, 85 percent indicated that sitting in panels reduced the caseload, and 82 percent felt that efficiency was increased by such a system and the "general attitude... was that panel-sitting was effective in reducing the backlog of cases."*

So I submit to the whole of this delegation that the amendment before you is reasonable, is the answer to the problems we are facing today, and that when we do need, some time in the future, an intermediate appellate court, that problem can then be addressed. We have the discussion, we have the material for the creation of such a system, such that when the time occurs that we wish to create one, I feel it will not be a long, involved

*Hawaii, The Judiciary, Special Report to the 1978 Constitutional Convention (Honolulu: July 1978), pp. 16-17.

and problem-laden situation. Therefore, I hope that you will all vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Liu. Is there further discussion? Delegate Pulham.

DELEGATE PULHAM: Madam Chairman, I'll just make a very short statement because I think that what this boils down to is that everyone seems to feel that now, or somewhere along the line, we're going to need this intermediate appellate system. So I think that we have to look at it on that basis. And from my study of the situation, being a humble lay person and not a lawyer, it appears to me that we need that system right now. Therefore, I think that we would be doing a disservice by increasing the size of the supreme court now and then later on down the road, we'll have to go through the whole thing again--if we don't have to wait for a constitutional convention first--and the backlog will build up more. So if you see it as I do--that there is a problem--let's solve the problem today and not 5 or 10 years from now. Thank you.

CHAIRMAN: Thank you, delegate. Is there further discussion? Delegate Odanaka.

DELEGATE ODANAKA: Madam Chairman, may I ask a question of Delegate Liu?

CHAIRMAN: If Delegate Liu will yield to a question.

DELEGATE ODANAKA: It's in regard to what the delegate just said.

CHAIRMAN: All right. State your question, please.

DELEGATE ODANAKA: I'd like him to repeat, if he will, the percentages.

CHAIRMAN: Is the question clear, Delegate Liu? The percentages that you stated in your presentation.

DELEGATE LIU: Yes. It says in the American Judicature Society study, based on responses to panel-sitting, the percentages that I read were: 85 percent indicated that sitting in panels reduced the caseload, and 82 percent thought that efficiency was increased by such a system.

CHAIRMAN: Thank you. Is there further discussion? The Chair recognizes Delegate Barnes.

DELEGATE BARNES: Madam Chairman, I mentioned that I just passed the bar a little while ago so I have not really practiced in front of the supreme court. However, from talking with friends who have clerked with the supreme court, I've noticed one condition--by the way, I am speaking in favor of Amendment No. 2--one condition that is of concern to me and that is the combination of types of appeals that the supreme court has to deal with. One type, for example, would be an appeal of the Public Utilities Commission decision in the Hawaiian Telephone Company case, which was under consideration for 4 or 5 years at the Public Utilities Commission. You have a record which is composed of maybe seven or eight boxloads of stuff. Well, if the supreme court starts taking that on, they're getting into an 8- or 9-month situation right there. So if you have an intermediate appeals court and a supreme court, no matter which one hears that particular type of administrative civil appeal is going to bottle it up.

The problem is that, if you have that in conjunction with criminal appeals which have to be dealt with immediately or very rapidly, you have two bottlenecks vertically, rather than a possible alternative which I would suggest and speak to, and that is the panel system. If you had three panels it might be possible for one of them to specialize a little bit. They could be rotated in this function--one panel could take traffic appeals, those little routine things that just get appealed anyway for some reason--one panel could dispose of those, and one panel could take these administrative civil type things, and the third panel would then always be free to take the criminal actions that have to be acted on right away. You can't have a 1-year delay on a criminal appeal. For that reason, I would speak in favor of Amendment No. 2.

CHAIRMAN: Thank you, delegate. Is there further discussion? If not, it has been-- Delegate Chung.

DELEGATE CHUNG: Madam Chairman, what I have to say would indicate that I am for this amendment because if we really feel that we expect to reduce the backlog of pending cases, especially of criminal cases which endanger our society--as we heard, it was 40 percent and it could be more in the long run--one of the best ways is to establish tough rules, to establish time limits for the disposition of cases according to laws and rules and regulations. I honestly feel this way as a layman, not as an attorney. I feel that if we establish--we can go ahead and establish more courts and this will not in the long run reduce the backlog of pending cases. We've seen it happen ever since we became a state and since the laws have been changed and the criminal code has been changed. It's basic economics. Those in the legal profession have got to eat--they've got to have cases. Those cases must be pending. They need retainers. It's down to earth. And for this reason we see a lot of backlog.

I've heard the chief justice speak--and I heard him say that even if we did have an appellate court, this would not be a panacea--it will not solve anything. He still expects a backlog. As hard as they work to accomplish and terminate cases, the intake will continue to rise. I have no solution, but I really feel that having an appellate court is not the solution. We've got to think in terms of a combination of things. Thank you.

CHAIRMAN: Thank you, Delegate Chung. Is there further discussion? Delegate Chu is recognized.

DELEGATE CHU: Madam Chairman, I would like to take the opportunity and the privilege to speak last. There's no question that the supreme court is doing a fantastic job and a very extensive job in writing their opinions. In fact, they have always rendered much lengthier opinions than I had ever anticipated. There have been situations where my own appeal--my brief was doubled by their opinion--my brief might be 10 or 12 pages in a very simple appeal and their opinion may be 20 pages. There's no question that Hawaii's supreme court is a very progressive supreme court. It has guaranteed and extended more constitutional rights to minorities than any other state in this country--and also more rights to minorities than the federal courts and the U.S. Constitution have granted.

However, the problem of the congestion, the backlog, must be solved. I think that the opinion writing could be limited. The sitting in panels is basically a very simple concept of division of labor. It is not a final--there is still the possibility that the appeal can be taken to the U.S. supreme court. En banc hearings have been very rare in other situations where panels have been allowed. I think that creation of this appellate court might in fact encourage appeals, encourage more litigation. I echo the sentiments of the Hawaii State Bar Association that in fact it will add work and it is much too radical a change at this time.

CHAIRMAN: Thank you, Delegate Chu. If there are no further comments or further debate, it has been moved and seconded that this committee adopt Amendment No. 2, which is the amendment of Delegates Chu and Liu. Are you ready for the question? All those in favor of adopting Amendment No. 2, please signify by raising your right hands. All those opposed? The noes have it.

May we proceed now to Amendment No. 3, which is the amendment of Delegate Takitani. Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, may I at this time speak briefly on behalf of Minority Report No. 10?

CHAIRMAN: You're slightly out of order, Delegate Burgess. Is there any reason why you've chosen to do this after foregoing it initially?

DELEGATE BURGESS: Yes, Madam Chairman, I understood when you called for the summaries of the minority reports earlier that you gave me permission to briefly summarize Minority Report No. 10 at the time we started taking up the following amendments.

CHAIRMAN: I think I misunderstood you because I was under the impression that you were going to forego your resume and that what you would do is speak on behalf of the amendments as they arose.

DELEGATE BURGESS: That was not my intent.

CHAIRMAN: Okay, excuse me-- Delegate Tam?

DELEGATE TAM: Point of order. I'm wondering--point of parliamentary inquiry, if the delegate is not out of order as he was given an opportunity to present his minority report earlier. I believe proper procedure at this time would be to let Delegate Takitani present his motion, and if the delegate wants to incorporate his minority report in support of the motion, then he can do so.

CHAIRMAN: Thank you.

DELEGATE O'TOOLE: Madam Chairman, may we have a short administrative recess?

CHAIRMAN: All right. So ordered.

At 3:26 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:28 p.m.

CHAIRMAN: Will the Committee of the Whole come to order.

DELEGATE SUTTON: Madam Chairman, point of order. Is there a quorum present?

CHAIRMAN: Mr. Clerk, is there a quorum present?

CLERK: Yes, Madam Chairman.

CHAIRMAN: All right, then let us continue. The Chair would like to tell the delegates that she misunderstood what Delegate Burgess had said; what he asked was that he be permitted to make his statement at a more appropriate time--mainly, after the first two amendments were dealt with. The first two amendments, as you note, dealt with the intermediate appellate court. As we get into Amendment No. 3, which is Delegate Takitani's amendment, we are going to be dealing with the merit selection system. Based upon my error, for which I apologize, I would now recognize Delegate Burgess. Would you proceed.

DELEGATE BURGESS: Madam Chairman, I would like to briefly summarize and introduce Minority Report No. 10 which deals with several of the amendments that will follow. A minority of the judiciary committee strongly supports the merit selection system for judges but disagrees with an important provision of the plan adopted by the majority. Although the majority report makes numerous references--

DELEGATE LES IHARA: Point of order.

CHAIRMAN: Yes, Delegate Ihara, state your point.

DELEGATE LES IHARA: Point of personal privilege. I believe that that's called the committee report, not the majority report.

CHAIRMAN: Thank you. Would you proceed, Delegate Burgess.

DELEGATE BURGESS: Although the report of the majority of the judiciary committee makes many references to the desire to establish a nonpartisan method for the selection of judges, the system which was ultimately adopted by the committee has many features which result in a system that is still strongly tied to the political arena.

It has features which will not result in a strong merit system and which in fact may threaten the independence of the judiciary. I will not read or repeat the many specific items which are contained in the minority report. I would like to very briefly, for about 3 minutes--in order to put in perspective the importance of an independent judiciary--go over some of the reasons and the history to show and put in perspective the need for an independent judiciary.

For centuries there was no such thing as a separate, independent judiciary in England. Before the 17th century in England, the judges were creatures of the king. When they displeased the king, they were subject to immediate dismissal, and their

salaries were subject to the whim of the king. When the king died, those judges were out of office; they were replaced by other judges who were creatures of the new king. The judge who was most likely to succeed under that system in England was the judge who was best able to guess what the king wanted him to do. Under that system, it's understandable that judicial corruption was rampant.

It was only after a long struggle in England--the Revolution of 1688, the fall of the Stuart kings and the Act of Settlement in 1701--that judges for the first time in England were given tenure during good behavior. And that meant that a judge, for a lifetime or as long as he was not impeached for cause, remained in office. When the American colonies gained independence from England, they wrote into the U.S. Constitution, in Article III, assuring the tenure and salaries of federal judges. The experience in the colonies from 1775 until 1790 when the U.S. Constitution and the Bill of Rights were adopted convinced the colonists that the tyranny of legislators was almost as potentially damaging as the tyranny of kings, and it was clear from the writings of John Adams, James Madison and Alexander Hamilton that they looked on the judiciary as the guardian of the Constitution, as the guardian of the rights of individuals against the oppression of not only the executive branch but also the legislative portion of the government.

The United States supreme court during its very early years established itself as the guardian of the Constitution. One of the first cases, decided by Chief Justice Marshall, was that of *Marbury v. Madison*, which established the right of the judiciary to adjudicate the constitutionality of legislation. Now that precedent, which established the judiciary's independence--as a check against the powers of the government, a check to protect the people from the power not only of the executive but also of the legislature--has become an important part of all of our law, and it's with us today.

Just this morning I read in the paper about Judge Lanham declaring an act of the legislature unconstitutional. So it is important that we understand, I think, that courts must be independent of the legislature. The judges must be independent, free from the undue influence of the executive. In that perspective I ask you, fellow delegates, to give careful consideration to the amendments which will follow.

CHAIRMAN: Thank you very much, Delegate Burgess. We will now consider Delegate Takitani's Amendment No. 3. Delegate Takitani.

DELEGATE TAKITANI: Madam Chairman, I move that Article V, Section 3, be amended to read: "The governor shall fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court, circuit courts and district courts by appointing a person from a list of not less than six nominees for the vacancy, presented to the governor by the judicial selection commission.

"If the governor should fail to make the appointment within thirty days of presentation, the appointment shall be made by the judicial selection commission from the list."

CHAIRMAN: Thank you. Is there a second to the motion?

DELEGATE LIU: Second.

CHAIRMAN: All right. It has been moved and seconded that the committee adopt Amendment No. 3. Is there any discussion on this amendment? Delegate Takitani.

DELEGATE TAKITANI: Madam Chairman, may I reserve the right to speak first and last?

CHAIRMAN: You may. Proceed.

DELEGATE TAKITANI: First I'd like to explain that this amendment does two things. It eliminates the requirement of senate confirmation and it requires that all judges be selected in the same manner. First, I believe that all judges should be selected in the same manner because district courts are no longer considered inferior courts and all should be treated in the same way. There is no justification at all for having a separate method of judge selection for district courts.

Moving to the idea of senate confirmation: reading through the majority report

of the judiciary committee, I notice that it's overflowing with references to the fact that everyone wants to establish a nonpartisan system of judge selection. And yet this entire proposed system very definitely--purposely--intends to keep judicial selection in the political arena.

The whole idea of sticking in senate confirmation is absurd and unnecessary. Not a single one of the 29 states which employ merit selection systems subjects permanent appointments to senate confirmation. This system obviously dilutes the fundamental purpose of submitting a list of blue-ribbon candidates to the governor and requiring him to select one from the list or have the choice taken away from him by the commission.

In effect, this proposal injects senatorial politics into the selection system. I've been wondering how the majority intended to justify this extra so-called check and balance. Considering that we will be the first state with a senate confirmation for judicial selection, I wonder if this will be construed as yet another "progressive" act by the leaders of the State. Or will it be argued that just because all the other states do it that way, that doesn't mean that we must follow suit.

I'd like to close by saying--let's not give the people of Hawaii a smoke-screen job. Let's give them a merit selection plan that they can vote for and be proud of. I sincerely feel that this watered-down version of merit selection will be rejected by the voters and then we will be left with the present system, which is the least desirable to an even greater number of people. And if that's what we're left with, we haven't done our job.

CHAIRMAN: Thank you, Delegate Takitani. Is there further discussion?
Delegate Blean.

DELEGATE BLEAN: Madam Chairman, I would also like to speak in favor of the amendment. I would specifically like to refer to the section on senate confirmation of judicial appointees. I think one of the basic fundamental problems that was stated before was the idea of separation of powers between the legislative, executive and judicial. And one of the main functions, I thought, of this Constitutional Convention would be to help separate the judicial from the other powers and to make it an independent entity representing the people and not partisan politics.

And yet what we've done here today, if we don't adopt this amendment, is drag even more partisan politics into the judiciary system by forcing senate confirmation on the appointees. For this reason I feel this is a step in the wrong direction, not the right direction. So, let's move more toward a nonpartisan, more toward an independent judicial system and, please, vote for this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Blean. Is there further discussion on this amendment? Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I rise to speak against the amendment. First of all, with respect to the matter of senate confirmation, I think that you have to view this in perspective and look at the present method of appointment, where judges are appointed by the governor and are subject to senate advice and consent. The proposed change provides that the selection will now be screened--screened first of all through an independent judicial selection commission, who will come up with six names, the presumption being that all six names on the list will be very highly qualified--and the ultimate selection will then be made either by the governor or by the commission if it's longer than 30 days.

Senate confirmation is merely an additional check to provide an additional level of review, where the reviewer is ultimately responsible to the people. The senate is elected by the general voting population in addition to the governor. We believe that this would be desirable to keep within the present proposed system of nominating candidates for judicial vacancies.

If the system works in the manner in which we think it will work, the likelihood is that if a candidate is very well qualified, there will be no question at all that the senate would simply confirm, because we would expect that the qualifications of any nominee would be such that there would be no basis upon which the senate could reject him.

With respect to the other matter, where district court judgeships are appointed in the same manner as circuit court judges, supreme court justices and judges of the intermediate appellate court, the feeling was that the important element to consider was the initial screening done by the judicial selection commission and not the ultimate selector, whether it's the governor or chief justice. And there are many reasons the chief justice would be a logical choice. It's the system that is in existence except that the chief justice, of course, now simply appoints the district court judges on the basis of who he thinks are qualified.

District courts are courts of very high volume; they handle the bulk of our criminal misdemeanor cases, they handle our traffic cases, as well as a great many civil cases. The need for judges in those courts arises much more rapidly, and with greater need for the filling of vacancies. We believe that the chief justice, because he is the chief administrator of the entire court system, would be much closer in filling the needs of the district courts by having the appointment power rest in him. For those reasons, I would be against this particular amendment.

CHAIRMAN: Thank you, Delegate Ikeda. Is there further discussion? Delegate DiBianco.

DELEGATE DiBIANCO: In going back to my old ways, I rise to speak in favor of this amendment. The only difference between this amendment and the proposal that was introduced by the judiciary committee is in fact the deletion in this amendment of the requirement for senate confirmation.

The problem with having senate confirmation--and it was the only part of the merit selection system that I did quarrel with, did find some fault with--is the potential for bickering between the senate and the executive, which might arise in future years should there be a change in the occupant in the governor's mansion or in the composition of the senate. I would hate to see qualified judicial selection candidates ping-ponging back and forth between the senate and the governor's office with the selection hanging in the balance.

It bothers me that--and I know from talking to many attorneys--that there is a fear on the part of certain attorneys about having themselves scrutinized and cross-examined by the senate. Not that they have anything to hide, but I think many attorneys--although this may surprise you--tend to shun the limelight and do not want to be seen in the public eye any more than is absolutely necessary. I don't think they derive any pleasure out of having their qualifications and credentials in public, debated at great length in the halls of our legislature.

The senate is not an additional level of confirmation as far as the selection of our district court judges is concerned, and I don't see any reason why we have to have it for our circuit, intermediate appellate and supreme court justices. I think that the true nature of merit selection is best served if we allow the merit selection committee maximum choice in the matter, tempered of course by the veto power of the governor, which is what we would have if we simply deleted the requirement of senate confirmation. Thank you.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Crozier.

DELEGATE CROZIER: Madam Chairman, I speak in favor of the motion. Reading the committee proposal, on page 3, lines 9 and 10, in that area, it says, "...by the judicial selection commission from the list with the consent of the senate. If the senate should fail to consent to any appointment, whether by the governor or commission, the commission shall make the appointment from the list, without senate consent."

Madam Chairman, I see a flaw in this. They place a time limit on how long the governor can take in choosing from the list, but there is no time limit set for the senate. There is the possibility, if the senate is not happy with the people on the list, that instead of making a decision, say they just postpone it for another session. And we possibly could be in a real fix. Thank you.

CHAIRMAN: Thank you. Delegate Hale.

DELEGATE HALE: Madam Chairman, I didn't think I would speak today because I don't feel that this is an area in which I am very qualified. On the other hand, I am a citizen, I was duly elected, and one of the six things that I did take to my constituents to ask their opinion on was the merit selection of judges. And although I was not on the committee--I'm speaking for the amendment, by way of explanation, I'm telling why I'm speaking--one of the six questions that I asked my constituency was--are you for the merit selection of judges. I found more hesitancy with this proposal than any other, and I had more opportunity to talk to my constituents because they didn't know what I meant. I had to explain to them that one system is the Missouri Plan, which at that time was the only system I was familiar with. And based upon that, they did overwhelmingly vote for a merit system for the selection of judges.

But it is my feeling that the people of this State are waiting to see what we mean by merit selection and that they do not intend to be fooled by a smoke screen in front of them. It appeared to me that the arguments for putting an appellate court were that we don't want to put a Band-Aid on the system of justice as it stands now. I maintain that we're putting a Band-Aid over the selection process of judges by this whole proposal. I think it's a Band-Aid under which the sores will fester, which may even cause the patient to have gangrene and have his leg cut off before it's all over. I base this upon this letter that's attached to the minority report.

When I read it I was shocked. As a lay person I really didn't understand too well what was being proposed and all these high-sounding words sounded nice, and it did look as though we were getting a judicial merit selection system that I could support. But if it were not for the Committee of the Whole and the opportunity to debate this, I'm afraid I would have been fooled. The people will have approximately two months to have this debated in front of them, and I don't believe they will be fooled. I'd like to point your attention to some of the things that were pointed out in this letter from the American Judicature Society, for whom I have the greatest respect. Never having heard of it before I came to this Convention, I found that they have the most intelligent, the most unbiased and the most informative articles on the judiciary and the system of any I have ever seen.

This letter, which was in response, I gather, to the committee's proposal that was sent to this society says: "... although I was pleased to see that the members of the convention's judiciary committee are committed to merit selection in principle, I was rather disappointed to find that they have included features which may not result in a strong merit system in practice." On page 2--

CHAIRMAN: Delegate Hale, would you address yourself to the merits?

DELEGATE HALE: "Second, besides the concerns I have discussed about qualifications for commission members, I am deeply troubled by the language in Section 3 allowing the Senate to consent to the nominees. I fear the growth of a practice similar to that which has dominated the federal system until recently, whereby the Senators, in effect, control the selection of judges. Senatorial consent could elevate partisan political considerations over a nominee's judicial qualifications.

"You may be interested in knowing that, according to our records, only two states which have constitutional provisions requiring the governor to pick judges from a list submitted by a nominating commission allow the senate to consent to judicial nominees. Even in these two states, Wyoming and Nevada, the senate is allowed to consent only to appointments filling interim vacancies, where the appointee is selected to serve the remainder of an unexpired term. In sum, I fear that senatorial consent would take the heart out of merit selection by allowing partisan political considerations to dominate over a candidate's ability to serve as a competent judge."

I submit to you also that those of you who have been close to the legislature have seen and know how it works. The problem is not that the qualifications are going to be taken out on the floor and debated; the problem is that this is going to be decided behind closed doors and smoke-filled rooms, and the majority decision is going to be forced upon the rest of the senate. I maintain that this is not what our people are looking for in making our judicial system a nonpartisan, effective way to select the best judges.

CHAIRMAN: Thank you, Delegate Hale. Is there further discussion? Delegate Nakamura.

DELEGATE NAKAMURA: I'd like to speak in opposition to the amendment. As far as the requirement of senate confirmation goes, I believe many members of the committee felt that it was a necessary part of the proposal. When the commission acts to select nominees, those proceedings are confidential and because of that there is little or no public input. Similarly, when the governor's appointment is made, it is also done without public input. The senate confirmation acts to provide such input and give the public confidence in the judicial selection process. The senate represents the people, and thus senate confirmation assures accountability. Mahalo.

CHAIRMAN: Thank you, Delegate Nakamura. Is there further discussion on this amendment? Delegate Takitani.

DELEGATE TAKITANI: Thank you. Thanks to my dear delegate from the Big Island, I see that all the members are back here. I guess most of us have heard the arguments. I implore those who didn't hear the arguments, please, for the sake of Hawaii, don't vote on this issue.

CHAIRMAN: Thank you, Delegate Takitani. Is there further discussion? Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, I just wanted to add one or two points that I think should be considered by the delegation. Under the proposal submitted by the committee, the governor is reduced to a--really--to an advisory role and the senate is given the dominant role in the selection of judges. That doesn't appear from a brief, superficial reading of the constitutional provision, but I would like to have you look at page 10 of the standing committee report, where--about the tenth line down in the procedure under which the selection is made--it is spelled out: "Where senate confirmation is required but is not received, then the governor must make another selection from the original list of not less than six until the list has been exhausted."

This means that when the nominating commission gives a list of six names, the governor then selects one, and if the senate rejects that one, the governor then has to go back and take another one from the list. If the senate rejects that, the governor has to name another one, and it goes on until the entire list is exhausted. This gives the senate the absolute veto right--the absolute right to select who among the six nominees shall be the judge. So what we've done is not only bring the senate into the picture, which in itself is a radical departure, but we have given the senate the dominant role in the selection of the judge. If that's what this delegation wants, then they can vote for it. But I would submit to you that we are going in uncharted waters, I think it is unwise and I would ask that you seriously consider voting to delete this portion of it so that our merit plan can use the same successful techniques of the 29 other merit plans in use in the United States.

CHAIRMAN: Thank you, Delegate Burgess. Is there further discussion? Delegate Pulham.

DELEGATE TAKITANI: Madam Chairman, I believe I asked to speak last. You should have taken the vote already.

CHAIRMAN: I'm sorry, Delegate Takitani. You are correct, you did ask to speak last, and we'll have to take the vote. My error. I did permit Delegate Burgess to speak beyond that, and I should not have. I'm sorry.

DELEGATE PULHAM: Then I think I should be allowed to speak against the motion since the last delegate spoke for it.

CHAIRMAN: Well, I guess we could go on for quite a while on that basis, Delegate Pulham. Do you feel you would be very deeply deprived?

DELEGATE PULHAM: Yes, I do.

CHAIRMAN: Well, I would not want to deeply deny anyone. You may speak.

DELEGATE PULHAM: As I've been sitting here listening to all of this, I'm just

wondering--because under the present system, in Section 3 under the appointment of justices and judges, it reads: "The governor shall nominate and, by and with the advice and consent of the senate...." Now, all of a sudden what makes this system so bad because the senate is involved and the old system so good because the senate was involved? I just don't understand this. Thank you.

CHAIRMAN: Thank you. It has now been moved and seconded that we adopt Delegate Takitani's Amendment No. 3. Are you ready for the question? All those in favor of the adoption of Amendment No. 3, please raise your hands. All those opposed please raise your hands. The noes have it.

We proceed now to--

DELEGATE HALE: Point of information.

CHAIRMAN: Yes, Delegate Hale.

DELEGATE HALE: Is it possible to announce the vote so that we know how much it was?

CHAIRMAN: Could the clerk announce the vote on the last amendment, please?

CLERK: Madam Chairman, the tally does not need to be announced unless a division of the house is called for.

CHAIRMAN: All right. So be it. No division of the house was called for. May we proceed with Amendment No. 4, which is the amendment of Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, I move for the adoption of Amendment No. 4.

DELEGATE BLEAN: Second.

CHAIRMAN: It is moved and seconded that Amendment No. 4 be adopted. Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, very briefly, the present proposed system requires that a list of not less than six nominees be submitted to the governor for appointment with the advice and consent of the senate. That is the largest number in any merit plan in existence in the country. It unduly dilutes the selection of the three best qualified judges.

When the United States selects the team to represent it in the Olympics--for example, in the marathon--it selects the three leading candidates, the three best. It does not select the five best. If it had to, it would not get the very best qualified runners. Judges, fortunately, are not like runners; they don't have one day when their performance is determined. By the same analogy, if the commission has to select only three, it can pick the top three. If it has to select six, then it must add three who are not as qualified as the top three. So I would urge that you delete or amend the six and make it three.

CHAIRMAN: Is there any further discussion? The Chair recognizes Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I speak against the proposed amendment. I was quite interested in the analogy raised by the delegate as to the manner of selection of the Olympics team.

However, I think he should have added at one point that even though the United States Olympics Commission selects three people to represent the United States, all three persons are ultimately involved in the events for which they were selected. In this situation, we have only one person who will be selected. And it's obvious that you can play the so-called numbers game with respect to deciding how many is a large enough pool from which to make the selection.

This is something our committee pondered a great deal. The number six was decided upon as being very representative, in that it was small enough so that we wouldn't

have what we might think is a dilution of strong judicial candidates and yet large enough so that there would be an adequate number for the governor or chief justice to make a choice from. The committee did not feel it would be wise to make the selection pool so small as to virtually force the choice upon the governor or chief justice. For that reason the committee ultimately decided that six was a good representative number. For that reason, I speak against the proposed amendment.

CHAIRMAN: Thank you, Delegate Ikeda. Further discussion? Delegate Hale.

DELEGATE HALE: I speak for the amendment, and I would like to read from the letter from the American Judicature Society on this question: "Finally, I question the requirement in the current proposal that the nominating commission must submit not less than six names to the governor. This requirement may dilute the quality of the nominees by forcing the commission to send three or four exceptionally well qualified candidates to the governor along with two or three considerably less qualified candidates. Requiring a smaller minimum number of nominees would help insure that every name on the list meets the highest standards required by the commission. Naturally, if there is an abundance of exceptionally well qualified people, the commission would not be prevented from sending a larger number of names to the governor."

Therefore, I think this is a very good reason to put three. What we're saying is that there be a minimum of three, but there should be no compulsion to give such a large list that they're diluting the quality of the nominees. I again warn you: let's not try to put a smoke screen over the people in the name of merit selection of judges.

CHAIRMAN: Thank you, Delegate Hale. Is there further discussion on this question? If not, it has been moved and seconded that we adopt Delegate Burgess' Amendment No. 4. Are you ready for the question?

All those in favor of adopting Amendment No. 4, please signify by raising your hands. All those opposed, please signify by raising your hands. The noes have it.

DELEGATE VILLAVERDE: Madam Chairman.

CHAIRMAN: Yes.

DELEGATE VILLAVERDE: I rise on personal privilege.

CHAIRMAN: Would you state your point?

DELEGATE VILLAVERDE: Yes. I think we're getting too much of this--pertaining to threats. I think--

CHAIRMAN: I beg your pardon? I didn't hear you, Delegate Villaverde.

DELEGATE VILLAVERDE: We've been getting too many threats from certain delegates--such as, "I warn you," "I warn the delegation." I don't think we need these kinds of warnings.

CHAIRMAN: Thank you, Delegate Villaverde. I don't think any rhetorical expression on the part of a delegate is intended as a threat as such. However, if that is the case, we will ask the delegates to refrain from using it. I will ask the delegates to please confine themselves to the merits of the issue. That's the best way to win votes.

May we move on to Amendment No. 5, which is Delegate Campbell's amendment. The Chair recognizes Delegate Marumoto.

DELEGATE MARUMOTO: Madam Chairman, I move for the adoption of Amendment No. 5 to Committee Proposal No. 10, by Delegate Campbell.

DELEGATE LIU: Second that motion.

CHAIRMAN: It has been moved and seconded that Delegate Campbell's Amendment No. 5 be adopted. Is there any discussion? Delegate Marumoto, the Chair recognizes you.

DELEGATE MARUMOTO: Madam Chairman, I rise to speak in favor of the amendment, on behalf of Delegate Campbell. This amendment provides for the nonpartisan at-large election of justices and judges in the State of Hawaii, thereby giving the people the right to choose their own judges. This method of choosing trial judges was widely adopted by many states after 1846 and remains the existing system in 24 states of the Union, such as California, Illinois, Michigan, Minnesota, New York and Pennsylvania.

Election of judges is consistent with our system of democracy, in which the people make the choice and the elected official is directly accountable to them. This will preclude, to a large extent, the arbitrary imposition by the judiciary of social, economic and cultural policies diametrically opposed to the best interests and welfare of the people. Further, if some judges fail to do their jobs competently, the people will have the opportunity to vote these judges out of office, a right they do not now have.

By using the elective method of choosing judges, the public is assured that judges will be independent and not beholden in any way to the executive and legislative branches of government. They will be beholden to the people only.

In order to eliminate undesirable partisan political influences, this proposal provides for a nonpartisan election. Thus the names of the judicial candidates would be listed on the ballot without any party designation. The potential for other political influences could be rendered nugatory by the establishment of publicly funded judicial campaigns, and the concept of publicly funded political campaigns has been approved by the Committee on Bill of Rights, Suffrage and Elections of this Convention.

The charge made by opponents of the elective system has traditionally been that it would be subject to tremendous political influence. An examination of the political realities in the State of Hawaii, however, reveals that there is little likelihood that such a result would pertain here. This is true because in our State the political parties generally make no endorsements of candidates in the primary election. It is only in states where the political parties have largely been in control of the nomination process that the fear of political corruption may be grounded.

In answer to the argument that the people do not have the knowledge and discernment to choose judges of merit, I say that if the people are able to choose the President of the United States, congressional representatives, etc., surely they have the capacity to choose their judges. This is particularly true in a state the size of Hawaii where judicial candidates are likely to be known to a large number of the voters.

Judge Samuel Rosenman, former president of the Association of the Bar of the City of New York and special legal counsel to two presidents, said that the fundamental defect in the purely appointive system is that "it does not provide a regularized method of actively seeking out talent for the bench in a non-political way...."

Proponents of the merit selection system say it is the best method of cushioning the elective process from adverse political influence and corruption. The question we need to ask ourselves is whether the plan recommended by the judiciary committee accomplishes this end. I'm afraid the answer must be a resounding "no." On the contrary, a close examination of the committee proposal shows it is replete with the potential for political influence. For example:

(1) The governor appoints three members of the commission and then is given the power to choose amongst the names submitted to him. Members of the house and senate may each choose one member of the commission and the supreme court may choose two. How can the people be assured that these recommendations will be free from political influence?

(2) The senate is empowered to confirm all judges except district court judges. Because of this, the political influence of the senate will be felt both at the commission and confirmation stages.

(3) Under the plan, members of the commission could hold a position of leadership in a political party, take an active part in political campaigns and make sizable contributions; this may be the reason they were chosen to serve on the commission. That could mean the absence of objectivity.

(4) The only basis for being disqualified from serving on the commission would be the holding of elective office. Therefore, if a person were a favorite paid staff member of the governor, house or senate members, he or she could conceivably be chosen to serve and not only be very much beholden to the appointer but also give the appointer a direct line of communication into the commission's activities.

If your aim is to free the selection process from adverse political influence, then let the people make the choice. You wouldn't deny that they acted with wisdom in choosing you, would you? Mahalo.

CHAIRMAN: Further discussion? Delegate Ikeda, the Chair recognizes you.

DELEGATE IKEDA: Madam Chairman, I wish to speak against the proposed amendment. I would like to indicate my very strong opposition to this proposed amendment. I think the matter of election of judges raises some very serious problems with respect to matters of the judiciary.

First of all, as indicated in the Legislative Reference Bureau's study and other studies on the subject matter, there is much information that indicates that voters who are voting for judge candidates simply lack knowledge of the judges and their qualifications, even more so than they do for other candidates for office. They often have very few criteria by which to proceed in an evaluation of the qualifications of a judge. In addition, there's the problem that if a judge has to run for election, he would have to devote some time to campaigning for office, which would be extremely disruptive of judicial proceedings. In addition, the election of judges focuses on the electability of the person rather than on the professional confidence of the person.

It also raises the spectre of a judge being beholden to whoever contributes to his campaign. Even if it's a judicial election, there is still the necessity for considerable funds to run for election. In addition and perhaps most serious, it raises the possibility of decision-making by a judge on the basis of popular appeal rather than what is right. For those reasons, I strongly indicate my opposition to the proposed amendment.

CHAIRMAN: Thank you, Delegate Ikeda. Delegate Hale.

DELEGATE HALE: Madam Chairman, I speak for this amendment. My initial reaction was that I was for a merit selection system for judges; however, I don't feel that what we're going to come up with--if the two votes that have been taken now on what was recommended by the American Judicature Society are any indication of the other amendments and what's going to happen to them--I don't feel that we're going to come up with a proposal that I can buy or try to sell to the electorate.

I had an opportunity to listen in on the hearings when Judge Lanham came to the Committee on the Judiciary. As far as I know, he was the only major person who spoke for an elected judicial system. I was quite impressed with his testimony, but I'll have to admit that I had a personal bias against it because my son-in-law in California is involved in a very heated, expensive and difficult campaign. On the other hand--and my daughter has told me, don't vote for elected judges--rather than have a system that I feel is not a fair and good merit selection system, I would rather trust the people than the politicians. That basically is what Judge Lanham said, and that's my opinion.

Because of the fact that these other amendments have been voted down and because of the criticism that has been laid on this committee proposal by the American Judicature Society, I would rather trust the people. I urge you to vote for elected judges.

CHAIRMAN: Thank you, Delegate Hale. Is there any further discussion? Delegate Miller.

DELEGATE MILLER: Madam Chairman, on my desk, unfortunately, is a booklet that the state of California gives out at election time on their propositions and candidates and so on. When it comes to the judges, I believe that there is just a yes or no. There isn't an elaborate system of campaigning for a judge. It's on your record. If anyone could add to this, I would sure appreciate it.

DELEGATE HALE: Madam Chairman, I can add to it.

CHAIRMAN: Yes, Delegate Hale.

DELEGATE HALE: That is not true. My son-in-law was appointed by Governor Brown for an interim term. But the law says that when the next election comes up, you have to run in that election. It has been true in the past and under most systems that there usually is no challenge to a judge. But in the past couple of elections, there have been more and more challenges and there were challenges in this election. My son-in-law had two challengers, and the two top people have a runoff in the general election. He had in the primary election, and he'll have in the general election. I speak from personal experience. I would not want to put that on anybody's family, but it's certainly better because I feel that he will get elected, maybe--but whether he does or not, I think it's better than this system that we're calling merit selection.

CHAIRMAN: Thank you. Is there further discussion? Delegate Pulham.

DELEGATE PULHAM: Yes, one word, Madam Chairman. I will speak against this amendment. I was just wondering: If you cannot trust politicians, what do we do with the judge once he becomes a politician by running for office?

CHAIRMAN: Thank you. Further discussion? If not, it has been moved and seconded that Delegate Campbell's Amendment No. 5 be adopted. Are you ready for the question? If so, all those in favor of Amendment No. 5, please signify by raising your hands. All those opposed likewise raise your hands. The noes have it.

We will proceed now to Amendment No. 6 which is the amendment of Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, I believe that Delegate Barr is going to speak in favor of this amendment.

CHAIRMAN: Are you moving for its adoption?

DELEGATE BURGESS: I move for adoption of Amendment No. 6.

DELEGATE BARR: Second.

CHAIRMAN: Discussion? The Chair recognizes Delegate Barr.

DELEGATE BARR: Madam Chairman, essentially what Amendment No. 6 does is provide for a retention election after the person appointed by the governor has served at least 12 months in office. So at the first general election following a year in office, the judge would be subject to a retention election. The ballot would simply read, shall justice or judge so-and-so of the whatever court be retained in office--yes or no. There is no opposition. The judge is not allowed to campaign. There is no filing fee even. He simply notifies, 60 days before the election, the appropriate authority--the lieutenant governor's office--that he wants to run.

Now I'd like to suggest why this is important. May I start by looking at the first half of our merit selection process as proposed by the committee. In fact, I commend the committee for their efforts in trying to provide some kind of merit selection, and I see their commission--the selection commission as an effort to in fact get better quality judges in the long run. That is a commendable effort.

Justice, however, requires not only being there in fact--that is, to have the process produce something that we can see as justice--but also having the appearance of justice. Now I know that nowadays it's very easy for us to be cynical; after a few drinks several of my lawyer friends admit that their original ideals in going into law, to help the world have justice, are challenged regularly by the processes. However, I think most of those friends of mine who are lawyers retain some hope that what they are doing can help, in fact, have a little more justice in our society.

But that justice--even if we have it in fact, and no matter how well we produce it--must also have the appearance of justice. A major element in the appearance of justice, I submit, Madam Chairman, is that the people in our society have confidence in the process. The retention election provides an opportunity for the public to stop and think--hey,

how is that court system doing? What is it that I feel? And if in fact they have confidence in the process, they can express that confidence by voting for the judge who is in office.

Now I would note for you that very rarely--there are 15 states with a merit selection plan that also has a retention election, and in those states a judge is turned out less than 1 percent of the time. I submit, Madam Chairman, that if they turn out a judge, that's pretty good evidence they don't have confidence in that judge, and a lack of confidence in a particular judge expresses or threatens a lack of confidence in the entire process. So that's a good, not a bad, that less than 1 percent get turned out, and it's an even greater good that the 99+ percent have the confidence of the public as expressed through those votes.

I understand that several attorneys have objected to the idea of having these retention elections because they feel somehow threatened by them. It's asking a lot, I am told, to ask an attorney to give up practice to become a judge for no more than two years--one year plus the time until the next election--when he is threatened by the possibility that the public will turn him out. But life doesn't come with any guarantees, and I can imagine much greater risks than that taken by a judge in a merit selection state since 99 percent of them are retained by the voters. So it helps then with this appearance of justice.

Now, I'd like to suggest a second argument for why we should consider very seriously having a retention election. We have, in our classic separation of powers in America, three branches of government. In two of those three branches in Hawaii, the voters have input: we elect our governor, along with our lieutenant governor, and that is our opportunity as voters to give some direction and on occasion a vote of confidence to the direction the executive branch of government is moving in; we also regularly elect our legislators at both the senate and house levels, and that again is an opportunity for the voters to have input and to give, if appropriate, their vote of confidence. And yet we are denied that in the case of the judiciary, which is no less important a branch of government and which is no less important for the voters to have input.

We are told that the reason is that since the governor is identified as the person making the appointments, the governor can be held to account for appointing that judge or justice. I submit to you that that's a very weak argument. Consider for a moment. Many of us have worked on a campaign for a governor, or will perhaps at some time. If you are working hard, believing in the programs of the governor, how would you feel if a voter told you--oh, yeah, I like what the governor does administering the executive branch of the state, I like what he does in the programs and laws he's proposing, I think his budget is good and fiscally responsible and yes, I like his social programs, yes, I like this, I like that, but you know, I'm not going to vote for that guy because he appointed one bad judge. Now we wouldn't expect a voter to do that; we would consider that person unreasonable, wouldn't we? We would argue that in balance you have to look at the good a guy does and the bad a guy does--the good a gal does, the bad a gal does--and reelect that person as governor based upon the balance sheet and not one act, one thing, one appointment of one judge you are not fond of.

So, as a matter of practice, in the appointment of judges the governor is not held accountable in the election process and neither would any other official we made the appointing authority. So in order for the voters to have an opportunity to express their confidence and have input, we need these retention elections. They are depoliticized as much as an election can possibly be in politics. But I further suggest to you that politics is after all the processes of making decisions on matters of public policy, and no one to be included in that process is more important than the voters. Therefore, I appeal to you to please pass this amendment.

CHAIRMAN: Thank you, Delegate Barr. Is there further discussion? The Chair recognizes Delegate O'Toole.

DELEGATE O'TOOLE: Madam Chairman, I'd like to pose a question to the previous speaker.

CHAIRMAN: Just a minute, Delegate O'Toole. Will the delegate who just spoke, Delegate Barr, yield to a question by Delegate O'Toole?

DELEGATE BARR: Depends on what the question is.

CHAIRMAN: Delegate O'Toole, do you want to ask your question?

DELEGATE O'TOOLE: What would be the process of finding out what the judge has done if he can't campaign? I'm just wondering. It seems that it would be easier to find out if the judge was a bad judge if he had done something that was very well known and explicit in the newspapers. But let's say that this individual did not have any publicity. What vehicle would you use to make sure you know the pros and cons of this individual?

CHAIRMAN: Delegate Barr?

DELEGATE BARR: Madam Chairman, may I ask to speak last and answer that question in the last speech?

CHAIRMAN: Is that satisfactory to you, Delegate O'Toole? All right, let's proceed. The Chair recognizes Delegate De Soto.

DELEGATE DE SOTO: Madam Chairman, I rise to speak against this amendment. As a candidate for the Con Con, one of the things that was made clear to me in our public hearings throughout the leeward coast area was that the people did not want an elective judge system. Some of the questions raised by the previous speaker were questions that lay people have had. How would the public determine the quality of a judge, whether to retain or not retain him. We would have no way of knowing unless we were in court ourselves, and then if we were defendants in a case, our opinion would be tainted if we were convicted. If a judge doesn't make the news media, we would have no way of knowing. Right now I have not been participating in the conversation on the floor--it sounds like lawyer versus lawyer, and I don't know what's going on since I'm not a member of that committee. I have commitments and responsibilities of my own to fulfill and still try to stay on top of this. But, unless I'm having extraordinary problems, other than what I term lay people or grass roots, I just don't know how anybody is going to find out unless they can campaign and let the people know what they have been doing.

I apologize for not knowing enough about our court system. But I did want to indicate that my not voting or my leaving the room was simply out of frustration--I don't know what you guys are talking about. Mahalo.

CHAIRMAN: Thank you, Delegate De Soto. I hope what we're talking about will become evident, because the input of each delegate here, whether a lay person or an attorney, is invaluable. Is there further discussion on this amendment? The Chair recognizes Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I would also speak against this amendment. I don't think we have to belabor the point. A retention election doesn't have the same drawbacks as an election in which there are several candidates involved. However, some of the previous delegates have touched upon a very pertinent problem: the matter of lack of voter knowledge about the candidates and the impossibility of the voter forming any kind of an opinion as to whether a person should be retained for a judicial office.

Even though you don't have substantial campaigning expenses, there is still the additional problem that is always present in a retention election that decisions will be made possibly on the basis of popular appeal rather than what is just and proper under the law. For those reasons, I would speak against this amendment.

CHAIRMAN: Thank you, Delegate Ikeda. Is there further discussion? Delegate Nakamura.

DELEGATE NAKAMURA: I would just like to address some of the concerns of one of the previous speakers as to what the public can do when they have concerns about a bad judge. The committee proposal, I think, has addressed that problem, on page 6 under the section entitled "Retirement; Removal; Discipline." We are proposing that the supreme court "shall create a commission on judicial discipline" to which complaints on judges' misconduct or "allegations of misconduct or disability" can be brought up to this commission and therefore acted upon by the supreme court.

CHAIRMAN: Thank you, Delegate Nakamura. Further discussion? Delegate Barr, did you want to make your final statement?

DELEGATE BARR: Yes, thank you. I would also like to thank the delegates who raised that question. I should quite properly have addressed it in the first place and I'm sorry I didn't, but I will take this opportunity to do so now.

The questions are based on the criterion that voters make their decisions based on the merits of a candidate. I know that we would all like to believe that's true. I would like to believe that I was elected a delegate to this Constitutional Convention based on my merits. But I don't feel myself above that; I have several opponents who wonder how voters could possibly have selected me based upon my merits.

Political science has become a very well-developed science in its analytic and statistical methods. Voter behavior is one of those areas that has been studied most thoroughly by political scientists. The studies in political science--I'm revealing my background to you, I am a political scientist--have shown quite unequivocally that typically, typically in an election, approximately 10 percent of the voters will make decisions based more or less upon issues; and in an extraordinary election as many, perhaps as many as 50 percent of the voters will make decisions based upon issues. That means the rest of us, in elections, are making decisions based upon other things. I don't really think that any of you could deny there are a whole bunch of other things upon which we make our choices.

In the case of the judges, it would be no different. In fact, it would probably be regularly that most voters would make their choices on things other than the merits of a candidate. In fact, in the 15 states that have this, they make their choices based upon their confidence in the judicial process. And where they can identify a judge who gives them no confidence, they have an opportunity in that election if they know the facts, the information, to take the case to the public, to make an appeal to the public that--here we have an example of what we ought not to do if we want to maintain the system that promotes confidence in justice.

So as a matter of fact, this is exactly the reason for us to have this, not for us to avoid it. I thank you for raising the question.

CHAIRMAN: Thank you, Delegate Barr. If there is no further discussion, it has been moved and seconded that we adopt Delegate Burgess' Amendment No. 6. Are you ready for the question?

All those in favor of the adoption of the amendment, please signify by raising your hands. All those opposed, signify in the same way. The noes have it. The Chair will declare a short administrative recess subject to call.

At 4: 40 p. m. , the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4: 44 p. m.

CHAIRMAN: Committee of the Whole will come to order. We will proceed with Amendment No. 7, which is also by Delegate Burgess. Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, I move for the adoption of Amendment No. 7.

DELEGATE WURDEMAN: I'll second it.

CHAIRMAN: The motion has been made and seconded. Is there any discussion? Delegate Burgess.

DELEGATE BURGESS: Fellow delegates, the purpose of this amendment is to correct the absence of any language in the proposal setting the number of nonlawyers and lawyers on the commission. It is important that there be a balance between laymen and lawyers for the merit commission to work properly. There is no prohibition whatsoever in this language from having nine lawyers. There is likewise no prohibition against having seven laymen and only two lawyers.

The plans adopted in other jurisdictions consistently have an almost equal balance between lawyers and laymen. Most of the 30 jurisdictions that use a merit plan have

a slight majority of attorneys--typically, five attorneys and four laymen. Five or six of the jurisdictions have a slight majority of laymen. The reason for the balance is to have input from lawyers who represent that part of the public involved in litigation. Lawyers provide expertise, familiarity with the workings of the court system and with the knowledge of other attorneys. Their contribution is very helpful in recruiting candidates for judgeships.

Laymen on the other hand bring the consumer perspective and the general public perspective to this selection process. The balance is important. It is important that neither lawyers nor laymen dominate. That balance is absent from this proposal and I would submit this amendment for your consideration.

CHAIRMAN: Thank you, Delegate Burgess. Is there further discussion on this motion? Delegate Ikeda, the Chair recognizes you.

DELEGATE IKEDA: Madam Chairman, I speak against this proposed amendment. The proposal put forth by the committee provides for a commission of nine members with two to be elected by the bar. This amendment would raise that number to four. What it does is raise the spectre of domination by one group.

You will have, if this proposal passes, a guaranteed number of commission members who are members of the bar--that is to say, four. The decisions of the commission will be made by a majority of the members, but with four members being from this particular group, I think it raises the possibility of domination by this one group.

It is true that in the committee proposal we set no requirement as to the total number of attorneys except for the two to be elected by the bar. But the likelihood is that the remaining members of the commission would be either lay people or people who could be members of the bar. But they're not on the commission because of the fact that they happen to be attorneys. I would submit that the proposal set forth by the committee is a superior one.

CHAIRMAN: Thank you, Delegate Ikeda. Is there further discussion? Delegate Waihee.

DELEGATE WAIHEE: Madam Chairman, I rise to speak against the amendment. I think that what is involved here is more than a question of domination. It's a question of who is appointing these commissioners, who has the responsibility for selecting society's judges. I question very much-- To begin with, I have some philosophical differences with the whole idea of the bar, as a special interest group in this society, electing members to sit on a commission which will select judges within their own profession.

Nonetheless, there are some good policy reasons for including members of the bar on this panel. What this amendment would do would in effect give the bar as a special interest group the largest single unit of appointment on the judicial commission. I think for that reason I would have to be against this amendment.

CHAIRMAN: Thank you, Delegate Waihee. Is there further discussion on this amendment? Delegate Hirata.

DELEGATE HIRATA: Madam Chairman, I rise to speak against the amendment. This proposal concerns only the composition of the judicial selection commission--for example, the number of members that the specified entities shall appoint or elect to membership on the commission. This floor amendment is essentially the same as to composition of the commission as the proposal made by the Hawaii State Bar Association, which was rejected in Committee Proposal No. 10 by the members of the judiciary committee.

I believe it is appropriate that the governor, who is elected the state official with the broadest popular base, should make three appointments to the commission rather than two. Three constitutes only one third of the commission membership, less than a majority but nevertheless a large enough number to insure that persons lacking what one delegate has called "a sense of justice" will be at least very carefully examined. Also, two appointments by the supreme court seems appropriate since Committee Proposal No. 10 envisaged a supreme court which would exercise active, supervisory powers over the courts and hence, as a representative of the court system, should have more than one representative; two out of nine is not excessive.

I believe that four members from the bar is excessive because four lawyers with their expertise in the law are too likely to work together and effectively overpower the will of the remaining five persons on the commission. However, I believe that legal expertise is necessary to the commission, and for that reason I believe that two members, as proposed in Committee Proposal No. 10, are desirable. However, I am opposed to the prohibition on all members of the commission, except the four elected by the bar, not to be lawyers. The bar association proposed a commission of five lay persons and four lawyers, a commission too likely to be dominated by the expertise and views of the four lawyers chosen by the bar.

Instead of that 5/4 configuration, I believe that Committee Proposal No. 10 properly is silent on whether seven of the nine members shall or shall not be lawyers. I believe this leaves the appointing entities free to choose persons best qualified to serve on the commission and eliminates what I see as the probable dominance of the commission by four who might better represent the interests of the bar than of the public.

CHAIRMAN: Thank you, Delegate Hirata. Is there further discussion? Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, just very briefly in response. I'm unable to understand the fear of domination that is discussed when the proposed balance is mentioned. The experience of jurisdictions that have been using this plan since it started in 1940 in Missouri has simply shown that that is not true.

One of the studies from The Key to Judicial Merit Selection: The Nominating Process says that the "... responses to our questionnaires reveal that very few lay members felt dominated by the lawyers and that equally few lawyer members felt the lay members to be superfluous...."

"The interaction between lawyers and laymen on the Committee is of some interest. Except in one or two cases, most of the laymen have scant knowledge of the courts, the judiciary, or their recent problems. The laymen, however, soon realized that they were as perceptive as the lawyers about people, and equally adept in evaluating available information. While laymen had to defer to lawyer opinions about legal experience, they had strong, independent views and were by no means dominated or manipulated by the lawyers."*

That, I might add, is in reference to a commission which was composed of either slightly more or slightly less than half lawyers. So I would respectfully submit that fear of domination is unfounded, and to change the balance as radically as this is unwise.

CHAIRMAN: Thank you, Delegate Burgess. Is there further discussion on this amendment?

There being none, it has been moved and seconded that we adopt Delegate Burgess' Amendment No. 7. Are you ready for the question? All those in favor of adopting this amendment, signify by raising your hands. All those opposed, signify in like manner. The noes have it.

Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I note that we are at sort of the midway point in the amendments that have been submitted. I think that probably this may be a logical breaking-off point. So I would move that we rise and report to the Convention that we have not completed our consideration of Committee Proposal No. 10 and that we would need more time to complete our work.

DELEGATE CALVIN CHING: I second the motion.

CHAIRMAN: It has been moved and seconded that we rise and report to the Convention

*Robertson and Gordon, Merit Screening of Judges in Massachusetts: The Experience of the Ad Hoc Committee, 58 MASS. L.Q. 131, 138 (1973).

that we have not completed our consideration of Committee Proposal No. 10 and that we would need more time to complete our work.

All those in favor of rising and reporting please signify by saying aye. Those opposed, by saying no. The ayes have it. The motion is carried. Mahalo.

At 4:51 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Thursday, August 31, 1978 • Afternoon Session

The Committee of the Whole was called to order at 2:12 p.m.

Delegate Campbell presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. We will now resume our work on Committee Proposal No. 10. You will all note that there are some new and some replacement amendments on your tables, and there are several changes we would like to have you make as we go along. Please listen to what we suggest should be destroyed and what replaced.

Note that your old Amendment No. 11 which starts with "considered and any member" should be withdrawn and replaced with a new No. 11, which starts with the words, "Any attorney member of the commission or that member's law firm"--Delegate Ikeda's amendment. Secondly, Amendment No. 13 has been withdrawn completely and not replaced by anything. Moving on, Delegate Stone has withdrawn his No. 15, which reads, "No member of the judicial commission shall receive any compensation for his services as such...." Replace that with a new No. 15, Delegate Ikeda's amendment, which starts, "No member of the judicial commission shall receive any compensation for commission services...." That is your new Amendment No. 15. No. 16 is a new amendment, which is Delegate Burgess'; number that No. 16. Delegate Hokama's is a new amendment and it should be numbered 17.

We shall now consider Amendment No. 8, Delegate Ikeda's. Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I move for the adoption of Amendment No. 8.

DELEGATE CALVIN CHING: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Delegate Ikeda's Amendment No. 8. Delegate Ikeda.

DELEGATE IKEDA: I would like to call your attention to lines 11 through 14 on page 7 of the committee proposal. What this amendment does is replace two sentences beginning on line 11 and ending on line 16. The present language that we are replacing through this amendment reads as follows: "The senate and the house of representatives shall each respectively elect one member to the commission, the initial appointments to be for a term of two years respectively. The supreme court shall elect two members to the commission, the initial appointment to be for terms of four and six years respectively."

These are replaced by the two sentences as stated in the amendment, as follows: "The president of the senate and the speaker of the house of representatives shall each respectively appoint one member to the commission, the initial appointments to be for a term of two years respectively. The chief justice of the supreme court shall appoint two members to the commission...." The amendment provides that the president of the senate and the speaker of the house would do the appointing rather than the house and the senate doing the electing and the chief justice appointing rather than the supreme court in general.

The reason for the amendment is as follows: in committee discussions, although we focused on the problem of how the representatives picked by the house and senate were to be selected, we never actually focused in on the process itself; and we never completely resolved the matter and as a result we stated it in very general terms. But based upon my having spoken to a number of the committee members, the feeling was

that we should define this much more specifically and provide a method of expediting the work of the commission, and that by designating the senate president and house speaker and the chief justice as picking the members from each of those respective branches of government or houses of the legislature that we would expedite the selection process of members for the commission.

CHAIRMAN: Thank you, Delegate Ikeda. Is there further discussion? Delegate Takitani.

DELEGATE TAKITANI: Madam Chairman, I rise to speak against the amendment. As a member of the committee, I believe we did resolve the problem and we chose to let the house and the senate find a way to appoint the members--or elect the members--to the commission. We specified that we did not want the president of the senate or the speaker of the house or the chief justice to do the appointing. So for those reasons--I believe we did resolve the problem in committee, and we did not choose to go this way.

CHAIRMAN: Thank you, Delegate Takitani. The Chair recognizes Delegate DiBianco.

DELEGATE DiBIANCO: I also rise to speak against this amendment. As a member of the judiciary committee I thought--it was my understanding when we discussed this that the reason we wanted the house of representatives and the senate and the entire supreme court to have some input in the selection of the members of the merit selection commission was to broaden the base as much as possible and have as much public input as possible in the selection of the commission members.

One of the debates we had regarding this matter was whether we should even have the selection commission elected by the general electorate. We decided that was too cumbersome and unwieldy and really wasn't necessary, and we could substitute by having them chosen by their elected representatives, the members of the house and the senate and, in the case of the supreme court, by the entire membership of the supreme court.

Now I see that we're changing it to just having three people do all the selecting. This is not just an economizing move, it changes the whole philosophy upon which the merit selection commission was being chosen. I would really urge the other judiciary committee members to express themselves on this subject because this is a radical departure from what we had agreed to in the committee.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Hale.

DELEGATE HALE: Madam Chairman, I'd like to refer the delegates to page 18 of Standing Committee Report No. 52, in the last paragraph it reads, "Again, in this regard, the proposals"--in the middle of that paragraph--"and testimony received"--and I'm speaking against the amendment--"indicated a consensus as to which groups or bodies in the community should have input selecting members of the commission. Included were the governor, the supreme court, licensed attorneys in the State, the house of representatives and the senate."

It is my opinion that the committee report reflects very definitely that they wanted all of these members to have input. Therefore, I think this is improper and I would urge you to vote against it.

CHAIRMAN: Thank you, Delegate Hale. Further discussion on this amendment? The Chair recognizes Delegate Liu.

DELEGATE LIU: Madam Chairman, I speak against the amendment because I speak in agreement with the vice-chairman of the committee, the first speaker on this subject after the chairman of the committee. It seems that the intent of the committee when deliberating on this subject was to have the house and the senate and the supreme court decide on whatever method they could to deal with the problem of choosing members to this commission.

I bring to the attention of this body that the possible constitutionality of the whole makeup of the commission and the selection system has been brought to question by a respected member of the bar here. One of those grounds is the equal protection argument, that perhaps, because we are dealing in a very special area and in an area that affects

all people, to have a very select group of persons dealing with the selection, that we may have a system which may ultimately prove to be unconstitutional. To protect the system that was proposed by the committee, I think that we have to attempt, within the framework of what is proposed, to make it as constitutionally safe as possible. That, I think, would be to have all the members of the house, all the members of the senate, all the members of the supreme court in some way or other have some input as to how the commission is selected.

In the end, it may mean that the president of the senate and the speaker of the house of representatives and the chief justice will be those people. But in no way then could the plan as submitted by the Committee on Judiciary be criticized on the point that it's unconstitutional not only because the makeup is select but also because those who do the selecting are a few themselves. For those reasons I speak strongly against this amendment.

CHAIRMAN: Thank you, Delegate Liu. The Chair recognizes Delegate Shon.

DELEGATE SHON: Madam Chairman, I speak against this for one reason and that is that the speaker of the house and the president of the senate are usually people of high stature who have much achievement. If they are attorneys, they are often considered as candidates for judgeships. I think that this puts them in a highly questionable position as to the appearance of impropriety or conflict of interest or however you want to put it. I don't believe people who are probable candidates for judgeship should be in a position to singularly nominate members for a judicial commission. This is something that should be seriously looked into. It's one thing if the entire body is involved, but it's another if it is an individual who might in the future be a prime candidate for a judgeship.

CHAIRMAN: Thank you, Delegate Shon. Is there further discussion? Delegate Sterling.

DELEGATE STERLING: Madam Chairman, I rise to speak against the motion. I'm a little confused. The last sentence in the amendment reads, "The chief justice of the supreme court shall appoint two members...." Then in the committee report, "The chief justice shall fill a vacancy in the district courts...." He will have power not only over the selection of the commission members but also over the judges. We're going to give him two shots at who's to be a judge. Is this what we want?

CHAIRMAN: Thank you, Delegate Sterling. Is there further discussion on this amendment? Delegate Takitani.

DELEGATE TAKITANI: Madam Chairman, I rise for the second time to speak against this amendment. What this does is let 4 people--the governor, the senate president, the speaker of the house and the chief justice--select 7 members of this 9-man commission. The chief justice himself comes from the governor, with the senate's advice and consent. By doing this, we will allow the opportunity to really stack this commission, and I don't think that is the intent.

CHAIRMAN: It has been moved and seconded that we adopt Delegate Ikeda's proposed Amendment No. 8. There being no further discussion, are you ready for the question? Delegate Ching.

DELEGATE DONALD CHING: Madam Chairman, the question has been raised whether there is a precedent for appointments by the president of the senate and the speaker of the house to commissions such as this. In the ones that I am familiar with, usually that power is delegated to the presiding officer of the respective body. This is not something that is far and apart different from what has happened in a lot of the areas where the president of the senate--the senate and the house have the power to add members to a commission. So, I don't think we're--

DELEGATE DiBIANCO: Point of order.

DELEGATE DONALD CHING: I'm speaking for the amendment.

DELEGATE DiBIANCO: I'm sorry. My question is whether or not this argument is out of order since the call for the question already has been made.

CHAIRMAN: Delegate DiBianco, I permitted it because we had not fully stated our position. Thank you, Delegate Ching. You have concluded your statement?

DELEGATE DONALD CHING: Yes, Madam Chairman. Was the point well taken, Madam Chairman? I just want to know for further reference.

CHAIRMAN: Insofar as Delegate DiBianco's point of concern?

DELEGATE DONALD CHING: Yes.

CHAIRMAN: I believe, when the Chair asks the question, at that point there should be no further discussion and we should take the question. But you had started and I will permit you to make that statement.

DELEGATE DONALD CHING: Madam Chairman, I appreciate your ruling, and I shall remember that in further session.

CHAIRMAN: Thank you, Delegate Ching. I will now repeat--it has been moved and seconded that we adopt Delegate Ikeda's proposed Amendment No. 8. Are you ready for the question? All those in favor of proposed Amendment No. 8, please signify by raising your hands. All those opposed, please signify in like manner. The ayes have it. The motion prevails.

We will now proceed to Amendment No. 9, which is Delegate Ikeda's proposed amendment. Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I move for the adoption of Amendment No. 9.

DELEGATE CALVIN CHING: I second the motion.

CHAIRMAN: Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I call your attention to page 8 of the committee proposal, lines 3 to 5. What this amendment does is simply remove the sentence that reads as follows: "The legislature shall by statute provide for the time and manner of appointments and elections to conform with this section." The reason for this amendment is that the committee, in its deliberation, attempted to make the matter of the setting up of the judicial selection commission as self-executing as possible without the need of any further statutory action. As the delegates will note, in reading the part beginning with the judicial selection commission on page 7, we set forth in very great detail the manner in which the initial commission would be set up and the provision for staggered terms of the members that are elected thereafter.

For this reason I believe that this sentence is not needed and in fact, if left in there in this proposal, would tend to confuse the matter of the selection process.

CHAIRMAN: So then, Delegate Ikeda, your intention is to delete the sentence after the word "commission," so that the paragraph would end with the words "term on the commission." Is that correct?

DELEGATE IKEDA: That is correct.

CHAIRMAN: All right. Is there further discussion on this amendment? Delegate Sutton.

DELEGATE SUTTON: Madam Chairman, I wish to speak in favor of the amendment simply because the previous amendment really invalidates this section. It's too wordy for a constitution and it really has no effect. All it's doing is adding more words.

CHAIRMAN: Thank you. All right. Is there further discussion? Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, I also speak in favor of the amendment. The sentence to be deleted should in fact be deleted as it serves no purpose.

CHAIRMAN: Thank you, Delegate Burgess. Is there further discussion on this amendment? If not, are you ready for the question? All those in favor of the adoption

of Amendment No. 9, please signify by raising your hands. All those opposed, signify in like manner. The ayes have it.

We now move on to Delegate Burgess' Amendment No. 10. Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, I move for the adoption of Amendment No. 10.

DELEGATE HALE: Second.

CHAIRMAN: It has been moved and seconded that Amendment No. 10 be adopted. Delegate Burgess, do you wish to speak to your amendment?

DELEGATE BURGESS: Madam Chairman, the purpose of this amendment is to add two features that are not presently included in the committee proposal. First is a prohibition against political activity which is stated in the third full sentence in the paragraph, which reads, "Nor shall any member run for or hold any office in any political party or organization, or take part in any political campaign."

This simply puts into the Constitution the clear intent of the entire committee and, I believe, the intent of the entire nominating commission approach to the selection of judges. I might add that it also parallels the language which we have already adopted in reference to ethics commissions. Committee Proposal No. 1, which was the first proposal that this delegation acted on and approved, contains a similar sentence. The sentence in the ethics section says: "The members of ethics commissions shall be prohibited from taking an active part in political management or in political campaigns." I would submit to you that such a prohibition in the case of ethics commissions is as important or more important in a commission which handles the selection of judges because the quality of our judicial system is one of the most significant parts of our society. I would commend this to you for your favorable consideration.

CHAIRMAN: Thank you, Delegate Burgess. Is there further discussion on this amendment?

DELEGATE HINO: Point of information, Madam Chairman.

CHAIRMAN: Yes, Delegate Hino, state your point.

DELEGATE HINO: Does this prohibition on United States officers apply to retired regular officers?

CHAIRMAN: You're talking about retired regular officers in the military?

DELEGATE HINO: Right.

CHAIRMAN: Delegate Burgess, would you yield to a question and respond to Delegate Hino's inquiry?

DELEGATE BURGESS: Madam Chairman, I don't know.

CHAIRMAN: Is there anyone in the body who is enlightened and can respond to that? Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I can't give a definitive answer, but my belief is that it would not preclude a retired army officer, for the simple reason that, although I suppose technically a retired army officer would be considered an employee, he is actually a person who is a pensioner and is no longer actively employed by the United States.

CHAIRMAN: Thank you, Delegate Ikeda. Does that answer your inquiry, Delegate Hino? Delegate Cabral.

DELEGATE CABRAL: Madam Chairman, I think I can offer some further enlightenment on this. As an active-duty military member, it would be prohibitive to engage in any kind of political activity. As a retired pensioner, however, that restriction is no longer applicable and they are free to conduct themselves as any normal citizen.

CHAIRMAN: Thank you. Delegate Hino, has that answered your question?

DELEGATE HINO: No, it does not, Madam Chairman.

DELEGATE WURDEMAN: Point of information.

CHAIRMAN: Yes, Delegate Wurdeman, state your point.

DELEGATE WURDEMAN: Would, in this instance, "officers" be nonpracticing officers as members of the bar, or not?

CHAIRMAN: Officers?

DELEGATE WURDEMAN: United States officers, don't they also have to take the bar exam?

CHAIRMAN: Would you clarify your question again? Would you state first of all what language you're referring to, Delegate Wurdeman.

DELEGATE WURDEMAN: I understand that there's a question on the floor right now, and I'm assuming that if you are becoming a judge in the State, that you are a practicing member of the bar. If so, many U.S. officers are not because they have not taken the bar exam. Is that correct?

CHAIRMAN: That may be true, but I think the language in question is this: "No member shall run for or hold any other office or position of profit under the United States, the State, or its political subdivisions." If I am not mistaken, this language really relates to individuals who are public employees either of the federal government, the state government or the city and county. I do not believe it addresses itself to the military as such, although if you were--the military retired--which Delegate Hino has addressed himself to, I do not believe it would apply to retired military officers. That is about as much information as the Chair can provide. Delegate Hino, did you want anything further on that?

DELEGATE HINO: Thank you, Madam Chairman, I have decided to vote against the amendment because of the uncertainties involved.

CHAIRMAN: Thank you. Any further discussion on this amendment? The Chair recognizes Delegate Kimball.

DELEGATE KIMBALL: Madam Chairman, I'd like to point out that the language that he is concerned about also is contained in the committee proposal.

CHAIRMAN: Thank you. The Chair recognizes Delegate Nakamura.

DELEGATE NAKAMURA: Madam Chairman, I rise to speak against this amendment. This proposed amendment makes certain changes in the third paragraph of the committee's new section of Article V concerning the commission.

First of all, the amendment deletes the word "elected" in the third line and adds "or position of profit" to the third and fourth lines, thus broadening the prohibition against elected officers to include not only elected officials but also any federal, state or county employees as well. The proposed amendment then continues with the prohibition against running for or holding "any office in any political party or organization" and a prohibition against taking part in any political campaign.

Such prohibitions are out of step with today's emphasis upon greater citizen participation in government and may be unconstitutional as well. Grave questions have been raised in the recent past concerning Hatch Act limitations upon the civil rights of federal employees and indirectly of all government employees. These questions will continue to arise as long as attempts are made to deprive public employees of their constitutional rights as citizens.

Why should thousands of public employees be deprived of this opportunity to participate in their government because they happen to be employed in some governmental

capacity? The great bulk of government employees do not work for the courts and have absolutely nothing to do with the courts and their work. But even if one were employed by the courts, his or her knowledge of the court system would either be helpful or neutral in value insofar as commission duties are concerned.

We should remember that most government employees have civil service status. As such, they are less susceptible to pressure than are employees outside government. I believe the committee's present exclusion of elected officers effectively insulates the commission from political forces. To exclude all public employees is overbroad. It deprives a large number of citizens in order to exclude the core group of elected officials who are our appropriate concern.

The proposed language, "Nor shall any member run for or hold any office in any political party or organization, or take part in any political campaign," is even more objectionable because its broad reach is undefined. First it says "any office"; this would exclude even precinct officers. To what purpose? It also excludes members of any political organization other than a political party. What is the definition of the word "organization"? But most objectionable of all is the exclusion of any person taking part in any political campaign. Since so many of our citizens take part in grass-roots activities like distributing literature or holding signs, this prohibition might exclude 10 percent of our population. And for what purpose? We believe this sentence would deprive a large part of our population of the opportunity to serve on the commission in order to exclude political leaders from service. I believe that the exclusion of elected political officials adequately meets that need and is not so broad that it deprives large numbers of our citizens of their right to participate in government.

CHAIRMAN: Thank you, Delegate Nakamura. Delegate Hale.

DELEGATE HALE: I'd like to offer an amendment to the amendment.

CHAIRMAN: Would you state the amendment?

DELEGATE HALE: Yes, I would like to add the word "elected" in the third sentence--line, after the word "other," so that it would read: "No member shall run for or hold any other elected office..." and delete the words "or position of profit."

CHAIRMAN: Would you go back and tell us first of all which line you are going to put your--

DELEGATE HALE: In the third line I would like to add the word "elected" between "other" and "office." And I would like to delete the word "or" in that line and on the next line the words "position of profit." It would then read: "No member shall run for or hold any other elected office under the United States, the State, or its political subdivisions." I move for its adoption.

CHAIRMAN: Does everyone have that language clear? The Chair shall repeat it: "No member shall run for or hold any other elected office under the United States...." Is that right, Delegate Hale?

DELEGATE HALE: Yes.

CHAIRMAN: All right. The amendment has been further amended to read as just indicated. Is there a second to that?

DELEGATE HORNICK: Second.

DELEGATE HALE: All right, may I speak for my amendment?

CHAIRMAN: Would you, please.

DELEGATE WAIHEE: Madam Chairman, point of --

CHAIRMAN: Yes.

DELEGATE WAIHEE: If I may, Madam Chairman. If I could have the delegate explain what her amendment, how this could be different--

DELEGATE HALE: My amendment is intended just to take it back to the language in the original amendment as far as that sentence is concerned. It leaves in, however, the words, "Nor shall any member run for or hold any office in any political party or organization, or take part in any political campaign."

What I'm attempting to do is to answer the question of whether retired military officers or anybody who is working for the federal, state or local government would be eligible to serve on this commission.

CHAIRMAN: Is the language of the amendment clear now?

DELEGATE HALE: I'd like to, please, speak first and last to my amendment.

CHAIRMAN: All right, Delegate Hale.

DELEGATE HALE: I'd like to point out, I think the purpose of this amendment is in its next sentence, and I would like to read from the letter from the American Judicature Society about this section. "As you know, for merit selection to work effectively, the selection process should operate in as nonpartisan a manner as possible. Unfortunately, I notice that several clauses in the bar association's proposal, designed to achieve the goal of nonpartisanship are conspicuously absent from the current draft. For example, the following language has been deleted from the section entitled, 'The Judicial Selection Commission.'

"Nor shall any...member run for or hold any office in any political party or organization or take part in any political campaign."

My amendment would put those words back in the proposal, but it would delete the questionable areas that nobody seems to be able to answer as to who might be barred from taking part on this commission. And the conclusion reads: "Certainly, members of the nominating commission should not be party office holders or campaign managers. Nothing in the current draft, however, prevents commission members from having such political entanglements."

I would like to say, Madam Chairman, that one of the main reasons for having merit selection of judges is supposedly to give the people some merit system for selecting judges, which means taking it as far from politics as possible. Without putting in the language in the next sentence, as I pointed out was in the bar association's draft, we are not doing that.

CHAIRMAN: Thank you, Delegate Hale. Further discussion on the amendment to the amendment? The Chair recognizes Delegate Hamilton.

DELEGATE HAMILTON: Madam Chairman, I rise to a point of inquiry, I guess.

CHAIRMAN: Would you state your point.

DELEGATE HAMILTON: Inasmuch as membership on the judicial commission is not an elected office, how can you then prohibit any other elected office?

CHAIRMAN: Would the maker of the motion wish to yield to a question to answer that?

DELEGATE BURGESS: I believe the reason for that is that the two members from the bar are elected.

CHAIRMAN: Thank you, Delegate Burgess. Is there further discussion on the secondary amendment? There being none, Delegate Hale, would you like to speak last?

DELEGATE HALE: Yes. I would like to point out that if you vote for the amendment to the amendment, you are voting for the original language as is in the committee proposal. Then we will take up the question of whether you want the amendment as amended, which would be different. Therefore, I urge everybody to vote for the amendment to the amendment, which will put it back the way the committee proposed it for that particular sentence.

CHAIRMAN: Thank you, Delegate Hale. Are you ready for the question? All those in favor of adoption of the amendment to the primary Amendment No. 10, please signify by raising your hands. Those opposed signify in like manner. The ayes have it. The amendment to the amendment passes.

We are now back to the primary amendment. Are you ready for the question on that? Delegate Burgess, would you like to speak last on that?

DELEGATE BURGESS: Yes, I believe that amendment would eliminate the questions which were ably stated by Delegate Nakamura and also the important question raised by Delegate Hino. We have now clearly before us whether we want to specifically say in the Constitution that commission members are barred from political activity. The committee report with the proposal indicates many times that the purpose of this entire judicial selection commission is to do exactly what this wording says--that is, to eliminate political considerations from the commission membership.

CHAIRMAN: Thank you, Delegate Burgess. Are you ready for the question?

DELEGATE IKEDA: Madam Chairman, I would like to speak against the amended amendment. There still remains that stated prohibition against political activity. The problem with it is that it really is almost a hatchet approach to the problem in that it would prohibit almost anybody who engages in even the most casual kind of political activity, as I read it, whether buying a fund-raiser ticket or being involved in the most casual sign-waving or going house to house. I don't think that the intent of the committee was to preclude the possibility of that occurring. For that reason, I speak against the amendment, even as amended.

CHAIRMAN: Thank you, Delegate Ikeda. Delegate Peterson.

DELEGATE PETERSON: There's been much said today about not denying people their political right to become members of the commission. As we consider people who will be on the commission, we're not talking about hundreds or thousands of people, we're talking about nine people. The position which they will have as members of the judicial selection commission is a very important one. These are the people who are going to be selecting our judges. And the judges are a whole section, in balancing the executive and the legislative organizations in the government.

So it's not as if we're just choosing a large group of people and excluding them from their political rights. We're choosing people who should have unquestionable integrity, independence and objectivity. I think the American Judicature Society in their letter summarized the reasons we want people who are objective and independent in the following words: "With this extra modifying word there is nothing to prevent the governor, the legislature or the chief justice from placing a loyal political appointee on the commission or someone who has already been rewarded with a civil service position. I do not believe there should be anything in the constitution which implicitly or explicitly allows the nominating commission to be used to repay political debts."

I think the persons selected for this commission will be in such an important position that their integrity or their objectivity should not be open to question. Therefore I do not feel that the proscription of active participation in the political-campaigning process should be removed. And therefore I speak in favor of this amendment.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, I think that some of the comments posed by Delegate Ikeda are well taken. The intent of this is not to eliminate a \$25 contribution or a ticket to a friend's dinner or anything of that kind. It's to prohibit active political management. I think everybody would agree that we don't want the governor's campaign manager serving on as sensitive a commission as this. I think everyone would concur with that sentiment.

We have already put similar language in the ethics provision. In order to correspond to that, I would like at this time to amend my motion so that that third sentence reads exactly as the comparable sentence in the ethics provision which we have already adopted. That language would be--

CHAIRMAN: Just a moment, Delegate Burgess. This would be a tertiary amendment, I believe, and I believe that would not be in order.

DELEGATE HALE: Point of order.

CHAIRMAN: I'm sorry. We've had one amendment and this would be a secondary amendment to the original one. All right, you may proceed.

DELEGATE WAIHEE: Madam Chairman, point of order.

CHAIRMAN: State your point of order.

DELEGATE WAIHEE: This would be a tertiary amendment because we have a proposal on the floor which was amended, which is Amendment No. 10 which was amended by Delegate Hale. So Delegate Hale's, this proposal--

DELEGATE HALE: Point of order.

DELEGATE BARR: Madam Chairman, could we have a 1-minute administrative recess?

CHAIRMAN: Just a moment. The amendment which is before you, which is Delegate Burgess' amendment, is a primary amendment. The amendment made by Delegate Hale is a secondary amendment, as I view it. Delegate Burgess' amendment would be a tertiary amendment and I believe, therefore, would not be in order.

DELEGATE HALE: Point of order.

DELEGATE BARR: Point of order.

CHAIRMAN: I recognize Delegate Hale first. State your point of order.

DELEGATE HALE: My point, Madam Chairman, is that we have already voted on the secondary amendment. So it is no longer before the group. Now Delegate Burgess is making another secondary amendment which is before the group.

CHAIRMAN: I believe that is correct. Once the amendment has actually been incorporated into the amendment, it no longer is a secondary amendment, so you may now make your amendment. I stand corrected, Delegate Burgess, you may proceed.

DELEGATE OKAMURA: Point of order, Madam Chairman.

CHAIRMAN: Yes, Delegate Okamura, state your point.

DELEGATE OKAMURA: Since the amendment is somewhat different, isn't it required to be in writing?

CHAIRMAN: No, I do not believe any amendment to an amendment requires a written statement. Delegate Burgess, you may proceed.

DELEGATE BURGESS: The proposed language would be the third sentence of the paragraph, in the fifth line, after the words "political subdivisions," to read: "The members of the judicial commission shall be prohibited from taking an active part in political management or in political campaigns." That language then is exactly identical to the language in the ethics proposal, which we have already adopted. I so move.

CHAIRMAN: Is there a second to that motion?

DELEGATE HALE: Second.

CHAIRMAN: Is there any discussion on the amendment, beyond Delegate Burgess' statement? I will repeat the amendment. There is a new sentence that is being added in line 5 of the amendment as previously amended, to go after the word "subdivisions," to read: "The members of the judicial commission shall be prohibited from taking an

active part in political management or in political campaigns." Is that correct, Delegate Burgess? All right.

DELEGATE HALE: Point of order.

CHAIRMAN: State your point.

DELEGATE HALE: I think the motion should be to delete the sentence, "Nor shall any member run for or hold any office in any political party or organization, or take part in any political campaign" and then to insert. I think that's the proper way to make that. We know then what we are doing; we are deleting the sentence that begins, "Nor shall any member run for or hold any office..." and inserting in its stead the language that you said.

CHAIRMAN: Will the maker of the amendment respond to Delegate Hale's inquiry. Is that your intention or not?

DELEGATE BURGESS: I will concede the accuracy of Delegate Hale's correction.

CHAIRMAN: All right then, to proceed; you want to delete the sentence that reads: "Nor shall any member run for or hold any office in any political party or organization, or take part in any political campaign." Is that amendment clear now? We've added one sentence and on the heels of that we have deleted the subsequent sentence starting with the words, "Nor shall" and ending with the words, "political campaign." Is there further discussion on that amendment? Delegate Shon.

DELEGATE SHON: Madam Chairman, I feel that I must speak in favor of this because as a member of the ethics committee, one of the problems we dealt with was a situation where a member of an ethics commission was very actively involved in a political campaign, particularly in appearing in a film. I feel very strongly that we should prevent that kind of thing on ethics commissions and, as I read the existing language in Committee Proposal No. 10, that sort of activity would be permissible under the current committee proposal. I do not feel that that is proper and as has been mentioned before, since the judicial selection commission is, I think, on the same level as an ethics commission--in that they must select citizens of the highest integrity for our judgeships--I feel that it is also appropriate that we include this in the judicial selection commission.

To those who would disagree with this, I would like to hear the reasons why there ought to be a distinction between ethics commission standards and those of the judicial selection commission.

CHAIRMAN: Thank you, Delegate Shon. Delegate Sterling.

DELEGATE STERLING: Madam Chairman, I rise to speak in favor of the amendment. The original language of the proposal, in my opinion, was taken from the Hawaii State Bar Association letter that was circulated to all delegates. And I would remind the delegates, my fellow colleagues, of the second paragraph of that letter from the Hawaii State Bar Association; the main thrust of the report is the proposal to establish an independent judicial commission to seek the most qualified candidates for judicial vacancies in all courts of record, etc. I think this is a very important proposal that we're making. I sincerely urge my colleagues to support it.

CHAIRMAN: Thank you, Delegate Sterling. Is there further discussion? Delegate Waihee.

DELEGATE WAIHEE: Madam Chairman, I rise to speak against the amendment. I think that the reason this type of language is not applicable to this commission but may be applicable to the ethics commission is simply because the people on the ethics commission deal with ethics. They set the standard of conduct for others. Now, as far as this commission is concerned, this commission would be under the ethics code that will be established by the State, subject to review by the ethics commission.

This ethics code would prohibit any kind of conduct that is out of line with the office the commissioners hold. For these reasons, Madam Chairman, outside of being an elected candidate or running for office, I don't think that we should prohibit anybody from exercising their First Amendment rights as citizens of this country and State.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Hale.

DELEGATE HALE: I would like to speak for this amendment, and I would like to call your attention to Standing Committee Report No. 52, page 7, the next to the last paragraph: "Although your Committee recognizes that politics or political influence over appointments even with a judicial selection commission may not be completely eliminated, it was the near unanimous consensus of your Committee that a nonpartisan commission would be an improvement over the present selection process by which one person selects a justice or judge without the benefit of input from others."

We have changed the original intent of the judicial committee proposal by saying that four individuals are going to have input over the selection of the judicial commission members, as was pointed out by a previous delegate, and appoint seven members on the commission, and now we are not even taking away any kind of political involvement from these people. I maintain that if ethics is not the main thing we're concerned with in our judicial system, I don't know why we have this system of merit selection at all. I urge you to vote for it.

CHAIRMAN: Thank you, Delegate Hale. The Chair recognizes Delegate DiBianco.

DELEGATE DiBIANCO: I rise also to speak in favor of the amendment. I would be remiss if I didn't point out that these proposals do have to go before the public for consideration. If the ethics proposal for some reason fails and we do not have any ethics proposal within the framework of the judicial merit selection proposal, and that proposal is accepted by the public, then we've left the merit selection commission without any guidance in this matter. The judiciary is supposed to be one of the three arms of government and in many ways it is the most important. Certainly, this is something that we should devote our attention to right now. Unfortunately, this problem was not worked out as well as it could have been in the judiciary committee itself and it remains for us to work it out right now on the floor.

It seems to me that we have to have some kind of recognition of the fact that many people are engaged in political activity and we do not want those kinds of people on the merit selection panel. So I urge your acceptance of this amendment.

CHAIRMAN: Thank you, Delegate DiBianco. The Chair recognizes Delegate Souki.

DELEGATE SOUKI: Madam Chairman, I wish to speak against the amendment. I think there is a great difference between the ethics commission ruling on taking part in partisan political affairs and in the judicial commission. If we do not allow the members of the judicial commission to take part in partisan affairs, we must also look toward other commissions--the Land Use Commission, planning commission, every commission. Why stop at the judicial--and provide for nonpartisan affairs, too? And then, possibly, we would then do away with the party--I think at some point we will have to halt this affair.

CHAIRMAN: Thank you, Delegate Souki. Delegate Blean.

DELEGATE BLEAN: Madam Chairman, I rise to speak in favor of the motion. I find it amazing that any delegate to the Constitutional Convention can make a distinction between ethics and justice.

CHAIRMAN: Thank you. Any further discussion? If not, are you ready for the question? It has been moved and seconded that we adopt Delegate Burgess' amendment to Committee Proposal No. 10 which has previously been amended. I will read it again so that you can all recall it. We're now voting purely on the amendment to the amendment--you understand that--and the amendment reads, after the words "political subdivisions," to insert the words: "The members of the judicial commission shall be prohibited from taking an active part in political management, in political campaigns," and delete the words: "Nor shall any member run for or hold any office in any political party or organization, or take part in any political campaign." All those--

DELEGATE LACY: Madam Chairman, I raise a point of information.

CHAIRMAN: Yes, Delegate Lacy, state your point.

DELEGATE LACY: When I wrote mine down, I had an "or" as the fourth word from

the last. Did Delegate Burgess mean "...part in political management in political campaigns" or "...in political management or in political campaigns"?

CHAIRMAN: Delegate Burgess, would you clarify that?

DELEGATE BURGESS: The language, as in the ethics provision, is "or in political campaigns."

Madam Chairman, I call for a roll-call vote.

CHAIRMAN: All those in favor of a roll-call vote, please raise your hands. All right, a roll-call vote is ordered. All those in favor of adoption of this amendment, please signify by saying aye when your name is called. May we proceed with the roll call.

Roll call having been ordered, the motion to amend Amendment No. 10 failed to carry by a vote of 40 ayes, 44 noes and 18 excused; with Delegates Alcon, Anae, Barnard, Barnes, Barr, Blake, Blean, Burgess, Cabral, Laura Ching, Chu, Chun, DiBianco, Fernandes Salling, Hale, Hamilton, Hanaike, Harris, Hoe, Kaapu, Kimball, Kono, Lacy, Rachel Lee, Liu, Marumoto, McCall, Miller, Odanaka, O'Toole, Peterson, Pulham, Shon, Sterling, Stone, Takitani, Uyehara, Wurdeman, Yamashita and Chairman Campbell voting aye; Delegates Andrews, Calvin Ching, Donald Ching, Haunani Ching, Chung, de Costa, Dyer, Fujimoto, Fukunaga, Fushikoshi, Hagino, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hokama, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Iwamoto, Izu, Kaito, Kojima, Ledward, Marion Lee, Lewis, Nakamura, Nishimoto, Nozaki, Penebacker, Sakima, Sasaki, Shinno, Souki, Takahashi, Takehara, Takemoto, Tamayori, Villaverde, Waihee, Weatherwax and Yoshimura voting no; and Delegates Chang, Chong, Crozier, De Soto, Eastvold, Ellis, Funakoshi, Goodenow, Hornick, Ishikawa, Okamura, Ontai, Paty, Silva, Stegmaier, Sutton, Taira and Tam being excused.

CHAIRMAN: The motion fails. Is there any further discussion on the amendment as amended now? Delegate Hamilton, the Chair recognizes you.

DELEGATE HAMILTON: Madam Chairman, I may still be confused and I should bow to my legal betters, I know. But I shall have to vote against this because as I read the way it is now, there is a good possibility that the legal interpretation would be that it would apply only to the two elected attorneys.

CHAIRMAN: Would Delegate Burgess, the maker of the amendment, want at all to respond to that?

DELEGATE BURGESS: Madam Chairman, I see the delegate's point and it may be well taken. That sentence which he brings into question is within the committee proposal itself, and I believe that it does deserve some thought.

CHAIRMAN: Thank you. Delegate Hale.

DELEGATE HALE: Madam Chairman, I'd like to make an amendment. I would like to add the words "an active" between "take" and "part."

CHAIRMAN: Would you state first the line which you are amending?

DELEGATE HALE: It is line 7, the line beginning with "organization, or take," to then add the two words "an active."

CHAIRMAN: Is there a second to that amendment?

DELEGATE DIBIANCO: Second.

DELEGATE WAIHEE: Madam Chairman, I rise on a point of order.

CHAIRMAN: Yes, would you state your point?

DELEGATE WAIHEE: The point of order, Madam Chairman, is that we have already voted on the essence of this new amendment.

CHAIRMAN: You say we have voted on that--

DELEGATE WAIHEE: This amendment is out of order because we have already voted on the essence of it--in fact, the identical language which was contained in the other one.

DELEGATE HALE: No, I'm sorry, Madam Chairman, I disagree.

CHAIRMAN: Just a moment, Delegate Hale. We'll take an administrative recess subject to call.

At 3:18 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:32 p.m.

CHAIRMAN: Will the Committee of the Whole come to order. Shall we resume? There was a point of order raised by Delegate Waihee as to whether Delegate Hale's motion to amend was in order. She sought to add the words "an active" in line 7 after the word "take," to read, "...take an active part in any political campaign." Delegate Waihee questioned whether we had not been over this before.

In light of the fact that the previous amendment failed and therefore because the language remains intact--"Nor shall any member run for or hold any office in any political party or organization..."--it is the Chair's position that the amendment is in order. Therefore, Delegate Hale, would you proceed, please.

DELEGATE HALE: I would like to simplify this idea so that all of us can understand it. We're not taking the language of the ethics commission now, for those of you who think that ethics and judicial behavior are different things. But we are saying that we do not want people who take an active part in any political campaign, and this does limit then those people buying a dinner ticket or soliciting their friends from this category of people. This means people actively going out, standing on corners campaigning and soliciting votes. I think it's clear and I think the concept is clear, and I think the vote that's taken on this amendment to the amendment will tell the public whether or not we are really sincere in wanting a merit system for selecting judges that is as far from the political arena as we can possibly, realistically take it.

CHAIRMAN: Thank you, Delegate Hale. Is there further discussion on this amendment? If not, are you ready for the question? All those in favor of Delegate Hale's amendment to add the words "an active" in line 7 of Amendment No. 10, between the words "take" and "part," please signify by raising your hands. There are some hands in motion. Would all the delegates please be seated so we don't have them in transit. Those opposed signify in the same manner, please.

DELEGATE HALE: Madam Chairman, I'd like to call for a division of the house.

CHAIRMAN: Just a moment. The Chair would like to say that if we're going to have a division of the house or a roll call on every amendment to every amendment, we are likely to be here until midnight. If we're going to have roll call or a division of the house, let's have it when we deal with the amendment as finally amended, unless there is a real cause or this is an obvious discrepancy.

DELEGATE HALE: Madam Chairman, there were people walking all over--I think it's only fair to have a division of the house. I'm not asking for a roll call.

CHAIRMAN: All right, we will have a division of the house. But hereafter on any further amendments to this amendment, we will not take a roll-call vote and we will not have a division of the house because I think it is going to protract our proceedings. If it is justified, the Chair will take that into account.

DELEGATE BLEAN: Point of order, Madam Chairman.

CHAIRMAN: Yes, Delegate Blean.

DELEGATE BLEAN: That is not up to the Chair's discretion. I agree with the logic of the statement, but you cannot make that statement. Thank you.

CHAIRMAN: Delegate Blean, the Chair has said that it will depend upon the circumstances. I am merely suggesting that in light of the fact that we would like to proceed without in any way harming the substance of any motion but without protracting the proceedings, we would like to at least be judicious in taking roll calls. If there is going to be a very close vote, it's understandable. Delegate Silva.

DELEGATE SILVA: I just wanted to find out the count on the vote?

CHAIRMAN: We're going to have a division of the house now, as called for. All right, all those in favor of the amendment, would you please rise. All those opposed, would you please rise. The vote is 26 ayes, 55 noes. The amendment fails.

We are now back to Delegate Burgess' amended amendment. Are you ready for the question? All those in favor of Amendment No. 10 as amended, which reads in part: "No member shall run for or hold any other elected office under the United States, the State, or its political subdivisions. Nor shall any member run for or hold any office in any political party or organization, or take part in any political campaign. No member shall be eligible for appointment to judicial office of the State..." and so forth--all those in favor please raise your hands. All right. All those opposed signify in the same manner. The noes have it. The motion as amended fails to carry.

We now proceed to Amendment No. 11, designated the new No. 11, which starts with the words, "Any attorney member...." This is Delegate Ikeda's new amendment.

DELEGATE IKEDA: Madam Chairman, I move for adoption of my new Amendment No. 11.

DELEGATE CALVIN CHING: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt the proposed new Amendment No. 11. Is there discussion? Delegate Ikeda.

DELEGATE IKEDA: I call the attention of the members of this committee to lines 16 to 20 of page 8 of the committee proposal. This amendment does two things. One is that it restates the sentence that presently reads as follows: "Any attorney member of the commission or his employer or firm representing any party before any nominee for justice or judge, shall disqualify himself in any judicial proceeding before the nominee for the period the nominee is being considered." It was thought that this sentence is not as clear as it should be. So in the new Amendment No. 11, it has been restated as follows: "Any attorney member of the commission or that member's law firm representing any party before any nominee for justice or judge, shall disqualify himself in any judicial proceeding before the nominee for the period the nominee is being considered."

Secondly, the amendment proposes an additional sentence, to read: "Any non-attorney member of the commission who is a party or if his employer or firm is a party in any judicial proceeding before any nominee for justice or judge shall disqualify himself from voting." The two sentences in the new No. 11 are intended to cope with a problem that could arise in commission deliberations should a judge or justice who is sitting on the bench apply to the commission for recertification for an additional term.

The first sentence is intended to specify that if an attorney member on the commission, or the law firm that he's a member of, appears before that justice or judge, that he would disqualify himself in that judicial proceeding but he would be permitted to vote in other deliberations of the commission. The purpose of that is to avoid the problem of conflict of interest where a judge being considered is acting on a matter that an attorney member of the commission is representing before him.

The second sentence is intended to take care of another situation, wherein a non-attorney member on the commission who happens to be the party himself--not representing the party but being the party--appearing before that judge or justice nominee, would disqualify himself from voting. We can't take the same steps taken for attorney members because if a person is a party to a lawsuit, he is sometimes in the lawsuit through no choice of his own. And if it happens that he appears before the particular judge or justice who is up for recertification, the only thing he can do is refrain from voting in that case.

Both these sentences in the new No. 11 are meant to take care of these conflict-of-interest situations that might arise.

CHAIRMAN: The Chair recognizes Delegate Sutton.

DELEGATE SUTTON: Point of clarification--a question to the chairman of the committee if I may direct it through the Chair. Is it the intention, about attorneys besides law firms or employers, to include associates?

CHAIRMAN: I will ask the chairman of the committee if he would yield to that question. Delegate Ikeda?

DELEGATE IKEDA: Yes, I'll yield. I understand the question. I suppose the question may be the meaning of the word "associate." If by associate you mean a situation where one attorney is sharing office space with another attorney and they merely share the expenses but do not have a composite mingling of their income, then I would say that that associate would not be disqualified. But if we're talking about a situation where, say, they're associates in a partnership, then that definitely would be included and all the other attorneys in the partnership would then be prohibited from appearing before that nominee.

DELEGATE HALE: May I ask a question?

CHAIRMAN: Excuse me just a moment, Delegate Hale. Delegate Sutton.

DELEGATE SUTTON: That answers my question, and I'd like to speak in favor of the amendment. As a committee member, this clarifies our intention in the committee. We looked at this in depth and determined that there was some need to disqualify. We went through several hours of discussion, if the chairman remembers, and I feel that this is the best wording we've seen yet.

CHAIRMAN: Thank you, Delegate Sutton. Delegate Hale, did you wish to speak?

DELEGATE HALE: I have a question that I'd like to ask the chairman of the committee.

CHAIRMAN: Would you state your question to the Chair, Delegate Hale.

DELEGATE HALE: My question is--it says here, "...shall disqualify himself... before the nominee for the period the nominee is being considered." Now, this is being considered by the judicial commission, by the governor, by the senate. What happens after the person is appointed? That same lawyer can go back and be a party in a proceeding before the judge who was selected by the commission of which he was a member? What happens after this "being considered"?

CHAIRMAN: All right, thank you, Delegate Hale. Delegate Ikeda, would you respond to that inquiry, please?

DELEGATE IKEDA: Yes, I will. The sentence speaks for itself; it is for the period in which the nominee is actually being considered. The committee had the feeling in general that to go beyond that would perhaps be unreasonable, because attorneys oftentimes represent clients in cases that are very protracted and last several years.

CHAIRMAN: All right. I believe Delegate Lacy is next.

DELEGATE LACY: Madam Chairman, I also have a question that I would like answered. In my interpretation, as I read the first sentence it bothers me that the member's law firm, of which he must have some interest, can continue to participate. That's the way I read it. I may be wrong, and I would appreciate an interpretation of this.

CHAIRMAN: In the way it reads--"Any attorney member of the commission or that member's law firm representing any party...shall disqualify himself..."--it would include that.

DELEGATE LACY: The "himself" would cover the firm too?

CHAIRMAN: Are you concerned about the pronoun, Delegate Lacy? Delegate Ikeda, would you explain that, please?

DELEGATE IKEDA: It refers to the law firm, which includes all the other attorneys who happen to be either associates or partners in the firm, or if it's a corporation, all the employees in the corporation.

CHAIRMAN: It is a disjunctive "or" and therefore the pronoun "himself" is in order, Delegate Lacy. I believe, Delegate DiBianco, the Chair recognizes you.

DELEGATE DIBIANCO: Madam Chairman, I rise to speak against this amendment. I think there's still a lot of confusion in the language as to precisely what we're trying to accomplish here. Some of the problems with the amendment are as follows: First of all, there is no language in here that would indicate what is to be done by way of replacement if one of the members of the commission is in fact disqualified. If an attorney member or nonattorney member is disqualified, or several of them are disqualified--which is a possibility--we don't have any language in here relating to how we're going to replace these people on the commission for the purpose of voting to fill a judicial vacancy. Part of Committee Proposal No. 10 indicates--one sentence reads, "No act of the judicial selection commission shall be valid unless concurred in by a majority of its voting members." We could have a situation in which there were only five voting members, and a judicial selection could be made by a vote of three of those five. I don't think that's what was intended, but on the other hand our language doesn't seem to meet this particular problem.

Since we do disqualify not only attorney members on the commission but also all members of their law firms from representing any party before a justice or judge nominee, that means that no attorney who is a member of any of the larger firms in this State--and presumably that would include the attorney general's office, legal aid society, public defenders office--would be allowed to participate on this commission because to do so would be to disqualify entire law firms from practicing before certain judges. I don't think that was our intention either, but again we didn't address that problem fully.

There's nothing in here about what we're supposed to do with candidates. If somebody is a candidate for a judgeship and that candidate appears in court and the attorney on the other side of the case is a member of the commission, can that candidate disqualify the attorney on the commission? Does he have to make known the fact that he is a candidate? You'll notice that the next amendment coming up by the judiciary committee chairman, Delegate Ikeda--he wants to include language that the receipt and review of applications for judicial positions shall be confidential. If in fact they're confidential, how will we know who is a candidate? How will we know when a person is a candidate? According to the language of this present amendment--the one that's on the floor right now--during the period of time that the justice or judge is a nominee--during that period of time--these attorney and nonattorney members must disqualify themselves if in fact their cases come before that judge or that justice. But we won't know whether or not that judge or justice is a candidate for renomination to the bench because all those deliberations are going to be confidential, as set forth in the next amendment.

The language is very confusing. I don't think we've adequately handled these problems, and I urge you to vote this amendment down and that we rise and report to the Convention that we were unable to proceed any further with the matter of a merit selection system, and I think it should be referred back to committee.

CHAIRMAN: Thank you. Delegate Hale, Delegate Chung was up first. The Chair recognizes Delegate Chung.

DELEGATE CHUNG: Madam Chairman, I rise on a point of information.

CHAIRMAN: State your point.

DELEGATE CHUNG: As a nonattorney listening to all of this from attorneys-- My point is, I feel we somehow have a conflict of interest. With all due respect to all the attorneys here, and especially looking at this amendment--it starts off, "Any attorney member of the commission..." and immediately I think of any attorney member of the Con Con. So fundamentally what we are talking about is merit selection. And whatever we decide eventually will or may not be the total merit selection commission product.

It may affect one of us here, the attorneys. So fundamentally I see a distinct connection with some conflict. It's unintentional, I would say, but I do see some essence of conflict, although inadvertent. So that is my question. I've been thinking about this all the time as I listened to everyone, and I just wanted to call this to the Chair's attention.

CHAIRMAN: Did you wish an answer to your inquiry, as to whether the Chair has parallel feelings, or are you registering your concern about this--

DELEGATE CHUNG: I'm registering my concern and maybe I need an explanation. I remember when Delegate Ellis talked about conflict of interest, when he talked about government workers and retirees on pension and so forth, on a very broad basis. So we're talking about attorneys, and future possibilities and opportunities to become judges in Hawaii, and so forth--and fundamentally we might have some essence of conflict of interest. That's my feeling.

CHAIRMAN: Thank you, Delegate Chung. Delegate Hale.

DELEGATE HALE: Madam Chairman, can I ask a question of the Chair that could be directed to the chairman of the committee?

CHAIRMAN: Yes, please state your question.

DELEGATE HALE: My question is, does this amendment say that an attorney member or a member of that law firm could not take a case before a judge who was being considered during the period that the judicial commission was considering that person, but that a nonattorney member of the commission who is a party to a judicial proceeding shall not vote for that judge? Is that what we're saying? We're not saying that the attorney member shall not vote; we are saying that the nonattorney member shall disqualify himself from voting. Are we distinguishing, then, between nonattorney members and attorney members as to whether they can vote for the judge--the selectee of the commission?

CHAIRMAN: Delegate Ikeda, would you please respond to that if you feel you are able to.

DELEGATE IKEDA: Yes, I'll yield. That's correct. If there was any way in which we could provide that a nonattorney member could disqualify himself in a judicial proceeding, we would provide this. But there is no practical way that it can be done, and yet we still have this problem of conflict of interest.

DELEGATE HALE: Could I ask another question, Madam Chairman? Would you be amenable to putting in that the attorney member of the commission could not vote for the nominee before whom that person may be practicing when he is being considered? In other words, if a lawsuit is before a particular judge and that attorney member or a member of his firm is proceeding at that time and will then have to disqualify himself if that name comes up before the judicial commission--shouldn't that person also not vote--the attorney member?

CHAIRMAN: Delegate Ikeda? Are you asking, in essence, whether an amendment to that effect would be in order?

DELEGATE HALE: I'm asking whether the chairman would be amenable to some sort of language that would assure that the attorney member would also disqualify himself from voting. That's what we're saying the nonattorney member should do.

CHAIRMAN: Delegate Ikeda, do you yield to that question?

DELEGATE IKEDA: Yes, I will yield. No, I would not be amenable because I think that this language as it is presently stated is actually stronger.

DELEGATE HALE: Well, I was not asking if instead of, but in addition to. In other words, here's an attorney who has a case before a district court judge and that judge is being considered for an appointment to the circuit court or the supreme court. Now, what we're saying is that that attorney member who has started a case and whose case has been dragging on for a long time--that once that name comes up before the judicial

commission, the attorney member is going to have to disqualify himself from the case. And yet that attorney knows that possibly that judge will be nominated, or be one of the select group. And if a person--a member--is in a case, then he cannot vote for that judge. But I can't see why the attorney should not be made to not vote for the judge, too, in addition to disqualifying himself from the proceeding before the judge.

CHAIRMAN: Maybe we can resolve it in this way. Delegate Ikeda, the question really is whether an amendment, if proposed by Delegate Hale--whether you would be amenable to amending your proposed amendment?

DELEGATE IKEDA: No, I would not be. The delegate can make it if she wants.

DELEGATE HALE: Well, I would like to speak against the amendment.

CHAIRMAN: All right.

DELEGATE HALE: I see no point in prolonging the proceedings with another amendment. I feel that this wording is very confusing. I don't think it solves the problem. As long as that nominee is being considered, then the disqualification will take place. But there's a longer procedure during which that nominee is going to be considered by the governor and by the senate who will then confirm it, and as soon as the person is appointed to that position, the attorney who has disqualified himself is going to be able to go back and practice before that judge. That seems to me to be really just another example of pulling the wool over people's eyes. Therefore, I ask you to vote against this amendment.

CHAIRMAN: Thank you, Delegate Hale. Is there further discussion on this amendment? Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, the discussion we've had up to now illustrates the flaw and the defect in this part of the committee proposal. Amendment No. 16, which will be coming to you shortly, proposes to delete the beginning sentence of No. 11 and also to include the second one. When we get to that, I would be arguing--or I will point out now--that neither of these sentences is necessary because under the rules of court and the canons of ethics, if an attorney who is sitting on the judicial selection commission has a pending case before a judge who is a nominee before that commission, the judge would be disqualified from acting as judge in that lawsuit. The proper way to handle it, I believe, and the way that would be done without this sentence, would be for the judge to ask or to be asked to assign the case to another judge. That would be the proper way and I believe that is the way it would be done.

CHAIRMAN: Thank you, Delegate Burgess. Is there further discussion on this amendment? Delegate Waihee.

DELEGATE WAIHEE: Madam Chairman, I rise to speak in favor of the amendment. I think the original language is quite strong, as a matter of fact, and is also a middle ground to take care of problems. The previous speaker would have us delete this and leave it up to the individual discretion when an attorney is challenged--that's my impression--before he would disqualify himself. This amendment goes one step further and disqualifies any attorney from practicing before any nominee as well as anyone in the attorney's firm. I think that's very strong language, and I'd like to see it in the Constitution.

As far as what happens after the nominee is either accepted or rejected, if he is accepted, he moves on and is no longer the judge before that case. If he's rejected, then--if I was the attorney, I'd try and find another judge--but it would take care of itself.

As far as the second part, where a nonattorney member in a proceeding before a nominee would disqualify himself from voting on that nominee, I don't know how else you can handle the problem. You can't stop this lay person from practicing before that judge because he doesn't practice. The only way to avoid the conflict would be for him not to be involved in any proceedings involving the nominee. I think this is a very reasonable and fair way of dealing with the conflict-of-interest problem. If we were to go one step further and disqualify the attorney from voting as well, we could very well then end up with the situation that the delegate from the windward side described, which is

that half of the panel could be disqualified. I see this amendment as a very reasonable approach to dealing with the conflict-of-interest problem. For those reasons I would support it.

CHAIRMAN: Thank you, delegate. Delegate DiBianco.

DELEGATE DiBIANCO: Madam Chairman, directing everyone's attention to the second sentence--which says that any nonattorney member must disqualify himself from voting if he's a party in any judicial proceeding before a nominee for a judgeship--there is another way to handle it. It's a way that's used quite a bit in court, and that is simply to ask the assignments judge to reassign the case to another judge whose name is not before the commission. In other words, if Mr. Smith is on the commission and Mr. Smith is also a party in a lawsuit appearing before a judicial nominee, all we would need to do is have Mr. Smith's attorney ask the civil assignments judge to please assign this case to another judge. That solves the problem and that way we could have our nonattorney members voting. The point is, however, that we don't have this kind of language to take care of it. Delegate Waihee is correct in saying that the language in here is strong. Unfortunately, the language does not cover every situation, and I think the only thing to do is to vote this amendment down, rise and report, and refer this matter back to the judiciary committee.

We're dealing with a very, very important topic here, and I would hate to have to go to the public with this particular plan with the holes it has right now, because I'm sure the public would not support it. Thank you.

CHAIRMAN: Thank you, Delegate DiBianco. Further discussion?

DELEGATE HALE: Is that a motion Delegate DiBianco made, to rise and report?

CHAIRMAN: He has not made a motion, Delegate Hale. Do you have anything--

DELEGATE HALE: I would just like to support it and hope that he would make the motion. Because the very fact that we have so many amendments offered by the chairman of the committee shows that this was very poorly drafted and very poorly considered.

CHAIRMAN: Thank you, Delegate Hale. Is there any further discussion on this motion? If not-- Delegate Liu.

DELEGATE LIU: Madam Chairman, I would like to direct a question to the chairman of the judiciary committee, if the Chair would direct it to Delegate Ikeda. My question is whether or not, under the language of the second sentence of his amendment, state employees in any capacity or federal employees for that matter would have to disqualify themselves from the selection process or from voting should the state or the federal--should the state or federal government be their employer under my hypothetical--be involved in litigation before a nominee?

CHAIRMAN: Is the question clear? Delegate Ikeda, would you yield to that question, please?

DELEGATE IKEDA: That is my interpretation. This is a very tough provision.

CHAIRMAN: The answer is yes, then.

DELEGATE LIU: In that case, then, I would hope that all present state employees and future state employees look very hard at that section.

CHAIRMAN: Thank you, Delegate Liu. Any further discussion?

DELEGATE HALE: Point of information. I don't understand Delegate Liu's point. Could you state again what your question is? I don't know--

CHAIRMAN: Delegate Hale--

DELEGATE LES IHARA: Point of order, Madam Chairman.

DELEGATE HALE: That's a point of information.

DELEGATE LES IHARA: I believe that parliamentary procedure requires that the Chair make a ruling whether to accept that--

CHAIRMAN: Excuse me. Do you have a point of information, Delegate Ihara?

DELEGATE LES IHARA: I have a point of order.

CHAIRMAN: What is your point of order?

DELEGATE LES IHARA: Well, point of parliamentary procedure and that is, was the request made by Delegate Hale a proper one by Robert's Rules?

CHAIRMAN: We'll have a short recess subject to the call of the Chair.

At 4:08 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:09 p.m.

CHAIRMAN: Would the delegates please come to order, now that the parliamentarian has cleared the air. Delegate Ihara's question is--it was a proper inquiry, but it was improperly placed. Delegate Hale, if you have any inquiry of any other delegate, would you address the Chair and ask whether that other delegate wishes to yield to answer the question.

DELEGATE HALE: Parliamentary inquiry, Madam Chairman.

CHAIRMAN: Yes.

DELEGATE HALE: I didn't understand the gist of the last question that was answered. Could you explain it to me or have somebody else explain it? There was something about public employees and I see nothing in this amendment about public employees and therefore I am confused.

CHAIRMAN: I would like--if Delegate Liu would yield to that question--to have him respond to that, please.

DELEGATE LIU: Yes, I would yield, Madam Chairman. My question was whether or not, under this second sentence, state employees who would be possible members of the commission would have to disqualify themselves from the selection process or at least from the voting process should the State be involved in litigation before a nominee. The answer from the chairman of that committee, I believe, was yes.

CHAIRMAN: Thank you very much, Delegate Liu. Is there any further discussion? If not, the question before you is the adoption-- Yes, Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, I'll yield to Delegate Ikeda unless he wanted to be the last to speak.

CHAIRMAN: Delegate Ikeda, would you want to speak last?

DELEGATE IKEDA: I'll yield to Delegate Burgess.

CHAIRMAN: All right, Delegate Burgess. The Chair recognizes you.

DELEGATE BURGESS: The point just raised by Delegate Liu, I think, is a good one and it also brings up another point, and that is that the new sentence being added by this amendment should apply to attorney members as well. If an attorney is a party to a lawsuit--since attorneys are sometimes parties in lawsuits, and sometimes their employers are parties in lawsuits. Therefore, it should apply equally to attorneys if we adopt this language.

I believe that the many questions raised about this language--which was never brought before the Committee on Judiciary, which deals with a very important part of

the whole process--make it clear that this should in fact be referred back to the judiciary committee for careful consideration and then after that, with the advice of counsel and the advice of other people who should be consulted, then I believe we can come back to this delegation with a good proposal that would solve these many problems which we have found do exist.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, the point that I wanted to make was that the language contained in this amendment is meant to be an additional safeguard. This is not to deny that there are other remedies available, as previously described by some of the delegates, whereby a person can avoid the possibility of a conflict of interest without having to resort to these provisions.

For example, one of the points that was earlier made was that a person who does happen to be a member of the commission, who is a party in any action before the particular judge who is up for renomination, can ask for another judge or justice, in which case this provision would not come into play and he could vote. The only point I'm trying to make is that this is meant as a safeguard, in the unlikely situation that the conflicts of interest that arise are not somehow taken care of administratively.

CHAIRMAN: Thank you. Is there further discussion? If not, the question before you is the adoption of the new Amendment No. 11 by Delegate Ikeda. Are you ready for the question?

All those in favor of adopting this proposal please raise your hand. All those opposed please signify in the same manner. The ayes have it. The motion is carried.

DELEGATE PETERSON: Madam Chairman, point of personal privilege.

CHAIRMAN: Delegate Peterson.

DELEGATE PETERSON: I would just like to draw the attention of the delegates to the amendments which were submitted today, particularly numbers 8, 9 and 14. Each of these amendments is no more than two or three lines in length and each also refers to a deletion from the committee proposal of a short number of sentences. I think, as an aid in the consideration of future amendments, that it would be helpful to me and maybe others here if the deleted lines could also be shown on the amendments, in brackets, so that we could easily refer and compare the portions deleted with the portions recommended for amendment. I just offer this as a recommendation to those in the future who prepare amendments for the body.

CHAIRMAN: Thank you, Delegate Peterson, your point is well taken. May we proceed now with Amendment No. 12 which is-- Delegate DiBianco.

DELEGATE DiBIANCO: Excuse me, Madam Chairman, I move that we rise and report.

DELEGATE HALE: Second.

CHAIRMAN: There has been a motion to rise and report. It has been moved and seconded. Is there any discussion? Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I speak in--

DELEGATE HALE: Madam Chairman, point of order. The motion is not debatable.

CHAIRMAN: It's not debatable. All right. There is no debate permitted in this situation. All those in favor of rising and reporting please signify by raising your hand. All those opposed please signify by raising your hand. The noes have it.

We now proceed to Amendment No. 12, Delegate Ikeda's amendment, which adds, in line 4 on page 9 of the committee proposal, the following words: "The receipt and review of applications for judicial positions and...." Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I move for adoption of Amendment No. 12.

DELEGATE CALVIN CHING: Second the motion.

CHAIRMAN: It has been moved and seconded that Delegate Ikeda's Amendment No. 12 be adopted. Is there discussion on the motion? Delegate Ikeda.

DELEGATE IKEDA: I would like to call the attention of the committee to line 4 of page 9 of the committee proposal, to the sentence that reads as follows: "The deliberations of the commission shall be confidential." This amendment adds an additional phrase to the sentence, as a pre-text, that the "receipt and review of applications for judicial positions" as well as the deliberations of the commission shall be confidential.

So we've added language at the beginning of the sentence. This matter was discussed in the committee and a vote was taken on the provision. A summary discussion was held on the point, and a prevailing position was stated--not a majority of the committee--that had the language in the amendment removed. I believe, upon talking to other members of the committee, that this language should be put back because it restores a basic fundamental principle in the commission--that is, confidentiality.

The present language states that the deliberations of the commission shall be confidential, but I believe that this should extend to the actual solicitation of applications. In testimony before the Committee on Judiciary, the point made by many attorneys, including the representative of the bar association, was that it was thought that applications should be confidential because oftentimes attorneys do not want their names to be known as applicants for judicial office because of the problems that might be raised with their clients knowing, and other problems of this type. Based upon the matter of the application process, I believe this to be a worthwhile amendment in this sentence.

CHAIRMAN: Thank you, Delegate Ikeda. Is there further discussion? Delegate DiBianco.

DELEGATE DiBIANCO: I rise to speak against the amendment. Again we've got problems with the language here not being clarified. For example, if, as the previous speaker has indicated, the purpose of this particular clause is to keep the matter of an application confidential, then the attorney who is applying for a judgeship cannot disclose the fact that he is applying. On the other hand, our canons of ethics as attorneys require us--mandate on penalty of losing our license--to disclose all conflicts in a proceeding to the other attorneys and to the court. So an attorney would be required by the canons of ethics to advise, for example, the other attorney in a lawsuit that he is applying for a judicial position, under certain circumstances. But on the other hand, the Constitution as we're setting it up now would mandate that he not disclose this. I don't know what kind of direction we would be giving an attorney applicant under those circumstances.

The other problem is that we do not address ourselves, in this language, to whether the results of the judicial commission are supposed to be confidential. We say the receipt and review of applications shall be confidential, the deliberations of the commission shall be confidential. One matter raised during the judiciary committee hearings--and which I had hoped our language would address itself to but apparently hasn't--was what to do about the matter of the judicial selection commission's vote. Do we make it a matter of public record that this particular nominee squeaked through with a 5-to-4 vote, while that nominee got a 9-to-0 vote in his favor? and this other nominee lost by a 1-to-8 vote? I don't think you're going to find attorneys willing to submit themselves to this procedure if they know the vote of the selection commission will be subject to public scrutiny.

This language also has to be cleared up--there's a problem with it. And because of that, I urge the rejection of this amendment.

CHAIRMAN: Thank you, Delegate DiBianco. Is there further discussion? Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, fellow delegates, I speak against this amendment. This particular point was discussed during the committee deliberations at some length and it is correct, as one of the previous speakers indicated, that there were some people, including the bar, who testified in favor of such a provision. However, there was also discussion on the other side, and in particular I would point out the problem of requiring that the receipt and review of applications be kept secret. This could pose serious problems. For example, the way selection commissions work in other states--

when there's a judicial vacancy, the newspapers publish an article to that effect, indicating that the commission will consider applications and that all applications and nominations, either by the applicant himself or by somebody else on his behalf, must be received by a certain date. After all applications are in, the commission investigates the backgrounds of the applicants, their financial conditions, and it requests that each applicant submit the results of a physical examination to make sure each is physically able to perform the job. The commission interviews people who have worked with or against each applicant in cases; it interviews judges each has tried cases before; it conducts a thorough investigation. Now all of that isn't possible if the Constitution requires that this process be kept confidential.

For example, it would be impossible to investigate and conduct an interview with another attorney about the attorney who is being considered if the investigator or the staff member is unable to tell the attorney being interviewed that attorney so-and-so is being considered for this judgeship. It would be totally unworkable. This secret proceeding also prohibits and makes impossible input from the public; if the public does not know who is being considered by the commission, there is no way the public can submit comments to the commission for consideration in its deliberations. That's the most important part of this judicial selection process.

Let me point out some samples of newspaper reports; these from Jefferson County, Alabama are typical reports where a judgeship is open and applications are being considered. One headline reads: "Morgan Submits his Name as Nominee for Circuit Court Judge." Then the article goes on to tell about Morgan, what his background is, the deadline for submitting other applications . . . and the newspapers will cover each stage of the proceeding. Another headline: "Judgeship Nominations in Tonight, Names Will Be Out Friday." The whole process is public and open so the public knows how judges are being selected.

Now it's true that the deliberations should be confidential because without confidential deliberations you can't have candid discussion; you can't have one commission member saying--well, I think this or I think that about the nominee. Without confidentiality at that stage, it's impossible to make a good decision. But the receipt and review of applications should not be prohibited in the Constitution; this should be omitted and left up to the commission, when it's finally appointed here, to determine how it will proceed and its methods of conducting business. So I would speak against this.

CHAIRMAN: Thank you, Delegate Burgess. Is there further discussion? Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I would like to respond to a number of points that were made by some of the previous speakers. First of all, I think it's clear that the deliberations of the commission are considered to be whatever vote the commission takes in the matter of evaluating candidates, and I would interpret the language as to the deliberations of the commission as indicating that these would be confidential.

Testimony of the bar association indicated--and it's something that the committee concurred in--that the six names, once they are selected, would be made public and the list then submitted to the governor or the chief justice. During that phase, and once that is done, there would be sufficient opportunity for public comment. In fact, it probably might be better at that point because then the choice is narrowed down to the candidates from whom the ultimate judge or justice will be chosen. There is also an opportunity--at least for circuit court judges and supreme court justices--for public input at the time of senate confirmation.

A point I would also like to emphasize is that while the receipt and review of applications by the commission will be confidential under this proposed amendment this does not preclude the possibility of any applicant making the information public himself. If he wants it known that he is a candidate for judge or justice, he can make any announcements he wishes on the matter. In the actual gathering of information on candidates for any judicial position, I think it is pretty clear that it is not always necessary to reveal the nature of the position a person is being considered for when gathering information about that person. So I don't believe that this would be any kind of a handicap for that purpose.

CHAIRMAN: Thank you, Delegate Ikeda. Is there further discussion on this amendment? Delegate Pulham.

DELEGATE PULHAM: Madam Chairman, I think that we in the lay group of this Convention have been fairly silent on this matter, content I think to let the delegates in the legal profession bang their heads together as long as they want to. But I think, when it comes to whether the public has a right to know who is being considered for what position in our government, particularly in positions as sensitive as the judiciary, while I respect the committee's report and I certainly respect the work of the chairman, there is no way that I can equate our getting a fair merit selection system for judges with, on the other hand, saying that those even being considered--saying that the public has no right to know, that it's going to be some big secret thing. The deliberations--certainly, I can see that; there may be things coming out that probably have no business being made public. But to say that the names of the people who submit themselves for judgeships--that the public has no right to know? This goes beyond my grasp. Now maybe there's some deep legal secret I don't know about, but if there is a reason the public has no right to know--and that's what we're saying--then I wish you would tell me and not just come on with all this legal jargon and all this other baloney that's been going on.

CHAIRMAN: Thank you, Delegate Pulham. Delegate Hale.

DELEGATE HALE: Madam Chairman, I rise to speak against the motion. No. 1, I agree that the public has a right to know who is being considered by this judicial selection commission. I don't think we're in the process of selecting something that nobody wants. I suspect there are going to be hundreds of applications, particularly in view of the fact that we now have a law school here and we're turning out lawyers by the tens and probably soon by the hundreds. There are going to be hundreds of qualified people, and there probably already are, for these positions. These positions will be well paid because we've got a judicial salary commission set up to make sure of an attractive salary. These positions will have attractive retirement and health benefits because the legislature is going to make sure that judges have everything they have so the whole question of their retirement benefits will never be unconstitutional.

So to say that the public should not know who is being considered and should have no input at this phase is a real insult to the public. It seems to me that this is another one of the many arguments to vote against this system. The other thing I'd like to say--remember, we voted in senate confirmation of these people, and yet we're going to deny the senate the deliberations of the commission. And how in the world is the senate going to make its decisions if they don't know the deliberations of the commission? Now, I would be willing to leave the deliberations of the commission secret, but certainly not what you're going to have confirmation on. I urge you to vote against this. It's just another poorly considered amendment.

CHAIRMAN: Thank you, Delegate Hale. Delegate Barr.

DELEGATE BARR: Madam Chairman, I wish to be associated with the earlier remarks of Delegate Pulham, especially the part about the baloney since I'm getting hungry. It seems to me that secrecy always breeds suspicion and lack of confidence, and that is a problem we should be aware of. Thank you.

CHAIRMAN: Thank you. Any further discussion? Delegate Ching.

DELEGATE LAURA CHING: Madam Chairman, would the committee chairman yield to a question?

CHAIRMAN: Would you state your question, please.

DELEGATE LAURA CHING: I'd like to know if this amendment is in accordance with the privacy act.

CHAIRMAN: Delegate Ikeda.

DELEGATE IKEDA: I take it that the question refers to the U.S. act on privacy. I believe that it is. I'm not absolutely certain.

CHAIRMAN: Thank you, Delegate Ikeda. Any further discussion on this? Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, I would like to ask the delegation to

seriously consider not going with this amendment or to vote against it either now or at Second Reading. I would like to just read from the discussion--this is from The Key to Judicial Merit Selection: The Nominating Process, page 109. I think this states it much more clearly than I can.

"The issue of confidentiality presented a broad range of concerns for the commissioners. First, the commissioners were concerned about the applicants themselves. They had to decide whether the names of the candidates would be made public at any time during the process of choosing nominees.

"The commissioners felt that there was no reason to keep confidential the names of candidates. They felt that over an extended period of time it was important to be able to attract the best possible persons from the legal profession to become candidates. The commissioners did not want to do anything that might discourage the proper individuals from submitting (or have submitted) their names. The commissioners believed that pride in having the community know that one's name was being considered outweighed the potential embarrassment that a candidate would face if it became known that he did not receive a nomination for which he was being considered.

"Also, the commissioners felt that even if they tried to suppress the names of the candidates, once all the names were submitted there would be some members of the bar who, through their own ingenuity, would be able to discover the names of the candidates. Since the commissioners had to delve into as much of the background of the individual candidate as possible in order to make a proper determination, they felt it would be difficult to keep the name confidential.

"Thus, to avoid any intrigue in the selection process and to keep it as open as possible, the commissioners decided that all names of candidates would be made public; that the three nominees would be publicly announced; and finally, that the governor's choice would be released immediately to the public upon appointment."

I would respectfully submit that this amendment should not be part of the Constitution.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Blake.

DELEGATE BLAKE: Madam Chairman, I'd like to request an administrative recess, please.

CHAIRMAN: Administrative recess will be granted subject to the call of the Chair.

At 4:37 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:47 p.m.

CHAIRMAN: Committee of the Whole will please come to order. Please resume your seats so that we can proceed. Mahalo. Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, recognizing the logic, which was inescapable, of some of the previous arguments made by other delegates on this matter; and because there is in the committee proposal a provision that the commission can make rules which have the force and effect of law; and believing that this rule-making power would cover the matter of confidentiality, I do not believe there is any need for this particular amendment.

For that reason, I would wish to withdraw the amendment, provided of course that the Committee of the Whole report reflect the fact that the statement was made that we believe the commission has in its rule-making power the right to adopt whatever rules it wishes on the subject of the confidentiality of the receipt and review of applications.

CHAIRMAN: Thank you, Delegate Ikeda. As the delegates have heard, the chairman of the committee has made a statement to withdraw his amendment, Amendment No. 12. Am I correct, Delegate Ikeda?

DELEGATE IKEDA: That is correct.

DELEGATE CALVIN CHING: I withdraw my second.

CHAIRMAN: The motion and the second have now been withdrawn with respect to Amendment No. 12. Would you please set it aside. Now may we proceed to Amendment No. 14, which is the amendment of Delegate Ikeda. Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I move for adoption of Amendment No. 14, which I hope will start a series of amendments that are innocuous.

CHAIRMAN: Is there a second to the innocuous motion?

DELEGATE CALVIN CHING: There is a second to the innocuous motion.

CHAIRMAN: It has been moved and seconded that Amendment No. 14 be adopted. Is there any discussion? Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I would like to call the attention of the committee to page 9 of the committee proposal, line 15. This amendment simply adds a sentence that the judicial selection commission "shall be created no later than April 1, 1979." In our committee proposal, we made no provision for the setting up of the commission and, although we believe that it would be set up in time anyway, we feel it would be best to set a specific time by which this commission would be created and in operation.

CHAIRMAN: Thank you, Delegate Ikeda. Is there further discussion on this amendment? If not, all those in favor-- Yes, Delegate Alcon.

DELEGATE ALCON: Madam Chairman, I'd like to ask the Chair whether the passage of this amendment and also the proposal would preclude the governor from appointing before April 1, 1979.

CHAIRMAN: Delegate Ikeda, would you please respond? Would you yield to that question?

DELEGATE IKEDA: Yes, I'll yield. It's the belief of the chairman and the committee that any appointments made before April 1, 1979 would just be interim until the commission makes its appointment.

CHAIRMAN: Are you ready for the question? All those in favor of the adoption of Amendment No. 14 please signify by raising your hand. All those opposed? The motion carries.

We now move on to Amendment No. 15. The delegates will recall that this has been designated as new No. 15. It is the amendment of Delegate Ikeda. Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I move for adoption of the new Amendment No. 15.

DELEGATE CALVIN CHING: I second the motion.

CHAIRMAN: It has been moved and seconded that the new Amendment No. 15 of Delegate Ikeda be adopted. Delegate Ikeda.

DELEGATE IKEDA: I would like to call the attention of the committee to page 9 of the committee proposal, lines 5 through 7. This amendment would delete the present sentence, which provides that the legislature "shall provide for operation, staff and other expenses incidental to the performance of commission duties." We have replaced that with the sentences as stated in the amendment.

As you will note, what is intended is to provide in somewhat more specific detail that the legislature should provide for the staff and operating expenses in a separate budget, and that no member of the judicial commission should be paid any compensation for services but should be allowed expenses for their commission duties. The amendment also places the commission under the judiciary branch of the state government simply for purposes of administration, where it would be an organizational element of the judiciary. What was intended here was simply to make it possible for the commission to be operational as soon as possible.

CHAIRMAN: Thank you, Delegate Ikeda. Is there any further discussion on this amendment? Delegate Liu.

DELEGATE LIU: Point of information.

CHAIRMAN: State your point.

DELEGATE LIU: Madam Chairman, just a point of inquiry. I would like to direct a question to the Chair to direct to any delegate able to answer it. The second sentence-- "The legislature shall provide for the staff and operating expenses of the commission in a separate budget"--is it the intent to have the commission as set up--to have any of the commissioners come before the legislature to request these funds, or would this be handled by the judiciary?

CHAIRMAN: Delegate Ikeda, would you yield to that question?

DELEGATE IKEDA: Well, I'll yield, but I really don't believe I can give an adequate answer. Based upon my understanding of how other independent commissions operate within the state government, I think it is the practice for the chairman of the commission to appear before the legislature at the time of approval on budgetary requests. So I imagine this would probably be handled in the same manner.

CHAIRMAN: Thank you. Is there any further discussion? There being none, are you ready for the question? All those in favor of adoption of Delegate Ikeda's Amendment No. 15, please raise your hand. All those opposed, same sign. The motion carries.

DELEGATE IKEDA: Madam Chairman, may I request a very short administrative recess?

CHAIRMAN: We will have a very short administrative recess subject to the call of the Chair.

At 4:56 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:05 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. You have before you Delegate Burgess' Amendment No. 16 pertaining to page 8 of the committee proposal. Delegate Burgess.

DELEGATE BURGESS: Madam Chairman, in the interest of attempting to find a reasonable solution to the problem this amendment addresses between now and Second Reading, I will withdraw Amendment No. 16.

CHAIRMAN: All right. Would the delegates please set that aside. We now have before us Delegate Hokama's Amendment No. 17. Delegate Hokama.

DELEGATE HOKAMA: Thank you, Madam Chairman, for the same reasons expressed by Delegate Burgess, I also withdraw my amendment.

CHAIRMAN: Amendment No. 17 has been withdrawn.

DELEGATE BLEAN: Madam Chairman, I rise on a point of personal privilege. I think this is a very meritorious amendment and worthy of our discussion, and I would like to offer it under my name.

DELEGATE HALE: Second the motion.

CHAIRMAN: Just a moment. Delegate Waihee.

DELEGATE WAIHEE: Madam Chairman, I move that Delegate Hokama be allowed to withdraw his amendment.

DELEGATE TAIRA: I second the motion.

DELEGATE DiBIANCO: Point of parliamentary inquiry. Is that a proper motion? I don't know if you can move to allow somebody else to--

CHAIRMAN: We will ascertain that shortly. You have a point of parliamentary procedure that you're stating?

DELEGATE DiBIANCO: Yes, I wanted to know if that's a proper motion. As I understand it--

CHAIRMAN: Just a moment. There was, Delegate DiBianco, a motion to adopt, as his own--Delegate Blean's motion was to adopt Delegate Hokama's motion as his own. And I believe Delegate Hale seconded it. Is that correct? Now subsequent to that, Delegate Waihee moved--or was that a point of inquiry? I believe you made a motion.

DELEGATE WAIHEE: Yes, I did, Madam Chairman. Let me explain my motion. The amendment belongs to the person, to the maker. The maker has attempted to withdraw his motion. The motion to except would be an objection to this withdrawal. Therefore, my motion is to allow the maker to withdraw his amendment.

DELEGATE HALE: Point of order, Madam Chairman.

CHAIRMAN: Just a moment. And it has been seconded? All right, Delegate Hale.

DELEGATE HALE: Delegate Hokama withdrew his amendment, which was proper. Delegate Blean stood up and said that this amendment is printed, and he is offering it under his name. That is proper. There is nothing in our rules that says the amendments have to be--it just says that the amendments have to be printed. The amendment is printed and is being offered under Delegate Blean's name, and if you want to cross out Delegate Hokama's name and put Delegate Blean's name on that amendment, I see nothing wrong with that, and I'd like a ruling, please, from the Chair.

CHAIRMAN: There will be an administrative recess subject to the call of the Chair.

At 5:08 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:18 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Blean's motion is to make Delegate Hokama's amendment his amendment. I will now ask Delegate Hokama whether, since this amendment is his writing and his property as such, if it is his desire to do that--to permit Delegate Blean to take the amendment and make it his own. Is that satisfactory to you, Delegate Hokama?

DELEGATE HOKAMA: Madam Chairman, I don't yield.

CHAIRMAN: Under those circumstances, I'm not--

DELEGATE DiBIANCO: Excuse me, point of inquiry.

CHAIRMAN: Yes, Delegate DiBianco.

DELEGATE DiBIANCO: Under what conceivable theory is this the property of Delegate Hokama?

CHAIRMAN: Under the theory that he drafted it, he wrote it and it is his writing, Delegate DiBianco.

DELEGATE DiBIANCO: I understand that, but it was presented to us by the clerk, and it is my understanding that, as with any other document in the Convention, it is the property of the Convention. Am I to understand that this piece of paper which I'm holding in my hand belongs to Delegate Hokama?

CHAIRMAN: It is not the paper, Delegate DiBianco. As I understand it, if a human being drafts any piece of writing and uses his head to do it, that's his property. It's not the paper, it's the concept. Now if Delegate Hokama does not want to give it up, then

Delegate Blean has the capability of preparing a document in his own words, in his own way, which has the same concept.

DELEGATE WURDEMAN: Point of information.

CHAIRMAN: State your point, Delegate Wurdeman.

DELEGATE WURDEMAN: From what I understand, Delegate Hokama's amendment is taken out of the present Constitution.

CHAIRMAN: Delegate Hokama, did you take this out of the Constitution, or are these your words? You do not need to yield if you do not wish to.

DELEGATE WURDEMAN: A point of inquiry to the Chair.

CHAIRMAN: Yes?

DELEGATE WURDEMAN: Could we review the Constitution?

CHAIRMAN: If you wish. Delegate Blean.

DELEGATE BLEAN: Madam Chairman, I think the point by Delegate Wurdeman was well taken and if I may, I would like to take a minute on a point of information to read the Constitution as it now stands.

CHAIRMAN: You may do so.

DELEGATE BLEAN: "The governor shall nominate and, by"--

DELEGATE SOUKI: Point of order, Madam Chairman.

CHAIRMAN: Just a moment, Delegate Souki, there is one person on the floor. I will ask Delegate Blean to sit down and compare the language of the Constitution privately, and then report back. Would you do that and see whether indeed that is exactly the same as the constitutional language, and then you may rise to--

DELEGATE BLEAN: It's the Constitution verbatim. That's the point I'm trying to make.

CHAIRMAN: It is verbatim?

DELEGATE BLEAN: Right.

CHAIRMAN: All right.

DELEGATE BLEAN: If I were to lift this language and to sign my name, removing the lower portion and signing my name to it, it is a written amendment, it does abide by the rules of the Convention, and I am entitled to submit it.

CHAIRMAN: All right, would you be seated while I recognize Delegate Souki. Yes, Delegate Souki.

DELEGATE SOUKI: Yes, this is a point of order. It's highly irregular that we should have this discussion. If the Chair makes a ruling, if there's any disagreement with the ruling of the Chair, I believe that you can ask for an appeal. I think that would be the proper procedure to follow.

CHAIRMAN: Thank you, Delegate Souki. Did Delegate Waihee wish to say something?

DELEGATE WAIHEE: No.

CHAIRMAN: Is there anything further?

DELEGATE BLEAN: I'd like to rise again on a point of personal privilege.

CHAIRMAN: Yes, state your point.

DELEGATE BLEAN: I wanted just to state--one, that I want to know I am entitled to make this amendment as I believe it is. If the Chair establishes that I have the right to make this amendment, I was going to withdraw it because I wanted it discussed at a later date. This was my intention, but now I am arguing a point of parliamentary procedure, that I do have a right to introduce this. If I am given that right and it is established, then I will withdraw it.

CHAIRMAN: Delegate Blean, what the Chair did was call on Delegate Hokama a while ago with reference to Amendment No. 17, at which point he withdrew his amendment. It never therefore became the property of the Convention. And based upon that, I will rule that it is Delegate Hokama's amendment and his property and he has refused to yield. Now is it your desire to appeal the ruling of the Chair?

DELEGATE HALE: No, Madam Chairman--

CHAIRMAN: Just a moment, Delegate Hale, the Chair is addressing Delegate Blean.

DELEGATE HALE: Point of information, before the appeal.

CHAIRMAN: Just a moment, the Chair is addressing Delegate Blean. Delegate Blean, do you wish to appeal the ruling of the Chair?

DELEGATE BLEAN: Unfortunately, this has gotten out of hand and I apologize. I feel it was something that should be introduced and discussed in this Convention. I intend to introduce and discuss it at a later date. I didn't realize that what I felt was a perfectly correct parliamentary procedure would cause such a hassle. In a movement toward reconciliation because the hour is late, I apologize for this thing taking off like this. I feel I am right, but I will abide by your ruling. I won't appeal it. I will discuss it at a later date with the parliamentarian.

CHAIRMAN: Thank you, Delegate Blean. Is there any further discussion? Delegate DiBianco.

DELEGATE DiBIANCO: Point of inquiry. Since this is the last amendment and since there is an indication that some of the delegates do wish to discuss this amendment--had relied upon discussion of this amendment as it was submitted and placed on our table and has now been withdrawn by its maker--and since there's been an indication by other delegates that they intend to reintroduce the same amendment, is it then safe to assume that we are not going to rise and report that all of our judiciary business is finished? Are we going to rise and report that we need more time tomorrow to finish our judiciary committee business so that this matter can be submitted under the name of another delegate? That's the question I'd like answered.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: Madam Chairman, I rise on a point of inquiry. May I inquire of the Chair whether there are any pending amendments before the body at this time?

CHAIRMAN: There are no further amendments before the body, Delegate Ching.

DELEGATE DONALD CHING: Then a motion to rise and report is in order. I so move.

CHAIRMAN: There has been a motion to rise and report.

DELEGATE WAIHEE: Second the motion.

DELEGATE DiBIANCO: Excuse me, Madam Chairman, I'm still waiting for an answer to my parliamentary inquiry.

CHAIRMAN: Delegate DiBianco--

DELEGATE DiBIANCO: I withdraw my inquiry.

CHAIRMAN: I'm sorry, I didn't mean to have you withdraw it. I was going to answer it.

Delegate Ching, I believe you moved to rise and report, is that correct? I wonder whether you would be good enough to withdraw that so that we can agree to the amendments which will be reported out.

DELEGATE DONALD CHING: At your request, Madam Chairman.

CHAIRMAN: All right. Delegate DiBianco.

DELEGATE DiBIANCO: I would object to the withdrawal of that motion and then would renew my inquiry on whether or not in fact we are going to rise and report unfinished business so that this amendment can be resubmitted through the proper delegate.

CHAIRMAN: It is my understanding, Delegate DiBianco, that in rising and reporting at this time--to rise and report with respect to those amendments which have been adopted--that should there be any amendments which any delegate wishes to bring to the Convention, that can be done at Second Reading.

DELEGATE DiBIANCO: Madam Chairman, it was my further understanding that we have an agenda--

CHAIRMAN: Delegate DiBianco, do you have a point of order?

DELEGATE DiBIANCO: Point of inquiry, then.

CHAIRMAN: State your point of inquiry.

DELEGATE DiBIANCO: Our agenda had set aside three days for hearing of the judiciary committee report. So I think a lot of delegates relied upon that and planned to introduce amendments tomorrow; we had amendments introduced yesterday, we had amendments introduced today, and presumably there will be amendments introduced tomorrow. So if we rise and report that all business is finished and we're prepared for Second Reading--that we move for the adoption and printing for Second Reading--then we've cut off delegates who have who knows how many amendments. I think we have the right to rely upon the agenda that was established and the schedule that's been circulated among the delegates.

CHAIRMAN: May I ask the delegates that, if they have a point of information, to please state it, state it to the Chair so that it can be answered. Do not use that opportunity to debate the issue. Do you have a point of information, Delegate Hale?

DELEGATE HALE: No, I have a motion, Madam Chairman.

CHAIRMAN: What is your motion?

DELEGATE HALE: I would like to move that we rise and report and request the Convention to let us finish our discussion in Committee of the Whole tomorrow, as on the agenda.

DELEGATE DiBIANCO: Second the motion.

DELEGATE DONALD CHING: I think my motion is still pending. I withdrew it only on the condition that we further clarify what the motion really intended. May I restate my motion at this time? I think my motion is already pending.

CHAIRMAN: I believe you moved to rise and report, Delegate Ching?

DELEGATE DONALD CHING: Right. I moved to rise and report that the work of the Committee of the Whole on Article V has been completed--

DELEGATE HALE: Point of order, Madam Chairman.

CHAIRMAN: State your point.

DELEGATE HALE: His motion was to rise and report and you asked him to withdraw to clarify it. Now he's making another motion. That motion is not in order because I have a motion.

DELEGATE DONALD CHING: All right, let's vote on your motion.

CHAIRMAN: Just a moment. Your position is well taken, Delegate Hale. It has been moved and seconded that we rise and report. All those in favor of rising and reporting, please indicate so by raising your hand. All those opposed? The noes have it. Yes, Delegate Peterson.

DELEGATE PETERSON: I have a point of order.

CHAIRMAN: Yes, would you state your point.

DELEGATE PETERSON: May I refer to Rule 23, please, which reads: "Upon consideration of the report or proposal of any standing committee by the Committee of the Whole, consideration of all matters on the same subject shall be in order. All amendments made to proposals, reports, resolutions and other matters submitted to the Committee of the Whole shall be noted and reported."

CHAIRMAN: Was that a question, Delegate Peterson, or were you noting that for the record?

DELEGATE PETERSON: I was suggesting that since the proposal had been submitted, the delegates should consider the proposal.

DELEGATE HALE: Point of order.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Were we voting on Delegate Ching's or my motion?

CHAIRMAN: We were voting on your motion, Delegate Hale.

DELEGATE HALE: My motion was not to rise and report, Madam Chairman, and that's the way you put the motion. Delegate Ching's motion was to rise and report, so I assumed we were voting on his motion. My motion was that we rise and--

CHAIRMAN: If you will remember, Delegate Hale, I said that your position had merit and we were voting on your motion. Now, if I did not state your motion correctly, restate it and we will vote again.

DELEGATE HALE: Then I think you should restate my motion.

CHAIRMAN: Would you restate it so that I can correct it?

DELEGATE HALE: My motion was that we should rise and report and request the Convention for more time to consider amendments in light of the fact that we had this scheduled on our agenda for the Committee of the Whole's consideration tomorrow.

DELEGATE HARRIS: Second.

CHAIRMAN: You have heard the motion and it has been seconded. All those in favor of that motion, please raise your hand. All those opposed? The noes have it. Delegate Ikeda.

DELEGATE CABRAL: Madam Chairman, I rise on a point of personal privilege.

CHAIRMAN: I haven't addressed Delegate Ikeda yet. Delegate Ikeda.

DELEGATE IKEDA: Madam Chairman, I move that we rise and report that the Committee of the Whole has adopted amendments numbered 8, 9, the new 11, 14 and the new 15 to Committee Proposal No. 10. And that after the necessary copies are printed and distributed--

DELEGATE CABRAL: Madam Chairman--

CHAIRMAN: Just a minute.

DELEGATE IKEDA: --we recommend that the amendments be adopted by the Convention and that Committee Proposal No. 10 as amended be adopted on Second Reading.

DELEGATE DONALD CHING: I second that motion.

CHAIRMAN: All right, Delegate Cabral.

DELEGATE CABRAL: Madam Chairman, I rise on a point of personal privilege.

CHAIRMAN: State your point.

DELEGATE CABRAL: I rise to offer a further amendment to Committee Proposal No. 10. I move that Committee Proposal No. 10 be amended--

DELEGATE WAIHEE: Point of order.

DELEGATE CABRAL: --by deleting Section 3 in its entirety and inserting the following: "Appointment of Justices and Judges. Section 3. The governor shall nominate and, by and with the advice and consent of the senate, appoint the justices of the supreme court and the judges of the circuit courts. No nomination shall be sent to the senate, and no interim appointment shall be made when the senate is not in session, until after ten days' public notice by the governor."

DELEGATE DiBIANCO: Second the motion.

CHAIRMAN: All right, Delegate Waihee.

DELEGATE WAIHEE: Point of order, Madam Chairman, I believe that motion is out of order for two reasons. One, we're in the middle of another motion, and he's offering an amendment to the proposal. The second reason is that any amendment to this proposal should be in writing according to our rules--

DELEGATE CABRAL: Madam Chairman, I do have it in writing.

DELEGATE WAIHEE: --and distributed.

DELEGATE DiBIANCO: Point of order, Madam Chairman.

CHAIRMAN: Delegate DiBianco, state your point.

DELEGATE DiBIANCO: I believe that Delegate Cabral was rising to a point of personal privilege at the time that Delegate Ikeda was making his motion, so is it not correct that you were allowing Delegate Ikeda to continue to make his motion out of courtesy, but that actually Delegate Cabral did have the privilege--

DELEGATE TAKEMOTO: Madam Chairman, point of privilege--

CHAIRMAN: Just a moment. The Chair recognized Delegate Ikeda because he was the first to stand--I did not know what it was he was going to do at the time, Delegate DiBianco. That is why he was recognized.

DELEGATE DONALD CHING: Point of order, Madam Chairman.

DELEGATE TAKEMOTO: Point of order.

CHAIRMAN: Just a moment, Delegate Ching. Delegate Takemoto.

DELEGATE TAKEMOTO: Madam Chairman, since this is a Committee of the Whole, points of privilege, personal privilege are not allowed. They are only allowed in regular session, so I think that that point of personal privilege is completely out of order.

CHAIRMAN: Thank you.

DELEGATE CABRAL: Madam Chairman, I call for a recess, please.

CHAIRMAN: Just a moment, Delegate Ching, and Delegate Cabral--the Chair will

rule that Delegate Cabral was out of order because he rose to a point of privilege and in that point of privilege he made a motion which was not within the framework of a point of privilege. Now, Delegate Ching.

DELEGATE DONALD CHING: Madam Chairman, I rise on a point of parliamentary inquiry. Is there a pending motion before this body at this time?

CHAIRMAN: There is, and I will now entertain a vote. It has been moved and seconded to--

DELEGATE HALE: Point of order. Was there a second?

CHAIRMAN: There was a second.

DELEGATE DiBIANCO: Point of inquiry. Does this require a two-thirds vote?

CHAIRMAN: No, it does not require a two-thirds vote, Delegate DiBianco. All right, it has been moved and seconded that we rise and report. All those in favor of rising and reporting as designated by the movant, please indicate by saying aye. All those opposed, say no. The ayes have it. The motion is carried.

At 5:38 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on HAWAIIAN AFFAIRS

Committee Proposal No. 11

(Article XII [XI])

Chairman: DELEGATE HARTWELL BLAKE

Saturday, September 2, 1978 • Afternoon Session

The Committee of the Whole was called to order at 12:30 p.m.

Delegate Hartwell Blake presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The Convention has referred Committee Proposal No. 11 to this Committee of the Whole for consideration. There are no amendments to Committee Proposal No. 11. I'd like to remind all the delegates here today that the Chair will demand courtesy between delegates. Each delegate will be recognized and given his chance to speak when properly recognized. No delegate will relinquish his speaking time to someone else. The delegate who makes a motion has the privilege of speaking last. Any frivolous or dilatory motions calling for recess or roll-call vote will be declared out of order and subject to appeal. If possible, a roll-call vote will not be taken unless there is a close or questionable vote. The Chair shall have hand votes or rising votes counted and announced.

The question before the Committee of the Whole is Committee Proposal No. 11. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, on behalf of the Committee on Hawaiian Affairs, I would like to preface my remarks by giving my love to the committee members and to the convention attorneys assigned to our committee and most especially to my staff.

Mr. Chairman, the Committee on Hawaiian Affairs, having held numerous public hearings throughout the State and having thoroughly examined all proposals and related testimonies and having deliberated on all issues, begs leave to report as follows:

The Committee on Hawaiian Affairs decided that its major goals were to identify the problems and concerns of native Hawaiians as they relate to the Hawaiian Homes Commission Act in Article XI of this State Constitution. It was apparent that the identifiable problem areas were--first, that the DHHL--the Department of Hawaiian Home Lands--which provides a land base, has a monumental and eternal dilemma in funding; a second aspect recognized by this committee is that, as the native Hawaiian culture is tied to the land, a land base is necessary for those Hawaiians who choose a traditional way of life. First, Mr. Chairman, in addressing the HHCA--the Hawaiian Homes Commission Act--let me say that the Great Mahele ostensibly was enacted to grant one-third of the land to the *maka'ainana*. Yet only 28,000 acres were made available to them. This marked the beginning of the end for the common people, who sorely needed land. In fact, by 1850--2 years after the infamous Great Mahele--foreigners held title to thousands of acres of land, thereby making a travesty of any benevolent rationale for this Mahele.

Seventy years later in 1920, the Hawaiian Homes Commission Act was passed, ostensibly to check the extinction of a dying native Hawaiian race which was virtually on the brink of disappearing. The act, which by its terms purported to "rehabilitate" native Hawaiians by removing them from the influences of city tenements and returning them to the land--although it may be cited as a humanitarian effort for the surviving descendants of an indigenous people--was enacted by sugar barons, who would not tolerate accelerated homesteading. A deal was struck: some second-class lands were to be put aside for native Hawaiians under the new program and in return all cultivated sugar lands would be withdrawn from homesteading.

Although the commission was authorized to lease parcels to native Hawaiians for 99 years at nominal rates, the land made available was arid and of marginal agricultural value. Hawaiians, in many instances several generations removed from agricultural life, were thus to rehabilitate themselves on land that experienced farmers would not touch. Furthermore, homesteaders' land rights were limited: they could not sublet, transfer or mortgage the land to non-Hawaiians, and they even needed commission approval to transfer to other Hawaiians; finally, the act provided little financial assistance to native Hawaiians desiring to erect homes and begin farming operations.

As mentioned earlier, the lands were 'opala lands insofar as farming is concerned. Let me cite a few examples: Waianae, Nanakuli, Lualualei, Papakolea on Oahu; Kahikinui and scrub land in Kula on Maui; Kalamaula on Molokai; Kawaihae, Ka'u and Makuu on Hawaii; and Waimea on Kauai. The good lands were excepted from the act because they were already in cane cultivation. The department must finance its own program through the general leasing of its lands. Incidentally, DHHL is the only one of 17 state departments which must fund itself. Therefore, land of any value through the years has been generally leased for revenue purposes.

Today over 113,000 acres of DHHL lands are leased to the public through leases, revocable permits or licenses. Another 16,000 acres are under governor executive orders, this all coming prior to 1972. Another 22,000 acres are utilized by federal, state and county agencies without document, and another 40,000 acres are classified as conservation. In all, 85 percent of DHHL lands (170,000 acres) are utilized by the general public; 12-1/2 percent have actually been utilized by the intended beneficiaries, or 400 acres per annum have been transferred to native Hawaiians since 1920. At that rate, it would take over 400 years to fully dispose of the lands, provided the department could regain those lands utilized by the government and public sector. Mr. Chairman, this is 1978, 130 years after the Great Mahele, and the maka'ainana are still a landless, drifting nonentity. Through no fault of their own, they have been foreclosed from the breath of life--the 'aina.

This committee's work was truly done with love and dedication. Although many members are not native Hawaiians, all are 100 percent Hawaiian at heart. The committee proposal before this Convention, if adopted, will effectuate the intent and purposes of the Hawaiian Homes Commission Act. On behalf of the committee members and those of the Hawaiian community whose future, in part, depends on the proposals, I humbly ask for your support. Mahalo.

CHAIRMAN: Thank you, Delegate De Soto. I'd like to call the attention of this body to three different things. With regard to personal privilege, the intent of personal privilege has to do with things--if something is going on in the room that causes you inconvenience, such as excessive noise, or it's too hot. That's personal privilege. A point of order--if anyone calls for a point of order, that delegate will not say a word until recognized and asked to state the point of order. Point of information, or likewise a point of inquiry--if you stand up on a point of information and the Chair asks you to state your point of information or inquiry, at that time and at that time only will you speak.

At this time, the Chair would like to recognize Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, I think the previous speaker has done a very beautiful job in pointing out the specifics. I rise also to speak in favor of Committee Proposal No. 11. On this Island of Oahu, this is the beginning of the month, 'eleu; on the Island of Hawaii, we call it mahina hou. September, the fifth month to the kau, season--the time when the sugarcane begins to unsheath itself. This is taken from Hawaiian Antiquities, by David Malo. I think it's rather significant. On our Island, this is the period of time established by the starting of pukana la, the sunrise. Today is also, as you have been told, the birthday of our last ali'i--ali'i by blood, election and selection.

The report being presented here this morning is unique in concept and context: unique as it addresses itself to the emotional request of a people attempting to reconcile today with the values of the past; unique as it seeks to translate suppliance and sensitivity into legal constitutional language; unique as it presents the pleas of an aboriginal people with understanding hearts. Why are we so proud and quick to say--I am Hawaiian, or I am from Hawaii? Is there some hope that whatever is left of the goodness of Hawaii will rub off on us? The very strength of this report is in what has been culled from it.

The process of trimming words, phrases and paragraphs of public testimony--the process of cutting out of it the outcries and pleas has been a difficult one. What remains is the core, the essence: this is what you are being asked to vote upon.

Please, my fellow delegates, no more compromise. Please, no more cutting off, na ma'oki, pau, lawa. We've had enough, no more concessions. There is no provision in this report that takes away anything from anyone else. It identifies problem areas; it transfers functions to equitable administration; it clarifies where clarification is needed; it codifies where codification is needed. Help us keep aloha a two-way street. Your support is requested.

CHAIRMAN: Thank you. May I ask the audience to refrain from applauding. We appreciate it, but the rules say no applauding, so we ask your ho'omanawanui and ask you to be quiet in the audience, please. We have before us Committee Proposal No. 11; there are 9 pages to it. We will take this page by page. The entire proposal deals with the Hawaiian Homes Commission Act. At this time, the Chair recognizes Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I rise to speak in favor of the proposal. Standing Committee Report No. 56 eloquently states the intent of those originators of the Hawaiian Homes Commission Act who believed that positive social action on behalf of native Hawaiians was desperately needed. They saw homesteading as a way of perpetuating the Hawaiian race and culture by encouraging the people to return to the land to till the soil. However, the noble intent of those seeking to check the extinction of the Hawaiian race and culture was not shared by all who sought passage of the act. History teaches us that there were other interests working for passage of the act, with other reasons to see the act pass.

In the late 1800s and early 1900s, Hawaii, following the example of the rest of America, was involved in the homesteading experiment. An amendment to our Organic Act directed the Territory to open up government lands in a given locality to homesteading when at least 25 people applied for the land. Although experiments in homesteading had not been successful in Hawaii, the advocates of homesteading were still a powerful and active force.

To Hawaii's sugar industry, the homesteading movement presented an economic threat: a large number of sugar leases on prime government land were due to expire and thus could be subject to homesteading. The Hawaiian Homes Commission Act presented a vehicle to the sugar industry to confine the homesteading movement to native Hawaiians and to prevent the loss of government-leased lands. The sugar industry supported the act and, in exchange, all sugar-producing lands were excluded from the acreage set aside as "available" for the Hawaiian homestead program. The Organic Act was also amended to eliminate the provision opening up government lands if 25 or more people applied for land to homestead. Thus the industry obtained the best lands in Hawaii and homesteading, except by native Hawaiians under the Hawaiian Homes Commission Act, was virtually at an end.

Yet, under the act the lands made available to native Hawaiians were arid and of marginal agricultural value. Little financial assistance was given to Hawaiians to build homes and begin farming operations. Hawaiians were to rehabilitate themselves on land that no one had ever been able to make productive.

My purpose in recounting this history is not to disparage the intent of those for whom the act was viewed as a means of rehabilitation for native Hawaiians. My purpose is to show that the Hawaiian Homes Commission Act was not an act which could have worked--that the economic forces of the time would not allow it to work.

Fortunately, we live in a different time and through this proposal we have the opportunity to insure that the vision of those who truly worked for the "rehabilitation" of native Hawaiian people can be fulfilled.

CHAIRMAN: Thank you. Delegate Hagino.

DELEGATE HAGINO: Mr. Chairman, I rise to speak in favor of this proposal. I would like to focus on the word "shall" in the phrase "shall make sufficient sums available" in lines 3 and 4, page 2 of Committee Proposal No. 11; "shall" mandates the legislature

to fund the Department of Hawaiian Home Lands for purposes which reflect the spirit and intent of the Hawaiian Homes Commission Act of 1920.

The purpose of the act was to check the extinction of the Hawaiian race, to reclaim the people from the city and return them to the land for farming, ranching and housing. At the time of Captain Cook's arrival there were approximately 300,000 native Hawaiians; in 1832 there were 100,000; in 1920, 24,000; and today, little over 11,000.

The Hawaiian Homes Commission Act may at first glance seem to be a noble act, but its real objective was to set aside the best lands for sugar; native Hawaiians received only large acreages of wasteland. The real objective of the Hawaiian Homes Commission Act of 1920 was achieved: sugar interests got the land they wanted, including the repeal of the 1,000-acre-limitation clause for plantations, and the native Hawaiians received the concept of rehabilitation. The rehabilitation concept could not work because the act was never intended to work. Most of the available lands were of poor farming quality and only 2 percent of the land could be properly developed at reasonable cost. A sugar expert at the time described the lands as third-grade agricultural land, second-grade grazing land and 40,000 acres as worthless.

Prior to statehood, the ceded lands of Hawaii were held in public trust by the federal government. To achieve statehood, the State and its people accepted as a compact with the United States, conditions or trust provisions imposed by the United States relating to the management and disposition of the Hawaiian homes lands. This compact reminds me of my wedding day. My greatest fear was that, despite all the well-wishing and reassurances of friendship, I would be losing my childhood friends that night. Unfortunately, my fears were justified and it is the same with this compact. The Territory, in its eagerness to achieve statehood, made promises that it would forget soon afterwards.

There is much discrimination in America, but the treatment of native Americans is one area where there has been no discrimination. Be they American Indian, Eskimo or Hawaiian, man, woman or child, they have all been screwed equally.

The only regrets I have about this proposal is that it's taken this long to try to sincerely right the grave injustices inflicted on native Hawaiians. I urge all my fellow delegates to vote for this proposal. Mahalo.

CHAIRMAN: Thank you, Delegate Hagino. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I would move at this time that the Committee of the Whole rise and report that there are no amendments to this proposal.

DELEGATE HALE: Mr. Chairman, I have questions I'd like to ask. I don't think it's proper in the Committee of the Whole to cut off debate. It's not debate, it's questions.

DELEGATE WAIHEE: I'm sorry, Mr. Chairman, I just didn't see any amendments down here and--

DELEGATE HALE: I have no amendments, but I do have questions.

DELEGATE WAIHEE: I'll wait until the delegate from Hilo asks her questions.

DELEGATE HALE: I was waiting to see if my questions could be answered by the people who were proposing this.

CHAIRMAN: Delegate Hale, then if you will take your seat we will continue. At this time, I'd like to recognize Delegate Sutton.

DELEGATE SUTTON: Mr. Chairman, fellow delegates, people of Hawaii, I rise to speak in favor of this proposal that we have worked on very hard but with a lot of aloha in the committee. I'd like to focus on the word "sufficient" on page 2, line 3, of Committee Proposal No. 11.

When the State adopted the Hawaiian Homes Commission Act (HHCA) as constitutional law, the State was charged with the responsibility of acting as trustee for the HHCA and thus assumed the responsibility for its welfare. The act bound the State to carrying on

the further rehabilitation of the Hawaiian people. Many Hawaiians at the time of adoption were living in slum tenements and needed a way to return to the land. The HHCA amended the Organic Act's provision for 25 people to petition the public commissioner for public lands. You've heard of this in previous speeches. The intent of the act was to return the Hawaiian people to the land, through ranching, farming and housing, and to rehabilitate Hawaiians to enable them to compete in the enveloping society of which they were now a minority. Since inception of the act, 59 ranches have been leased--the last occurring prior to statehood--322 farms, of which 100 were disposed of in the first 8 years (an average of 5-1/2 per year), and 2,560 homes (an average of 35 per year), with more homes coming in the last 3 years than in the preceding 30 years.

Presently, 85 percent of the land is utilized by either the general public or government agencies. There are only 25,000 acres in use for homesteading purposes, or 12-1/2 percent of the total land inventory under DHHL jurisdiction. Looking at the program today, there are 60,000 Hawaiians eligible for the program, or about 8,500 households. It is expected that 3,440 new homes will be added to the 2,560 already existing. By 1984, 6,000 homes will be needed to meet the requirements of the DHHL general plan, which is now in existence--the one started in 1974. The department must conform to county standards for site development in order to qualify for dedication of roads, etc. to the county for maintenance purposes. The department must conform to housing construction ordinances in order to qualify for federal monies under Farmers Home Administration (FmHA).

The State must not only insure there are funds to prepare sites but also insure that there is a way for the DHHL administration to be fully funded to get the evermounting paperwork done. There are presently only 90 people statewide, who are limited by time and other constraints as to what they can do. As demands on the department and staff grow, a much bigger staff will be required. At present, the DHHL budget calls for the expenditure of \$1.3 million; \$1.1 million is through land revenues and the rest through Time Certificates of Deposit (TCDs). From this budget, \$750,000 goes toward staff salaries for 66 percent of the staff. Even this figure will rise as this portion of the staff is civil service and subject to an 8-percent annual inflation rate. The other 34 percent of the staff is funded through the Comprehensive Employment and Training Act (CETA) and the State Comprehensive Employment and Training program (SCET) funds. If these temporary dollars are cut, the staff would have to be cut accordingly. Not only is there a demand on the money for staff, but there are also other administrative demands that need to be met through funds, especially in the area of record-keeping. Problems the department is facing in record-keeping include a lack of proper equipment to record information, lack of a filing system, the need to automate many portions of the system to speed up the processing of records--now there are only electric typewriters.

One way the DHHL can save the State funds, and thus insure that there will be enough funds to meet their needs, is through mutual assistance with other agencies, such as the Hawaii Housing Authority (HHA). Qualifications for DHHL and HHA are very similar in that they both require that the applicant net not over \$10,000. DHHL could provide land to those who qualify under both DHHL and HHA programs. The total cost for land acquisition to the State in order to develop homes for the needy under DHHL authority is zero--nothing--as contrasted with the State having to purchase land for the same people qualifying for housing. As it is now, the Hawaii Housing Authority has to condemn the land, pushing the average cost of a home over \$60,000. The poor cannot afford these high-priced homes (myself included). They could afford homes much more easily under mutual assistance programs.

Again, to the word "sufficient"--what does this really mean? It means funding to develop house lots for applicants on the waiting list or implied in the general plan. It also means money to provide loans to lessees to construct their homes, since the lessee cannot mortgage or encumber the land.

For the administration, there is need for support of a staff to adequately service the department's beneficiaries and to purchase equipment which will allow sufficient management of its resources and records.

In summary, this proposal will help the problems of the State and Hawaiians as a people, while not changing the intent of previous laws. It will also allow the poor to live in houses they can afford. I urge you to vote unanimously in support of the passage of this proposal. Mahalo and aloha.

CHAIRMAN: Thank you, Delegate Sutton. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I'd like to speak in favor of this proposal. The proposal states: "The legislature shall make sufficient sums available...." The standards which define "sufficient" are contained in the department's general plan, approved by the Hawaiian homes commission on October 31, 1975 and signed by Governor Ariyoshi on April 14, 1976.

The Department of Hawaiian Home Lands is currently obligated to fund its own administrative budget. It is the only department that has to pay its own way. Because of this, when an administrative budget is developed, it is not based on their needs in order to achieve their goal. It is based on the amount of money the department is to receive through its funding mechanisms. One of the major mechanisms is the revenues derived from general leasing. General leasing is the leasing of DHHL lands to the general public. General leasing is not used to rehabilitate Hawaiians; these revenues are used in the administration of the department. Homestead leases are reserved for Hawaiians. The DHHL has 200,000 acres of land, of which 170,000 are already encumbered through homestead leasing, general leasing and state agencies. That means that 85 percent of the land is already locked up. Of the remaining 30,000 acres, 9,000 are at the 9,000-foot level of Mauna Kea, covered with pahoehoe lava, with no water, frosted for 5 months during the year; 8,000 acres are at Kahikinui on Maui, running from the 7,000-foot elevation up to the summit of Haleakala; 8,000 acres at Puukapu, Waimea, Hawaii are watershed; and 3,000 acres in Kalamaula on Molokai are considered poor land.

This leaves only 2,000 acres for more general leases or for Hawaiians to use. In effect, what this means is that the department, in terms of general leases, has reached a point of diminishing returns. The reality of this is that the department cannot lease out any more land.

Mr. Chairman, the U.S. House Committee on Territories report of April 15, 1920-- House Report No. 839, page 7--said: "Your committee is, however, of the opinion that... the Hawaiian must be financially aided until his farming operations are well under way." Mr. Chairman, this statement proves that the proposal is not asking for anything more than is rightfully theirs. Also, as more people become farmers the better off the whole State will be; this will contribute to the State's goal of becoming more self-sufficient. San Joaquin Valley will have to share some of our local market with Hoolehua and Panaewa. That means the dollar will stay in Hawaii just a little longer.

CHAIRMAN: Thank you, Delegate Crozier. The Chair will entertain a short administrative recess.

At 1:03 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 1:05 p.m.

CHAIRMAN: The Committee of the Whole is back in business. At this time the Chair would like to ask if there are any questions on the floor pertaining to Committee Proposal No. 11. The Chair will recognize anyone who has a question. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I'm not speaking for or against this proposal because I am not sure how I will--

DELEGATE DE SOTO: Mr. Chairman, point of order.

CHAIRMAN: Will you state your point of order.

DELEGATE DE SOTO: Will the delegate please state whether she is speaking for or against the proposal.

CHAIRMAN: Delegate De Soto, she stated she is not speaking for or against. She has a few questions to ask. Continue, Delegate Hale.

DELEGATE HALE: Thank you. I would like to share my concerns with you in the hope that I can get answers that will enable me to make a reasoned and intelligent decision.

When the rights of any individual or group are trampled upon, my fighting instincts are aroused, and I think that most of you are aware by now that this old "hen" has plenty of fight left. As a member--

CHAIRMAN: Would you please state the question.

DELEGATE HALE: I am not speaking for or against. My questions will come out as I give the background, Mr. Chairman. And I think that other members of this Convention spoke for more than ten minutes. I promise not to speak for ten minutes.

As a member of a minority group myself, I am deeply sympathetic to the historical wrongs that the Hawaiian people have endured, and I do believe that we have to begin to do more than put a Band-Aid upon the wounds. However, discretion is sometimes the better part of valor, and in this case I want to win the war, even if I lose this battle.

In a lighter vein, I would like to tell you a story about my name. I understand a radio reporter this morning referred to me as Helene Hale [Hah-lay]. When I ran for county chairman of Hawaii county, there was a certain person in the district who said that she voted for me because my name was Helene Hah-lay. My opponent was Thomas K. Cook who was part-Hawaiian. But perhaps this particular person thought he was descended from Captain Cook and I was the Hawaiian because she voted for me. And the reason I am saying this is, I am trying to put myself in the place of a native Hawaiian, and I'm trying to do the best I can for my people. Incidentally, when I was elected chairman and executive officer of the County of Hawaii, I was, by newspaper reports, the first woman executive in this territory since Queen Liliuokalani, so I feel a very warm and personal relationship with her, and I'm glad this is her birthday.

To get the proper background and perspective to this proposal, I hope all the delegates have read the Proceedings of the 1950 Constitutional Convention where this problem was debated all day long. The chairman of the Hawaiian homes commission act committee was Flora Hayes, a representative of the territorial house of representatives. I would like to quote from her testimony on her committee report, where she brought up the problems that concern me today. This is getting to my question.

"Until very recently, there has never been any suggestion that the Hawaiian Homes program should"--this was in 1950--"be discontinued. Then the use of certain Hawaiian Homes lands at Waimea, Hawaii came up for discussion, and in the ensuing argument, some few persons brought into the question the very existence of the Hawaiian Homes Commission Act of 1920. The arguments raised against the act have been as follows: "--and I'm quoting from her committee report in 1950--"1. It is unconstitutional. 2. It is discriminatory. 3. The Hawaiian Homes program is a failure. 4. It is time to liquidate the Hawaiian Homes program. 5. A majority of the people of Hawaii are opposed to this act." She went on to dispose of all of these arguments very effectively and did establish that the act was not discriminatory and that the Hawaiian homes program was not a failure or unconstitutional. But she also said, "So long as there are eligible applicants endeavoring to obtain Hawaiian Homes land, there is every reason for continuing the program. When no lands are left and when no applicants remain unsatisfied, then it will be time to raise the question of whether the Hawaiians have been fully rehabilitated."

What the Legislative Reference Bureau book on Article XI fails to tell us is what really happened in 1950. The committee had recommended that an additional sentence be put in the Constitution, namely: "Such appropriations for administration expenses of the Hawaiian Homes Commission shall never be less than, after due consideration of the receipts applicable to such expenses from the Hawaiian home lands, will accord said Commission equal treatment with other departments of the state in the funds available for its administration expenses."

What I'm trying to tell you is that the 1950 convention had this in their report. This provision was deleted in the Committee of the Whole with the concurrence of the chairman of the committee after many hours of debate because the majority of the convention felt that the language was too strong. During the discussion, Delegate Marguerite Ashford, a respected lawyer and head of the land department in the territorial government, had a chance to present her views. She held these opinions so strongly that she was the only one of the delegates who refused--

DELEGATE ALCON: Mr. Chairman.

DELEGATE HALE: --to sign the document at the end of the 1950 constitutional convention, which was presented to Congress and to the people for adoption. She stated: "My position is twofold. First, that it writes into our Constitution an adoption of the principle that classification by the accident of race is appropriate, which seems to me the most dangerous principle we could possibly accept here. And, second, that the lands granted by the Republic of Hawaii and accepted by the United States, being ceded in trust cannot have trust strings"--

DELEGATE WAIHEE: Mr. Chairman.

DELEGATE HALE: --"tied to them when they are returned...."

DELEGATE DE SOTO: Mr. Chairman.

DELEGATE HALE: Mr. Chairman, we have had explanations--

DELEGATE DE SOTO: Point of order.

CHAIRMAN: State your point of order.

DELEGATE DE SOTO: Mr. Chairman, where is the question?

CHAIRMAN: Delegate Hale, I notice you have 5 pages there and if it's going to take 2-1/2 minutes to read each--

DELEGATE HALE: I will get to it before my ten minutes, Mr. Chairman. Other delegates--

CHAIRMAN: You're running short of time, and I'd like to ask--will you state your question?

DELEGATE HALE: No, I cannot until I give you the background.

DELEGATE LES IHARA: Point of order.

DELEGATE HALE: "...the requirement by H.R. 49 of entering into a compact with the United States is absolutely invalid. This is land and this is a subject matter over which the United States, if we were a state, would have no control, and in requiring us to enter into such a compact, they diminish our sovereign powers. They, therefore, infringe upon that well settled interpretation of the provisions of the Constitution that new states shall be admitted upon equal terms with the old."

And she goes on to quote the opinion of a supreme court case--

DELEGATE LES IHARA: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Hale, I'd like to ask you a question. Either you answer the question or I'm going to cut you off. You said you have some questions you're going to ask?

DELEGATE HALE: I do. I have a very important question at the end of this--

CHAIRMAN: And you're going to do all that in ten minutes?

DELEGATE HALE: Yes.

CHAIRMAN: Continue.

DELEGATE HALE: The constitutionality of the Hawaiian Homes Commission Act has never been challenged in court--

DELEGATE LES IHARA: Point of order.

CHAIRMAN: Will you state your point, Delegate Ihara.

DELEGATE LES IHARA: I have a point of parliamentary procedure. Does the delegate wish to make--does she have a request to speak or is she speaking on the motion?

DELEGATE HALE: I am speaking neither for nor against, nor is it in our rules that we have to speak for or against. Other delegates have given history in preface to their speaking, and I'm giving history before I give my question--

DELEGATE LES IHARA: Mr. Chairman, point of information.

DELEGATE HALE: You are taking up my time, delegate. However--

DELEGATE LES IHARA: Mr. Chairman, on a point of information, the Chair can rule whether that point will be accepted or not.

DELEGATE HALE: It's not a point of information, Mr. Chairman. I am taking my due time as a delegate to speak on this proposal.

CHAIRMAN: The information just given is not detrimental to what's being said. Continue.

DELEGATE HALE: I have often heard during my ten years in elected office, which started before statehood, that legislators question the constitutionality of this act. It is my belief--and this is the key to it--that there are many lawyers waiting for the opportunity to challenge it in court. I have discussed this with some of my learned lawyer friends who have served this State for many years in various capacities and they agree.

What is proposed in Committee Proposal No. 11 is an extension of the powers of the Hawaiian homes' commission and the responsibility of the State to fund their activities. One of the suggestions is that we delete the necessity for approval by the Secretary of the Interior, on page 9 of the committee report, for certain acts. I believe that we will have to have the approval of Congress for this deletion and the whole proposal then will come under their scrutiny at a time when the Hawaiian reparations act is being discussed. Our timing is very poor, and this bothers me. The legislature, certainly more politically astute than we are, warned of this problem when H.B. No. 1469 relating to the native Hawaiian program was discussed last year in 1977 and their recommendations are as follows:

"Your Committee believes that the further review, revision and refinement of H.B. No. 1469 and similar legislation must be actively pursued prior to the next Regular Session of the Legislature and accordingly also recommends that the Committee continue its public hearings. It further recommended that a statewide conference on Native Hawaiian programs be sponsored by the Legislature with special attention given to the idea"--

CHAIRMAN: Excuse me, Delegate Hale. Your time is running out, and I am asking for your question.

DELEGATE HALE: I would like to say that whether we like it or not, there are many people in the cold, cruel world who are still not sympathetic with the Hawaiian Homes Commission Act when it is limited to those of at least 50 percent Hawaiian blood. And what we're purporting to do with this proposal is put it before the people in a--

DELEGATE WAIHEE: Point of order, Mr. Chairman.

DELEGATE HALE: My question is--will the people--

DELEGATE PENEBACKER: Point of order.

CHAIRMAN: Delegate Penebacker.

DELEGATE HALE: Is he taking up my time?

CHAIRMAN: He's not taking up your time. Delegate Penebacker.

DELEGATE PENEBACKER: Mr. Chairman, I think now that the delegate is getting into the pros and cons of the proposal, and she's not stating the question. I would ask the Chair to rule at this time.

CHAIRMAN: The Chair rules that she has about a minute left--

DELEGATE HALE: I am not against the proposal.

CHAIRMAN: I will make the decision. The Chair states that you have only a minute and a half to finish and have your questions answered.

DELEGATE HALE: This proposal, if voted favorably today, will be the only real and meaningful change in our Constitution. It does not fit into the kind of amendments we are offering the people, which are only helping to keep our State the same highly centralized bureaucracy that has so frustrated so many of our citizens that it alienates them from the voting process. We have turned down an elected attorney general, limitation on terms of legislators, a strong nonpartisan--

CHAIRMAN: This has nothing to do with the discussion.

DELEGATE HALE: It does, Mr. Chairman, because my question is to the chairman of the Hawaiian affairs committee. If she is satisfied that her package can be sold to the people along with all the other 'opala we are giving them, I will vote for this proposal.

CHAIRMAN: Delegate Hale--

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: I would request that the word 'opala was used in the wrong sense and I am very displeased with your general attitude.

DELEGATE WAIHEE: Mr. Chairman.

CHAIRMAN: Delegate De Soto, you may not answer that question.

DELEGATE WAIHEE: Mr. Chairman, I rise to a point of order.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I don't think we ought to be asking rhetorical questions. If anyone wanted to ask a question specifically on this proposal, this proposal was laying for 4 days on each delegate's desk. If anyone doubts--I don't think there is a single delegate sitting on the committee who would deliberately send out a proposal with the intent that it would be lost. I believe that if we propose something, we at least believe that the people of Hawaii should accept it. I think the question is rhetorical.

Mr. Chairman, at this time, unless there are any specific amendments--because I do feel that questions are really out of order to be brought on the floor unless they are of a general nature--I would move that the committee rise and report to the Convention that we have no amendments to this proposal.

DELEGATE BARR: Second.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: It has been moved and seconded that the committee rise and report.

DELEGATE BURGESS: Mr. Chairman, I think this is the time to discuss all proposals--during the Committee of the Whole--and I have some points of information that I would like to ask.

DELEGATE WAIHEE: Point of order. We do have a motion on the floor.

CHAIRMAN: Delegate Waihee has the floor. Was it moved and seconded that we rise and report? All those in favor of rising and reporting, say aye.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Opposed, say no. The ayes have it, the motion is carried.

DELEGATE BURGESS: Mr. Chairman, we had no opportunity to discuss the motion. I think discussion is in order before a motion is voted on. This is an important subject, Mr. Chairman, and I think we should be able to ask questions and to have answers before we vote on the point.

DELEGATE FUSHIKOSHI: Mr. Chairman, can we call a short recess?

CHAIRMAN: Delegate Burgess, from the standpoint of following procedure, there is no discussion or debate when the rise and report is seconded.

DELEGATE BURGESS: Mr. Chairman, as I understand it--

CHAIRMAN: There will be a short recess.

At 1:19 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 1:24 p.m.

CHAIRMAN: Committee of the Whole will come to order. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, since we didn't get a count on the last motion, as we intended to when we began the rules, initially, and since the vote was not actually taken because of that, I would like to withdraw my motion if it's in accordance with the second.

DELEGATE BARR: I will withdraw my second.

CHAIRMAN: Is there any question from the body on withdrawing the motion? If not, Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, on a point of personal privilege. It is the consensus of the committee that we leave the debate open. We have nothing to hide.

CHAIRMAN: Delegate Sterling, the Chair is not--for the information of all concerned--the Chair is not, in plain language, railroading anything. When a motion is made to rise and report and it is seconded, I have no alternative but to call for the vote. So now we're back to Committee Proposal No. 11. Does anyone wish to speak on the proposal? Delegate Burgess.

DELEGATE BURGESS: Thank you, Mr. Chairman. I appreciate the courtesy of the delegates who withdrew their motions so I could ask these questions. I have three questions that I'd like to ask and I would direct them to any delegate--perhaps someone on the committee, or someone else--who could answer them.

There is a reference in the Constitution as it now stands that provides that before any amendment can be made to the Hawaiian Homes Commission Act, it must be with the consent of Congress. My question is--is this amendment that is now being proposed, is it necessary to have the consent of Congress?

CHAIRMAN: The Chair can answer that, unless Delegate De Soto wishes to answer it.

DELEGATE DE SOTO: Mr. Chairman, is that the only question or are there others that I could answer all at once?

CHAIRMAN: Are there any other questions?

DELEGATE BURGESS: I have three questions in all.

CHAIRMAN: Are they related?

DELEGATE BURGESS: They're all related to this proposal, but they're all different.

CHAIRMAN: Well, Delegate De Soto, will you answer the first question? This time, by the way, is charged against Delegate Burgess.

DELEGATE DE SOTO: Mr. Chairman, I would prefer that the delegate ask all of his questions and I will address them all at once. Thank you.

DELEGATE BURGESS: The other two questions I have--and these are not rhetorical questions, these are questions I am asking in order to get information--the second is, has there been an opinion of counsel as to the constitutionality of these changes? And third is, what would be the estimated cost of these programs which are mandated? Those are the three questions.

CHAIRMAN: Delegate De Soto, did you get those three questions?

DELEGATE DE SOTO: Mahalo. To the first question, of whether or not the proposed amendments before this body for consideration need ratification, they do not. We have met with teams of attorneys, we have spoken with congressional delegation members, we have spoken to everyone who has an opinion, including the attorney general. All of the amendments proposed here in Committee Proposal No. 11 do not need ratification by Congress.

To the second question, of whether or not we have had counsel, I think I took care of that in answering the first one. What we propose with respect to "shall fund" is the administrative and costs of running the Hawaiian homes program, which would amount to operating and administrating approximately \$1.3 million to \$1.6 million, taking into consideration inflation, collective bargaining agreements that go into inflation with the pay.

CHAIRMAN: Thank you, Delegate De Soto. Are your questions answered, Delegate Burgess? The delegate answered all three of them.

DELEGATE BURGESS: Mr. Chairman, it wasn't clear from the answer--has there been an opinion from counsel as to the constitutionality of these proposed changes?

CHAIRMAN: All of these have been handled by counsel, yes.

DELEGATE BURGESS: Could I ask if that question was specifically addressed?

CHAIRMAN: It was. It has been answered, yes.

DELEGATE BURGESS: I would like to--perhaps during a recess I could ask further questions about that point. I would ask--is the \$1.3 to \$1.6 million that was mentioned the total cost of the programs which are mandated to the legislature? Does that amount include the development of home, agriculture, farm and ranch lots, and the other aims that are cited on page 2 of the proposal?

CHAIRMAN: That question was answered by Delegate Sutton, but I will ask Delegate De Soto if she would like to reply to that. The question was answered by Delegate Sutton in his preparation.

DELEGATE DE SOTO: No, I would not.

DELEGATE BURGESS: Well, maybe someone could answer it for me again. I didn't understand that that question had been answered, Mr. Chairman.

CHAIRMAN: Restate your question.

DELEGATE BURGESS: Does the \$1.3 to \$1.6 million figure that was mentioned just a few minutes ago include the costs of the home developments, the loans and the other rehabilitation projects which are referred to on page 2--in other words, the development of home, agricultural, farm and ranch lots; the home, agriculture, aquaculture, ranch and farm loans; and all of those programs. Are all of those included in the total estimate of the \$1.3 million to fund this program, or is the total cost to the State different from that?

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: At the time of my speech, I was asking and pointing out that I hoped everyone was listening. I do not have my speech in front of me at this time,

but I will recollect from my own listening and writing. The \$1.3 to \$1.6 million is for administrative costs at present. Their need is more. The way the State itself can fund all the rest of the projects--and directly answering your question, delegate, is no, is not only \$1.3 to \$1.6 million--the way the State can find the funds is through mutual agreement with different parts of the government here in Hawaii; and that is, for the poor people who qualify, that is for HHA or Hawaiian Homes Commission Act properties, that there are similar needs and requirements for those to get the land--that is, under \$10,000 net assets. The State may fund these projects and come out with considerably more for the people at less of an expense, simply because the Hawaiian homes commission has land and does not need to condemn and purchase other land to fit the needy at that level. I would ask the Chairman if that is sufficient, or would he like me to go in more depth?

CHAIRMAN: Thank you. Are there any other questions? Delegate Ihara.

DELEGATE LES IHARA: Mr. Chairman, I rise to speak in support of the Hawaiian affairs committee's amendments to the Hawaiian Homes Commission Act. I would like to speak, in particular, about the inclusion of the native Hawaiian rehabilitation fund in our Constitution. I ask my fellow delegates to give serious consideration and support to this amendment.

The cultural heritage of these Islands is vested in the Hawaiian people and their youth. As adopted sons and daughters of Hawaii, we are under an obligation to maintain and promote our unique island heritage. We can only achieve this through the protection of its native people.

This amendment will provide for the rehabilitation of native Hawaiians, which shall include but not be limited to educational, economic, political, social and cultural processes. This fund will allow the Hawaiian homes commission to more economically utilize Hawaiian homestead lands and to promote a nonpartisan political education, which would allow and encourage native Hawaiian participation in our political process. In turn, this would promote the accountability of the Hawaiian homes commission to the people.

This fund is not designed to relieve the State of its responsibilities to the people of Hawaii outside the Hawaiian homes commission. This fund is but one step toward maintaining and promoting the cultural heritage of our native Hawaiian people. It is a step we must take now. Mahalo.

CHAIRMAN: Thank you, Delegate Ihara. Delegate Ontai.

DELEGATE ONTAI: May I speak on behalf of the proposal. As most of you know--but I'll repeat it for emphasis--the Hawaiian homes department and the act were and are the most neglected part of the State of Hawaii, the most neglected department. It was woefully lacking in funds at its inception, and for the past 50 years and even today, it lacks funds to run the department properly, lacks funds to construct homes and facilities necessary to service existing and future applicants.

At its inception the act was designed to fail, as most of you know. As a matter of fact, there was no intention of putting all the applicants on the lands. Most of the lands that were given to the Hawaiian homes department were called junk lands. The word 'opala was used earlier and would aptly describe these lands. In 1920 (approximately), when the act was being discussed in Congress, one congressman in referring to these lands used the words "junk lands"--it's in the congressional record and that is why I use the term. I've seen most of the lands myself--they are junk lands. The land the people are on today, and most of it at the time the people went on it, was junk land. Thank goodness for modern times, with roads, utilities and job markets spread out into the country.

On Oahu, where 90 percent of the applicants would like to have home sites, there are only enough lands for home sites totalling about 1,500 homes. After that, Hawaiian home lands will be in trouble. As you know, this proposal calls for an exchange of lands with the State. It is our hope the State won't go into its old act of giving junk lands for good land to the Hawaiian homes department, and the department ends up getting junk lands. But that is an administrative problem to be worked out with the State. Land on the outer islands--as you know, there is quite a lot of it, about 100,000 acres. Also there are still junk lands.

A funding setup for the Hawaiian homes act in 1920 was made and made for failure. It was doomed to failure; it did not take into account the increasing numbers of applicants coming into the program or the increasing costs of construction. Today funds are absolutely depleted, except using their own funds. They can barely build 50 homes a year. As you all know, there are several hundred new applicants every year. If the Hawaiian homes department were given good lands, no doubt the applicants coming in every year, instead of two or three hundred, probably would double or triple when it was known that good lands were available instead of junk lands way out in the boondocks. It is time to correct the inequities, injustices and, I might say, the deliberate deceit--or perhaps more of fraud--perpetrated on the Hawaiian in 1920 and for the past 50 years. I feel, and I know most of us feel, it is high time we correct all the injustices, inequities and the fraud and deceit that were played upon the Hawaiian people. This is the time.

CHAIRMAN: Thank you, Delegate Ontai. Delegate Barr.

DELEGATE BARR: The chairman of the Hawaiian affairs committee asked me to address the question of constitutionality in hopes that it might bring to rest some of the questions raised here. If you will indulge me a few minutes, Mr. Chairman, I would like to do that.

Article XI of our State Constitution, in all three of its sections, makes reference to the Hawaiian Homes Commission Act. Section 3 of Article XI is identical in its wording--it's verbatim--to Section 4 of the Admission Act that allowed us to become a state. It is in that section that the reference Delegate Burgess made to the requirement of congressional approval is contained. It says: "As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, as provided in Section 7, subsection (b) of the Admission Act, subject to amendment or repeal only with the consent of the United States"--which is where we got the idea that it required the consent of Congress. However, it goes on for about three times that much longer and includes in there, "Provided, That"--and there are some very important provisos in there. I'm not going to read the whole thing because of its length, but one of the provisos is that there are several sections of the act itself that what I just read does not apply to.

A second proviso--and this is the one that's really important--is that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution. So the crucial point to understand in connection with the constitutionality of what we are proposing in Committee Proposal No. 11--or for that matter in any of the Hawaiian affairs proposals--is that they do not decrease the benefits to native Hawaiians, plus they do not diminish or interfere with the qualifications of native Hawaiians seeking leases under the act. Those are the two things that we could not do and that our proposal does not do.

CHAIRMAN: Thank you, Delegate Barr. Anyone else who wishes to speak? Delegate Silva.

DELEGATE SILVA: Mr. Chairman, not to close debate or discussion or questioning--if there is no questioning, I'd like to move that we resolve from the Committee of the Whole to the Convention.

CHAIRMAN: Are there any other comments? Anyone else wish to speak? Delegate Barnes.

DELEGATE BARNES: Mr. Chairman, reiterating many of the previous speakers, it is my belief that no dollars or this proposal can repay the Hawaiian people for the inequities put upon them by the Mahele. Any graduate of the University of Hawaii law school can go on and on about the historic problems--in the way that lawyers in particular have--worked over the Hawaiian people. I don't feel that we can quibble with administrative niceties or take issue with small points as to whether the Hawaiian homes act administration moneys are perhaps a little more than they should be, or whatever. Furthermore, I don't think that we should mix this issue with other issues that some of us may have supported, such as an elected attorney general or home rule or whatever your opinions. I urge you very strongly to support this whole Hawaiian package any way you can and not carry it over into other issues.

CHAIRMAN: Thank you, Delegate Barnes. Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I rise to speak in favor of the proposal. I'm not going to reiterate what previous speakers have said. I would just like to echo the sentiments of all Hawaiians today. O ka manawa keia. It's about time.

CHAIRMAN: Mahalo. Is there anyone else who wishes to speak? Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I'm really quite moved by the concerns that some of us have. I thank my sister delegate Helene Hale for her concerns borne out of deep concern for the act, and I'm sure there were some members of our Constitutional Convention, this Convention's LRB members, who have stated opinions all over this Convention. I assure you, fellow delegates, that what we propose has been digested and has been seriously looked at. I would not, with any knowledge, propose to you any considerations that would jeopardize myself and my people.

I hope that this Convention would give serious considerations to the Hawaiian people by adopting Committee Proposal No. 11 that is before you, because we have come the full circle. We, the native Hawaiians of Hawaii, have no place else to go. This is Hawaii. We are Hawaii. I was told by my staff not to get emotional, because some people frown on emotionalism. I would just like to close my remarks by telling you from the bottom of my heart that we have indeed done our homework, and there will be people who will contest the constitutionality of anything we do here in the Convention. I ask you with all humility and as a servant of the Hawaiian community to pass this Committee Proposal No. 11 for the benefit of my people. Mahalo.

DELEGATE WAIHEE: Mr. Chairman, at this time I move we rise and report to the Convention that the Committee of the Whole proposes no amendments to Committee Proposal No. 11.

DELEGATE SILVA: Second.

CHAIRMAN: It has been moved and seconded that we rise and report. All those in favor of rising and reporting, signify by saying aye. Opposed, nay. The ayes have it. The motion is carried.

At 1:43 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on HAWAIIAN AFFAIRS

Committee Proposal No. 12

(Articles X [IX], XII [XI], XV [XIII] and XVI [XIV])

Chairman: DELEGATE HARTWELL BLAKE

Saturday, September 2, 1978 • Afternoon Session

The Committee of the Whole was called to order at 1:52 p.m.

Delegate Blake presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The Convention has referred Committee Proposal No. 12 to this Committee of the Whole for consideration. In addition to the committee proposal, we have two amendments. At this time I would like to specify how we will handle these amendments.

DELEGATE HALE: Mr. Chairman, since they're both my amendments, may I suggest how I would like to have them handled?

CHAIRMAN: The Chair will take it under advisement.

DELEGATE HALE: I would like the one entitled "Land Title Actions" to be No. 1 and the one deleting section 5, No. 2.

CHAIRMAN: I see no objection. No. 1 will be "Land Title Actions" and No. 2 will be the amendment deleting section 5. I would like to recall the procedures: the Chair will request that courtesy be given all delegates; no delegate will pass on his speaking time to another delegate; the delegate introducing a motion will be privileged to speak last--you need not ask for it; such motions as recess, roll call or adjournment will be denied by the Chair. If possible, roll-call votes will not be taken unless there is a close, questionable vote. The Chair shall have hand and rising votes counted and announced.

At this time, the floor is open for Committee Proposal No. 12. The Chair recognizes Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman and fellow delegates, I rise to speak in favor of Committee Proposal No. 12. There are five significant sections contained within the proposal. Amendments are made to Articles IX, XIII, XIV and I.

Section 1 amends Article IX by adding the following, entitled "Hawaiian Education Program. The State shall provide for a comprehensive Hawaiian education program consisting of language, culture and history as part of the regular curriculum of the public schools.

"The use of community expertise shall be encouraged as a suitable and essential means in furtherance of Hawaiian language, culture and history."

There has been a strengthening of emphasis on the diversity of cultures found within the larger American society and a lessening of the emphasis on assimilation, or the "melting-pot model," in America. Your Committee agrees with thoughtful scholars who point out that, as in the survival of biological species, variety rather than sameness enhances the possibilities for survival and that a culturally diversified society is a source of strength for a nation. It is important that different non-Western values be studied in order that we may evaluate existing models of society and perhaps thus discover alternative models for structuring society.

Your Committee determined that one ethnic group that may be a rich source for

just such a study is the Hawaiian culture, with its emphasis on group responsibility and success, and the 'ohana extended family system. The Hawaiian culture survived and thrived in environmental harmony on a relatively small land area.

Section 2 of Committee Proposal No. 12 deals with official languages. We propose that "English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law." Your Committee decided to make this amendment to the Constitution in order to give full recognition and honor to the rich cultural inheritance that Hawaiians have given to all ethnic groups of the State.

The purpose of Committee Proposal No. 12, section 4, is to recognize, reaffirm and protect those traditional and customary rights of native Hawaiians. As native Americans, Hawaiians have inherent and fundamental rights to the free exercise of ancient activities necessary for the purposes of sustenance, culture and religion. These rights are partially reaffirmed by the State Constitution as well as by many state laws. The recognition of traditional native Hawaiian fishing rights outside the public use of certain fisheries is upheld in Article X, Section 3, of our State Constitution. The codification of traditional native Hawaiian access, water and gathering rights for sustenance purposes is found in Section 7-1 of our Hawaii Revised Statutes, originally part of the kuleana act of 1850.

Despite these laws, the inability of poor Hawaiians to gain access to the courts, the lack of government efforts to protect Hawaiian rights and the judiciary's unwillingness to enforce these rights have resulted in making Hawaiians strangers in their own homeland. Native Hawaiians who practice or wish to follow the ancient ways of their ancestors face more and more "keep out" signs, barbed wire fences, locked gates and government prosecution for trespass. How long are we going to deprive a people of their culture and heritage? Ignorance, apathy, callousness and neglect are keynotes of this government's interaction with traditional Hawaiian religion and culture. This state of affairs is caused by a common misconception that such Hawaiian use rights somehow do not have any validity in today's society. What are we going to do with the many Hawaiian taro farmers sprinkled throughout the State who are deprived of their water rights because large business entities are diverting water? What are we to do with the many Hawaiians who depend on access to the sea and mountains to feed their families? What are we to say to the Hawaiian children who wish to visit the burial grounds of their kupuna? Do we tell them to visit Bishop Museum or see a tourist show if they want to learn about their Hawaiian culture, values and identity? or are we going to allow them to become part of their culture?

Mr. Chairman, in ancient Hawaii an individual did not own land or water; there was no such thing as private ownership. Hawaiian society was based on the welfare of the community and a sharing of the water and its products. Under the ancient value system of aloha 'aina, Hawaiians respected the land and practiced conservation of natural resources. They respected each other's property rights; they did not arbitrarily invade another person's cultivated area if they wanted some taro or bananas.

Committee Proposal No. 12, section 4, does not attempt to grant unregulated, abusive and general rights to native Hawaiians and only native Hawaiians; rather, it allows tenants of an ahupua'a--and not all native Hawaiians--access rights to the mountains and sea, as was traditionally and customarily asserted by their ancestors. This is very important since the large landowners--basically 10 to 12 corporations and estates which own almost 90 percent of all private lands--have intruded upon, interfered with and refused to recognize such rights. Sustenance, religious and cultural practices of native Hawaiians are an integral part of their culture, tradition and heritage, with such practices forming the basis of the Hawaiian identity and value systems.

Although the enforcement problems create more difficult administrative issues and require more careful consideration of regulation changes in this area, it is possible, with minimum effort (also known as work), both to protect the rights of private landowners and to allow for the preservation of an aboriginal people.

If the delegates to this Convention sincerely wish to preserve the small remaining vestiges of a rapidly disappearing culture, the solution is to provide the recognition and reaffirmation of native Hawaiian rights by constitutional amendment. I strongly recommend passage of this proposal because such action would help to perpetuate a heritage that is unique and an integral part of our State.

Mr. Chairman, I also speak in favor of Committee Proposal No. 12, section 5, which deals with adverse possession. Many people are under a misconception that adverse possession is a thing of the past. Unfortunately, the fact is that it is not a thing of the past. At this very moment, 27 applications claiming adverse possession are currently being processed in the land courts. Many people even today--right this minute in Hawaii--are using this legal means of thievery. I received, Mr. Chairman, a call from the Big Island this morning in which the people described their problems right in Waimea.

Mr. Chairman, all the proposals before this Convention for consideration have been thoroughly discussed, thoroughly deliberated upon, and many opinions were received from all segments of society here in Hawaii today; and we have had opinions by attorneys, many, many of them, some of them with differing opinions. However, what we have in Committee Proposal No. 12 from the Committee on Hawaiian Affairs--if all the members of the Convention will see--there was not one dissenting vote noted with the signatures on the standing committee report. Every one of the Hawaiian affairs committee members agreed totally, in concept and in fact, with Committee Proposal No. 12.

CHAIRMAN: Thank you, Delegate De Soto. Delegate Barnard.

DELEGATE BARNARD: Mr. Chairman, I'd also like to speak in favor of Committee Proposal No. 12, especially section 4 on traditional and customary rights.

CHAIRMAN: Hold it one second--for the convenience of all--excuse me, delegate, you'll be the first to speak on section 4. But the Chair would like to suggest that we take the sections one at a time rather than hop, skip and jump. At this time, is there any discussion on the Hawaiian education program? Delegate Ching.

DELEGATE HAUNANI CHING: Mr. Chairman, I rise to speak in favor of the new section relating to the Hawaiian education program, as proposed in Standing Committee Report No. 57 and Committee Proposal No. 12. The committee recommends this amendment to our Constitution to insure there is a comprehensive Hawaiian education program consisting of language, culture and history as part of the regular curriculum of the public school system. It also provides for the use of community expertise in the public school system, in the areas of Hawaiian language, culture and history.

In 1962, the late John A. Burns was inaugurated as governor of the State of Hawaii. His inaugural address was centered upon six pledges; these pledges were commitments of what he and his administration intended to do to shape the future of the State of Hawaii. Governor Burns stated as his final pledge: "...my sixth and perhaps most important pledge--to provide for our children the best possible education."

Mr. Chairman and fellow delegates, I believe that this amendment before us today does provide the young people of Hawaii with the finest education possible to carry out the dream of the late Governor John Burns. I strongly believe that the future of Hawaii rests directly with young people and that these young people are the greatest and the most precious resource that Hawaii has. These youngsters are Hawaii's future and tomorrow; without them, there would be no future or tomorrow for Hawaii. The raw materials are here today, and it is incumbent upon all of us who believe in a good education system for Hawaii to provide the means by which these resources can be developed. Unless we adequately train the young people of Hawaii today, they cannot be expected to govern the future and, tomorrow, the destiny of the State of Hawaii.

I firmly believe that the amendment before us today has great importance and urgency. I say this because we are daily losing key resources of information: existing material resources are disappearing slowly and, more importantly, men and women who have significant information are dying and the information they could provide is being lost forever.

Mr. Chairman, in conclusion I would like to say that our children are our heirs and beneficiaries and to serve them well we must give them and teach them the tools they will need when the time comes for them to take up the burden of our State's survival. Our children are our future, and if we are to prepare for the future, we must prepare our children as best we can and educate them with the finest education possible.

CHAIRMAN: Thank you, Delegate Ching. Delegate Teruo Ihara.

DELEGATE TERUO IHARA: Mr. Chairman, some members of the education committee have questioned this proposal relating to the Hawaiian education program. But my understanding is that there will be opportunities between now and the time the proposal comes up for Second Reading to iron out our differences. Is that correct, Mr. Chairman?

CHAIRMAN: I think I speak for the chairman of this committee that that's accepted. Do you want to state what the problems are, for the good of all here?

DELEGATE TERUO IHARA: The problem is that the education committee has already passed a section in that article relating to Hawaiian history, culture and language. There may be some duplicity and because of that, we'd like to go over this matter and discuss it within our committee as well. I understand that we'll have a chance to go over these two proposals and, as I said, iron out the differences and come up with a satisfactory solution to the problem.

CHAIRMAN: Thank you, Delegate Ihara. Delegate Nozaki.

DELEGATE NOZAKI: I rise to speak in favor of section 1, entitled "Hawaiian Education Program." It is time to recognize the fact that Hawaiian values are as important as other values in our multicultural State, and that these values should be given equal consideration and recognition. We cannot deny the reality that Hawaiian values do influence us in all phases of our life, whether we realize it or not.

It is time to wipe out the alienation of the Hawaiian people in the schools. Of most importance is the blossoming of the Hawaiian renaissance which we are experiencing at this very moment. The time is right for change. How do we begin to change? We must start with education. The State should provide for a comprehensive Hawaiian education program. The State must mandate the provision for Hawaiian studies for two main reasons. First, it will guarantee a meaningful program--not the piecemeal kind of program that now exists. What we have now in the schools is fragmented and not even an introduction to Hawaiian culture--that's how sketchy it is. Secondly, if it is mandated we can be assured that it will be taught properly.

The committee proposal recommends the inclusion of language, history and culture. These three elements are necessarily tied together. Language is essential to gain insight into the feel of the culture; through language we realize the innuendos and beauty of a culture. By studying his own ethnic history, the Hawaiian student becomes politically aware and develops into an effective citizen. By studying his own culture, he becomes socially aware and develops individual pride, identity and self-realization. There are also benefits to the community and the schools. Hawaiiana stresses cooperative rather than competitive behavior. Other students benefit through understanding the background of the Hawaiians. All students will learn that there are not just differences between Hawaiians and others, but that there are many things they all have in common. Through these kinds of developments, we can look forward to a decrease in alienation in the community. And all this can be the result of providing for a comprehensive Hawaiian education program in the schools.

It is the duty and responsibility of this State to preserve all aspects of Hawaiiana in education, for it is this State which is the home of the Hawaiian people. Where else are we going to perpetuate it? We must do it here in its home State. Therefore, I urge you to support this amendment.

CHAIRMAN: Thank you, Delegate Nozaki. Delegate Hagino.

DELEGATE HAGINO: Mr. Chairman, I rise to speak in favor of Committee Proposal No. 12, particularly the section on the Hawaiian education program. It embarrasses me that I know very little of my own culture and the hardships that my grandparents suffered to make me what I am today. Delegates, I want your niece Dani and your nephew Jeremy to know and feel the richness of the language, culture and history of the Hawaiian people, which are part of their heritage.

About a month ago I was fortunate enough to witness a Hawaiian songfest by children, and I was greatly touched by their enthusiasm. I realize that songs are just a small part of the Hawaiian culture, but I am sure they would share the same enthusiasm for the entire Hawaiian education program. Mahalo.

CHAIRMAN: Thank you, Delegate Hagino. Delegate Goodenow.

DELEGATE GOODENOW: Mr. Chairman, I speak to amend the amendment in the following manner--I speak for it. I shall read it as it is now: "The State shall provide for a comprehensive Hawaiian education program consisting of"--

DELEGATE WAIHEE: Mr. Chairman.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, it's with great reluctance that I call for a point of order. I think all amendments have to be in writing.

CHAIRMAN: That's correct.

DELEGATE GOODENOW: Sir, I will write it and bring it up later.

DELEGATE WAIHEE: Mr. Chairman, could we have a short administrative recess?

CHAIRMAN: The Chair declares a short administrative recess.

At 2:20 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 2:28 p.m.

CHAIRMAN: Committee of the Whole will come to order. Delegate Goodenow.

DELEGATE GOODENOW: Mr. Chairman, I would like to withdraw at this time my amendment to the amendment.

CHAIRMAN: Thank you. Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, I'd like to speak in favor of the section of the committee proposal on Hawaiian education. The main thrust of this section is toward things of value--the sophisticated, proven culture that sustained thousands and thousands of people in a very healthy manner prior to contact with Western civilization: a culture that allowed navigation of thousands of miles of open sea long before the Vikings faced the open sea; a calendar that considered the subtle differences between a normal calendar year, the tropic year and the sidereal year as we know it, the leap year; an advanced system of irrigation; an advanced knowledge of astronomy. These are just a few points of this very sophisticated culture that existed in Hawaii prior to contact with the Western world. This is their heritage, as one of the previous speakers said, that we leave to our children.

CHAIRMAN: Thank you, Delegate Sterling. Anyone else wish to speak on the subject? Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I rise to speak in favor of this section. When my father was growing up in Hauula many years ago, all the Punaluu-Hauula district was served by a small school. I guess this was somewhere around 1901-1902. He related to me the story of how at school they were prohibited from speaking the Hawaiian language. This was not just in class, this was anywhere. If any student was caught speaking the Hawaiian language, he was made to do detention. My father was one early rebel who did a great deal of detention pulling weeds. Also, in his early childhood experience, there was one grass house left standing in Hauula, and an elderly couple lived there. Even in those days, there were tourists that came around the Island--I believe there were no roads, I guess they rode horseback--but the couple who lived in the grass house were so ashamed to be living in a grass house, that they went off to hide when people came by because they were taught that this was not something to be proud of.

Many years later when I was growing up and going to Kamehameha School, I didn't even have a chance to take the Hawaiian language because it wasn't offered. Courses were offered very infrequently in a very few places throughout the State. My father, in rebelling against the attitudes of these elderly Hawaiians, devoted his life to learning once again from the libraries, from the Bishop Museum, from studying the works of David Malo and others how to recreate and build grass houses. He made for himself a home

of many grass houses on a beautiful kuleana, which was one of the few that remained even at that time. Despite the existence of adverse possession, the kuleana still remains intact, at least parts of it.

I was fortunate to have grown up in that surrounding as I got to appreciate the feel of living in a grass house, working in taro patches, doing all these things. My father wore a malo--he was quite a sight to behold, but the Hawaiians in the areas viewed him with mixed feelings. Some were ashamed to see him naked like that; from the teachings in school and from the attitudes that were conveyed to them by those who controlled the educational system, they felt that this was somehow something to be ashamed of and they regarded him askance. And yet there were many from the mainland and other parts of the world--celebrities like President Roosevelt--who made it a point to drop in and visit him and see the way he lived, because they felt that it had great value. And for that reason, some of the Hawaiians in the area felt there must be something to it, so they were ambivalent, they had differing feelings: he was a celebrity, yet at the same time he did things they were taught to be ashamed of. Schoolchildren came in great numbers to see how the old Hawaiians lived; they watched him pound poi, they watched him eat raw fish, they were shown all these things because this was the only opportunity they had to learn. So they came from all over the State, and all over the world for that matter.

However, I was not privileged to learn the Hawaiian language because, although I learned to live in the old way, it was not offered in the schools I went to. Nor were there courses adequate to teach me things I had to learn, very fortunately, from my own experience. Now, many years later I see with great happiness the spread of awareness, that the opportunities are even greater. And yet my son--who just left for Harvard a few days ago, having worked here in the Con Con for several weeks--was only learning Hawaiian as he got aboard the plane. He took his language book with him, and he's trying to master the phrases contained therein, although at his school (a public school) he had already had seven years of Japanese and could read, write and speak it.

So while I would not discourage the efforts that have been made to this point, I think this proposal and this section in this Constitution, which would give encouragement to this, would be appropriate. For personal reasons, as well as the hope that many throughout the State will someday benefit by it, I support it. But I also support it for another reason: to come to know a culture is to come to appreciate it, and to appreciate a culture is to respect it. And those who respect it will not destroy it. And to come to know this land and the traditions associated with the land in the early ages and in the schools, in a curriculum and in a course that is given the dignity of being regarded as one of the most important by its recognition within the Constitution, I think will convey to our young people the kind of appreciation and respect--not only for the land but for the culture derived from that land, and for the people, and for the language and customs that they developed. And for that reason also, I support this. Because those who study the Constitution and find in it an indication of the importance we place upon the Hawaiian culture and language, and who gain this opportunity in the schools, will come to know the Hawaiian culture, the Hawaiian feeling, the Hawaiian spirit and our land, and they will therefore preserve it and not destroy it.

CHAIRMAN: Mahalo, Delegate Kaapu. Delegate Chung.

DELEGATE CHUNG: Mr. Chairman, I speak strongly in favor of this particular proposal. In the first place, it calls for the usage of community expertise to be encouraged "as a suitable and essential means in furtherance of Hawaiian language, culture and history." In all my experience working with people, particularly youths, they learn from a teacher if they have respect for the teacher, for the person teaching, who does not teach down or look down on them. We have much expertise in our communities with excellent material and information on Hawaiian culture. And we are yet to utilize these resources in our society. Oftentimes we feel that instructors are only able to teach if they have some degree or a long academic history. In our complex society we find that this is a fallacy, although I'm not undermining the importance of degrees and a good education. But in my experience utilization of so-called common people, without PhDs, can do an effective job if they have the compassion and the ability to really relate to people. And this is a rare gift, which not everyone has. That is why I think the second sentence of this proposal has excellent merit.

I think this is one of the concerns that Delegate Ihara has, which we hope to straighten

out. As a freshman at the University of Hawaii in 1935, I took Hawaiian from the late Henry P. Judd. And let me tell you I was an A student, and I had eight Kamehameha graduates and none of them knew Hawaiian. What I am saying is, we are 43 years behind the times. I also took Hawaiian from the late Sam Kamakau, a Hawaiian historian, and the late Johnny Wise. These true-blood Hawaiians are gone; the only other ones we have are recent arrivals and what have you. Kamehameha I said, "Mamala hoe kanawai," the law of the splintered paddle; what Kamehameha said when he became the ruler of all Hawaii was: Oh my people, honor thy god. Respect the likes of great men and the humble. See to it that our aged, our women and our children lie down to sleep by the roadside in safety and without fear of harm. Disobey, and you die.

This is just a sample of what I have learned in Hawaiian history. I want to tell the delegates here that when I took that course as a freshman, I never realized how important that education would be for me and my future work, all my work in Hawaii. And as I said, we are 43 years behind. Therefore, I think it's about time. I think that the philosophy of this proposal is an excellent one, and I strongly advocate that we keep it. If we can improve on it, more the better. Thank you.

CHAIRMAN: Mahalo nui loa, Delegate Chung, your articulation on Hawaiian is excellent and a credit to your course at the University of Hawaii some 35 years ago. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I have no doubt in my mind this time as I rise to speak. I speak particularly for this section of the proposal. And since everyone is relating personal experiences, I would like to relate one to you. When I was elected chairman and executive officer, I had to move from South Kona--which is about a 95-percent-Hawaiian community, where my daughter grew up, went to a 2-teacher school and was the only non-Hawaiian in the school--to the city of Hilo, the big city. And my son, who was just entering school, was gerrymandered out of his school district. In those days, the school department did a very nice job of drawing district lines so that certain people would go to certain schools. We happened to live right across the street from the Hawaiian homes area in the Hilo district; everybody who lived across the street from the Hawaiian homes district went to school 3 miles down the road, whereas everyone who lived on the Hawaiian homes land went to the Hawaiian homes school, Keaukaha School. This effectively discriminated against the Hawaiians and against the non-Hawaiians because what it did was to eliminate any mixture of people.

I protested and, possibly because of the fact that I had a little political influence in those days, was able to break down this barrier. And for the first time non-Hawaiians went to Keaukaha School. The reason I did this was because Keaukaha School was the only school located in the whole State of Hawaii that taught Hawaiian in the fourth grade. My son went through this school in his early days and took Hawaiian from a non-Hawaiian teacher who, unfortunately, didn't know very much herself. So I can't say that he knows very much Hawaiian, because it was taught not by somebody who really knew Hawaiian but by a certified teacher who picked up a few words--enough to stay ahead of the students, for the next day. This was the way in which the Department of Education carried out the mandate that in this particular school, located on Hawaiian home lands, the Hawaiian language had to be taught.

I think it's time--my son is grown up now and will not get the advantage of this. But perhaps my grandchildren, if and when I ever get any, will be able to take advantage. I only feel that it is time we taught the Hawaiian language, culture and tradition to all the people and all the children in the State of Hawaii.

CHAIRMAN: Mahalo, Delegate Hale. Delegate Villaverde.

DELEGATE VILLAVERDE: Mr. Chairman, I'd like to speak on behalf of this section in Article IX regarding the Hawaiian education program. Much has been related of experiences that happened many years ago. The Hawaiian education program and other cultural programs at the University of Hawaii at Hilo were threatened only a year and a half ago, when I was a student there. They threatened to dump these courses in favor of others. I believe at the time also that the type of course more relevant to today's society was more favorable than the rich cultural aspects of the Hawaiian language and Hawaiian history.

I would also like to relate a personal experience. I believe that if it wasn't for

some of the Hawaiian studies as well as the Hawaiian language program my children have been involved in--and they are part-Hawaiian--that they wouldn't have appreciated this cultural background that is so rich. Today I have a son who has capitalized on his culture, and I believe he will be one of Hawaii's foremost composers as he has already been credited with most of the songs of Hawaii that relate his love for Hawaii, for the place where he lives--the Big Island. He has demonstrated his love of his culture. If we are not to provide our children in the future with this Hawaiian education program, I can guarantee we will not have the Hawaii that we so long have cherished.

There have been moves to dump the resource teachers in the university system. In Hilo we have Moses Ahuna, Auntie Edith Kanakaole, and most recently I was privileged to study under a very youthful girl who is right now working toward a doctorate degree, Malama Solomon. They are so proud of their cultural background, and they are so generous in attempting to afford us the opportunity to learn by the formal method of learning, and not only the formal method but also by experiences they gained as children. I believe if there is anyone here who doubts this program should continue, I believe you should adhere and listen and really deeply absorb the words of the previous speakers on this subject. I therefore ask my fellow delegates to vote for this proposal.

CHAIRMAN: Mahalo nui loa. I think we've about covered this subject. The next section is listed "Official Languages." The floor is open for discussion on official language. Is there any discussion? Second time, any discussion on it? Third and last time--Delegate Hale.

DELEGATE HALE: Mr. Chairman, I speak for it because the first time that I voted, the ballot was written in English and Hawaiian. It used to be a law that ballots had to be printed in English and Hawaiian. Somewhere along the line we lost that, but it's one area where I think we could make it official again.

CHAIRMAN: Thank you, Delegate Hale. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak in favor of this section. This section in no way dictates that all laws and all official documents--and that teachers shall have to teach in Hawaiian. All it does is give recognition that English and Hawaiian shall be the official languages of Hawaii, except that "Hawaiian shall be required for public acts and transactions only as provided by law." So there's no law directing that that is going to happen.

However, I'd like to share with the delegates who are still here that one of the reasons for doing this is that for Hawaiian people this language, culture and history is replete with ironic innuendos. Example: at the University of Hawaii, the Hawaiian language is in the foreign language department. I am 49 years old and I will never till the day I die understand that. All this does is try to retrieve it from the foreign language department. I don't think anyone should be ashamed of the Hawaiian language. It should be given official status along with English.

CHAIRMAN: Does anyone else wish to speak on the subject? Third and last call--Delegate Ontai, short and snappy.

DELEGATE ONTAI: I'd like to speak for this proposal. I see nothing harmful here. It does no harm, and it does some good. And anytime the balance of the scale tips one way, I think it should be passed.

CHAIRMAN: Mahalo, Delegate Ontai. We now move on to the next item, on traditional and customary rights. Delegate Barnard.

DELEGATE BARNARD: Mr. Chairman, I'd like to speak in favor of this section, "Traditional and Customary Rights." I would simply like to offer a quotation in support of this from Liliuokalani's autobiography. At the end of her autobiography, which pleads for the return of Hawaiian autonomy, Queen Liliuokalani wrote: "...I suppose I must have met...at least five thousand callers. From most of these, by word, by grasp of hand, or at least by expression of countenance, I have received a sympathy and encouragement of which I cannot write fully. Let it be understood that I have not failed to notice it, and to be not only flattered by its universality, but further very grateful that I have had the opportunity to know the real American people, quite distinct from those who have assumed this honored name when it suited their selfish ends."

Today we have the chance to perpetuate the culture and traditions and to help restore pride to the native Americans of our State--and, by doing so, to be like the "real American people" to which Liliuokalani referred.

CHAIRMAN: Mahalo nui loa. Delegate Shon.

DELEGATE SHON: Mr. Chairman, I rise to speak in favor of section 4 and to an extent section 5 also. There is something about the shoreline--

CHAIRMAN: Delegate Shon, would you restrict yourself to section 4 at this time, please.

DELEGATE SHON: There's something about the shoreline and the land, the air and the water, and access to those that transcends private property. But it was through the application of certain notions of property to such resources that the Western world took much of Hawaii. I don't think that the lands in Hawaii should ever have been taken or sold. But to those who would argue that the economic activities of recent times should override the rights and values of the Hawaiian people, I would refer you to the eloquence of a 19th-century native American, speaking to "un-native" Americans who were after his lands. He said: "Our land is more valuable than your money. It will last forever. It will not even perish by the flames of fire. As long as the sun shines and the waters flow, this land will be here to give life to men and animals. We cannot sell the lives of men and animals; therefore we cannot sell this land. It was put here for us by the Great Spirit and we cannot sell it because it does not belong to us. You can count your money ...but only the Great Spirit can count the grains of sand and the blades of grass of these plains. As a present to you, we will give you anything we have that you can take with you; but the land, never."*

I submit, Mr. Chairman, that in all fairness, the entire State should belong to native Hawaiians. But this proposal does not do that. It is most generous to us newcomers. It is a proposal with much aloha toward us, and the least we can do as new members of this very special community is to grant the Hawaiian people this small part of what is rightfully theirs. Mahalo.

CHAIRMAN: Mahalo nui loa, Delegate Shon. Delegate Wurdeman.

DELEGATE WURDEMAN: Mr. Chairman, I rise in support of Standing Committee Report No. 57 of the Committee on Hawaiian Affairs and its proposal No. 12. In particular, I wish to direct my remarks toward section 4, which would reaffirm the traditional and customary rights of those native Hawaiians who are tenants of an ahupua'a and to the comments on that report which most of us have received from the Hawaiian Sugar Planters' Association.

In those comments, many assertions are made about the nature of ancient Hawaiian land rights. I do not wish today to challenge these assertions or to renew the continuing argument about the manner in which the corporate forebears of the HSPA extinguished these rights, or the role they played in destroying the sovereign who could protect these rights when she challenged--I'm speaking about Queen Liliuokalani--their economic well-being by seeking to regulate their insatiable appetite for cheap immigrant labor.

I wish instead to comment on the things I have observed and experienced in my own lifetime. It is a fact that many spots necessary for my understanding of my own heritage are either located on or accessible only by passage through lands currently under the control of the large multinational corporate landholders of this State. The petroglyphs at Olowalu on Maui and the birthstones at Wahiawa, Oahu are two which come to mind, which have been visited by my children, myself and many others, over rights-of-way that are both well defined and long used. I am told that their long use has created at least a valid legal argument for the proposition that these rights-of-way now belong to the public, either as an easement or under a theory of "implied dedication" to the public--at least, the California supreme court has so held in similar facts in that state. And if anyone would like to know, they can refer to Gion v. Santa Cruz.

*Touch the Earth: A Self-Portrait of Indian Existence, compiled by T. C. McLuhan (New York: Simon and Schuster, 1971), p. 53.

But yet the continuing pressures of urbanization have caused the fences to go up across similar rights of access all over the State. In my own district of Waipio, as recently as three years ago it was possible for me to go from my home to the forests over agricultural lands. I want not to interfere with any agricultural activity--but simply that I and my children may have the opportunity to go to the mountains to pick guava and 'akala to make jam, to swim in the streams or just to show that the koa, from which canoes are made, is something other than the spindly haole koa of the roadside. Today, however, the fences are up and the security guards roam these fields and a part of what was to me an important part of my relationship to the land is gone.

I am sure that the argument will be made that if these traditional and customary rights are preserved, the resulting economic hardship to the giant agricultural interests will cause the possibility of closed plantations, with resulting economic detriment to all of us. We have heard these threats before, whenever the public interest causes alarm in the corporate boardrooms, whether the issue be pollution, land-use control or whatever. Generally we have deferred to these arguments and the giants have had their way. But the plantations continue to close anyway--Waianae, Aiea, Kahuku, Kohala and Kilauea on Kauai. The list goes on and on, and the legacy is unemployment for the workers and a burned-out, exhausted land for those who come after.

We do not seek to interfere with the legitimate agricultural use of these lands. No one is advocating the trampling of sugarcane, the pilferage of pineapple or the vandalism of machinery or irrigation systems. Such practices can and should be prohibited by valid regulation. Neither do we seek any new infringement on private property. All we seek is the opportunity to do what we have always done.

The alternative for us is a joyless life in concrete enclaves from which we cannot escape. The options are the recognition of these cultural rights or the condemnation of the Hawaiian people to life in a tropical Chicago, unrecognizable as their native land.

CHAIRMAN: Mahalo nui loa, Delegate Wurdeman. Delegate Hoe.

DELEGATE HOE: I'd like to speak in favor of this section of Committee Proposal No. 12. I feel that continuing displacement and more and more pressures against the native Hawaiian's rights make it just and proper that the State at this time reaffirm and vow to protect the rights of the native Hawaiian, as this proposal states. If we are to assure the future of the Hawaiian culture, which all of us recognize as a basic and essential part of our State for all residents, and if we acknowledge that Hawaii is the only land where the Hawaiian culture can exist, it is paramount that we endorse this legal action to protect the traditional and customary rights of native Hawaiians.

It has been stated that "...this proposal would...[require] the establishment...of two separate systems of law."* I find this statement curious. This proposal merely protects rights that are established; it does not create new rights. It specifically states that the rights referred to are to be subject to the State's right to regulate. Both aspects then are today within the law. How then could this proposal necessitate a new legal system?

These rights are not something only now being asserted. They are consistently documented in Hawaii's history and are preserved today in many sections of the Hawaii Revised Statutes, the most notable of which is Section 7-1. Though they describe the personal rights of the native Hawaiian, these rights along with all other rights travel the same path; they do not preclude other rights. Just as the right to free speech is not the right to slander, the right to peaceably assemble is not the right to cause riot or mob destruction, these personal rights do not negate other personal rights.

All rights must function in relation to all others. What this proposal does--and what we must do by supporting it--is to protect those rights which today are being threatened and slowly eroded--the rights of native Hawaiians for subsistence, cultural and religious purposes. I urge your support of this proposal.

*Summary statement of HSPA position, dated August 30, 1978, on provision on traditional and customary rights in Committee Proposal No. 12, submitted to 1978 Constitutional Convention of Hawaii, p. 4.

CHAIRMAN: Thank you, Delegate Hoe. Does anyone else wish to speak on the subject? Delegate Hale.

DELEGATE HALE: I would like to speak in favor of this. I feel that the circle has completed its 360 degrees and perhaps when I tell you my experience, Delegate Crozier will let me join his Panasonic Club. For over 24 years I fought for these same rights. When I first became interested in getting active in the political arena in this State, one of the things I fought for was access, particularly to the ocean. In our Kona district, we were beginning to see hotels come up that were taking away the rights of the Hawaiian people--and along with the Hawaiian people, the rights of all people to have access to the ocean.

One of my first big fights--and I've been a fighter for 25 years--was with Lyle Guslander of American Factors--today he's with American Factors, but at that time he was with Island Holidays--who wanted to build the King Kamehameha Hotel on the sacred grounds of the Ahuena [Heiau] of Kamehameha I. That hotel--we warned him it had a jinx on it and it did, from the very beginning. But in the process of building that hotel, they cut off access to the beach in front of the hotel, which is what we had warned about. And we also requested that they restore the Ahuena of Kamehameha I. It took almost 20 years, but last year the new King Kamehameha Hotel was rightfully put way back from the beach, and the Ahuena of Kamehameha I has been restored and the beach is open to the public. I hope, with this kind of wording in our Constitution, this can happen all over the State of Hawaii.

CHAIRMAN: Mahalo nui loa, Delegate Hale. Delegate Crozier.

DELEGATE CROZIER: The delegate from Kona has now been made an honorary member of the Panasonic Club.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, point of information.

CHAIRMAN: State your point of information.

DELEGATE BURGESS: I'd like to ask what specific rights are covered by this article? What specific rights are we giving to descendants of native Hawaiians who inhabited the Islands prior to 1778? Specifically, Mr. Chairman, less than a month ago I married a lady who is such a descendant, and I would like to know what rights she is being given that I don't have.

CHAIRMAN: Are you directing that question to the Chair?

DELEGATE BURGESS: Yes, Mr. Chairman. I meant the question seriously. I am directing it to the Chair or to anyone who can answer it. I would like to know what specific rights are being covered by this provision in the Constitution.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I'll answer to the best of my understanding, first in general and then more specifically. As a result of the research that was done while I was working with the ALOHA organization, having to do with Hawaiian lands, we looked to the constitution [of 1840], which was the first manifestation of the Western understanding of land law as applied to Hawaii. But it was colored by some specific Hawaiian ideas: in the preamble, it said that "all the land from one end of the Islands to the other" belonged to the king, Kamehameha I, as he created the kingdom; however, those lands were held by him in trust and were shared jointly with all the people. Rather than go into detail of what happened, those lands, which were government lands and crown lands, were later lost. But in the sections pertaining to these, the constitution says that those lands "belonged to the chiefs and people" jointly and would be held forever, and so forth.

When the land was later taken in the Provisional Government by those who overthrew the Queen, they took over as a government de jure. But it was never de facto but not necessarily de jure. In fact, they claimed all the rights as successor to the people for that land. But later when the land was taken over by the United States in the annexation, a curious phrase was inserted, which was also similar to one which prevailed in Alaska when it was taken over from Russia, and it was this: that all those laws and traditions

and rights pertaining to Hawaii would continue and remain in effect until Congress could otherwise legislate, despite their difference from any laws pertaining to land elsewhere in the country.

Now Congress never did otherwise legislate, and the rights that your wife may have that you may not have or may share now, if you seek to go out and pick berries or whatever, are those rights that derive from the ownership, or that common ownership, of lands dating from the kingdom. What those are will be determined, I'm afraid, by lawyers such as yourself and others as they handle trespass charges and other things down the line. But when it is further defined, history will have to determine what those in similar circumstance, such as those covered in this act and in this provision, did in fact enjoy. That is going to be a problem for historians; historians and lawyers together will finally develop the precise nature of these. Now there are some things that are known, but I will leave it to others to explain that. The chairman of the committee did mention them earlier in her remarks.

CHAIRMAN: Delegate Burgess, I'll also just offer a short story on what happened. With regards to the planting of taro, this Hawaiian gentleman planted taro where the stream was, as did his father and grandfather. This was established access. Later on the lands were bought, fences put up, and he was stopped--this is one example--to the mountains, to the oceans, established way back in the reign of the early kings. These are the things that were spoken of here. Access to go--people can go for religious rights, things of that nature. Today all of these are blocked and you can't get to the places. We can go into much more detail, but I don't think we've got time here. Any other questions?

DELEGATE BURGESS: Mr. Chairman, the committee report is not specific on that, and I think somewhere we should have some indication in the record of this Convention, either here or at Second Reading, of specifically what rights we are dealing with. I'm very uneasy about granting rights in a constitution unless we know specifically, and with specific understanding, exactly what rights we are dealing with.

CHAIRMAN: I would answer your question but since the chairman of the committee has risen, I will recognize her. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, nobody--no one in this Convention or anywhere else--is granting us any rights. The rights that we wish to protect and reaffirm are listed statutorily. These traditional and customary rights did not fall out of heaven into our laps while we were having committee deliberations. These traditional and customary rights were handed down to the hoa'aina and maka'ainana of each ahupua'a, despite what Mr. Ashford said in his letter that was attached to the HSPA position statement, which is derogatory to the Hawaiian.

These customary and traditional rights are slowly being extinguished. Fences and roads are going up so we no longer have access to the ocean in many areas. Large landowners who own an entire section of an island shut out the public and the native Hawaiian from the beaches, which are public property. In going through the outer islands receiving testimony, we have received--and you, Mr. Chairman, heard the testimony, when many native Hawaiians stood before this committee and cried--grown men, grown women--declaring to this committee and its members that their right of access to the beach had been infringed upon; where, indeed, their family for generations had practiced going to the ocean for their subsistence and sustenance, was now blocked off by large landowners.

Their appeal, their cry to this Committee on Hawaiian Affairs was to help them do something about this. The one point in particular that stands out vividly in my mind is of a man who said, with tears rolling down his face, that he cannot get to the area where his family has fished for generations, and on a pension of \$276 a month is now forced to buy his fish. Consequently, fish is no longer in his diet.

We are trying to protect those rights already established by law for tenants of an ahupua'a who are descendants of native Hawaiians. These rights are rights. We have a different legal basis for rights--when I say "we" I mean the Hawaiian people. However, any right enjoyed by the native Hawaiian is also truly enjoyed by those who are non-Hawaiian. If you are fortunate enough to marry a Hawaiian, certainly you may follow her right down to the beach.

DELEGATE BURGESS: That's what I wanted to get straight.

DELEGATE DE SOTO: Mr. Chairman, I know that there is some hesitancy in what appears to be a giving of a right. I want to reassure you and the members of this Convention that nobody is giving any rights. These rights are statutory. Mahalo.

CHAIRMAN: Thank you, Delegate De Soto. I believe that was well answered, Delegate Burgess. As stated, nothing is being asked for, it's reaffirming these rights. Delegate Ontai.

DELEGATE ONTAI: I am in favor of this proposal on traditional, customary rights. I have been touched by that "Great Spirit" that Delegate Shon spoke of and by Delegate De Soto's speech. I have before me one of the volumes of the Hawaii Revised Statutes, and in Chapter 7, Section 7-1, entitled "Building materials, water, etc.; landlords' titles subject to tenants' use," it reads: "Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided, that this shall not be applicable to wells and water-courses, which individuals have made for their own use."

Fellow delegates, these are some of the rights that are in the statutes today. We feel that it should be in the Constitution. These are primary rights; they're like the bill of rights to some of the people. A great portion of the people today, by design for one reason or another, married into the Hawaiian race, and, as Delegate De Soto said, they can follow them wherever those rights go. The children can follow, also.

For those who fear that hundreds of natives will be running through their living rooms, or hordes of natives in the middle of the night, once this bill is passed, have no fear--this proposal is "subject to the right of the State to regulate the same." What this means is that the legislature will then put it under a microscope, ax here, ax there, and I think it will come out as something everybody can live with. So again I say, have no fear, you have that safety clause. The legislature, as you know, goes through things pretty thoroughly.

CHAIRMAN: Mahalo nui loa, Delegate Ontai. I believe we've completed this subject. The Chair would propose that we move on to the fourth item, on quieting title. We have two amendments. At this time the Chair recognizes Delegate Hale.

DELEGATE HALE: Mr. Chairman, I'm proposing in my first amendment, "Land Title Actions," that Article XIV be amended by adding a new section to read: "The State of Hawaii shall pay for all the expenses, including attorneys' fees, in securing land court titles to all estates or interests in real property when title to these lands is in dispute." I move for adoption of this amendment.

DELEGATE STERLING: Second.

CHAIRMAN: It's been moved and seconded--

DELEGATE BARR: Point of information.

CHAIRMAN: State your point.

DELEGATE BARR: How does this relate to the section on quieting title?

DELEGATE HALE: It's a new section.

DELEGATE BARR: It's a new section. Therefore, shouldn't it wait until we're finished with this section?

DELEGATE HALE: They are related, Mr. Chairman, and I don't think I can discuss one without the other. That's the reason I asked that it be done in this order, that if

this particular amendment is passed, I think the objections to quieting title, as I understand it, could be met. But without this amendment the objections to quieting title are so overwhelming that I don't see how this Convention can recommend that section by itself.

Now, I took this from a proposal that was submitted by Delegate Sterling, and perhaps later he would like to expand on why he submitted this proposal. As I understand it, no action has been taken on this proposal. But it's very vital to all the real property problems this State faces. And although I sympathize very much with the historical enactment we have had here, of how we got the system of private property in the State of Hawaii imposed upon the native Hawaiian culture, I would remind you that it was the Hawaiian king who established--

DELEGATE DE SOTO: Mr. Chairman, point of order.

CHAIRMAN: Delegate De Soto, would you state your point.

DELEGATE DE SOTO: The delegate is attempting to amend Article XIV, but Article XIV in the committee proposal deals with traditional and customary rights. This amendment deals with land title actions. I submit, Mr. Chairman, that the article for amendment is in error and does not address the proposal.

DELEGATE HALE: Well, perhaps that's true, but this was written by the--

CHAIRMAN: Delegate Hale, it was my understanding that both your proposals were part and parcel to quieting title.

DELEGATE HALE: That's right.

CHAIRMAN: You're speaking on--

DELEGATE HALE: I'm speaking on land title actions first because it's necessary to understand what the real problem is--

CHAIRMAN: Will you continue.

DELEGATE HALE: --in the State, to vote intelligently on the next section on quieting title. Therefore, in effect I'm addressing the two of them. I will not speak later on my second amendment because if this is voted down, then I think the other would certainly be voted down too.

CHAIRMAN: No objections.

DELEGATE HALE: What I am saying is that the problem of real property--private property ownership--in the State is a serious problem, particularly in the district from which I really call myself almost a native. That's the district of Kona on the Big Island of Hawaii. I come from an area where there are 95 percent Hawaiians living on plots of land that belong to the family, for which no one can establish a valid claim. And it just happened that someone who was married to a Hawaiian was able to get some land along the road in South Kona, and he cut it up into 1-acre plots.

I'm telling this story in order to illustrate--when I was a very young schoolteacher, my husband and I wanted to build a home. And we were able, in Kona, to purchase one of these 1-acre lots. In the district of Kona it was almost impossible to purchase any land because it was all owned either by Bishop Estate or by three big ranch landowners who did not sell their lands in fee simple. So we went way down in the boondocks--20 miles from Konawaena School where we taught--with no electricity, and the water caught in water tanks, but we owned our own little acre for our independence, and we built our home.

About 14 years later, we needed to borrow some money. We hadn't borrowed money to build our home because my husband had a small inheritance, which we spent on the original building. But we needed money about 14 years later and we went to the bank to get a mortgage on our home. At that time we found that the "deed" we had, that we had built our house on, was not a very good one. We were schoolteachers and very ignorant about land in those days, and, although it said "deed," we found that when we read the fine print all it was, in legal parlance, was a quitclaim deed. The man who had sold

it to us had sold us his interest only--if he had any. But the banks would not lend money on that kind of deed and they insisted we get a title search. We could not get a title company to give us clear title, so we took the problem to a lawyer friend of ours who decided that there were two ways that we could establish title to this land--now remember, we'd lived on it for 14 years, nobody was claiming it, and we only wanted to borrow money on it--he said there were two ways: we could land-court it or we could quiet-title action in the Third Circuit Court. Inasmuch as land-courting would have cost thousands of dollars 15 years ago--and as schoolteachers we were making about \$3,000 then--we couldn't afford to land-court the property. But it was going to cost us and it did cost us \$600, which 14 years ago was worth maybe \$6,000, to quiet-title action on a 1-acre piece of land that we had paid \$900 for. It cost us almost as much to establish our title to that land as it did to buy the land originally. And the only way we were able to get clear title to that land, in a court decree declaring that that land belonged to us, was after proper notification, proper publication through the quiet title procedures of the Third Circuit Court, and the court awarded us our home by adverse possession.

Now I maintain--this is my only real experience with adverse possession, and so I went to experts in the field, I talked to lawyers, and I asked what it would do if we put this in the Constitution. This was long before the HSPA sent us the letter the other day; if I had seen that letter first and if I hadn't had that personal experience, I would have been turned off completely. But my lawyer friends tell me--and I've heard this from some of the top lawyers in this State--that if this goes into the Constitution there will be no legal way to establish claim to land where there is probably a break in the chain of title way back in the latter part of the 19th century or the early part of the 20th century. My own personal experience bears this out.

Now I would like to point out to you that this problem has been addressed by the legislature. Dated March 28, 1973, Standing Committee Report No. 387 for Senate Bill No. 660 reads: "Your Committee on Judiciary to which was referred Senate Bill No. 660 entitled: 'A BILL FOR AN ACT RELATING TO ADVERSE POSSESSION', begs leave to report as follows:

"The purpose of this bill is to abolish prescription and adverse possession as a means of acquiring title, right, or interest in, to, or across real property.

"After much consideration, your Committee has determined that complete abolition of the concept of adverse possession is too drastic a measure and unwarranted at the present time. Your Committee agrees, however, that the present law relating to adverse possession needs to be tightened. Accordingly, your Committee has increased the length of time...." With this bill they increased it from 10 to 20 years.

Later on, House Bill No. 15, which sought to amend the adverse possession laws--

DELEGATE WAIHEE: Mr. Chairman, point of information.

DELEGATE HALE: I'm trying to point out that this is a statutory problem, delegate, and that we should beware of putting it in the Constitution.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, the only question I have is--I don't know which amendment we're taking first.

DELEGATE HALE: We're taking both. These two were submitted together, and one is not valid without the other. Unless the State has a way of establishing valid--

DELEGATE DE SOTO: Mr. Chairman, point of order.

CHAIRMAN: Delegate De Soto, state your point of order.

DELEGATE DE SOTO: Mr. Chairman, I think that the Chair should--pardon me for suggesting this, for being so bold--if we rise to a point of order or point of inquiry, I wish the Chair would try to ask the delegate not to respond or start screaming until the point is answered.

CHAIRMAN: For the good of all--I asked earlier on this concern--now anytime

a delegate stands up, and please all bear this in mind, the Chair will acknowledge that delegate and ask for that point. Whoever has the floor will be quiet until I turn the floor back to the individual, whether for point of information or point of inquiry.

DELEGATE WAIHEE: Mr. Chairman, point of parliamentary inquiry.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: When we are debating on two motions like this, we start mixing the merits of either case. Now if we have one proposal before us--for instance, if we're dealing with the land title actions proposal, there are merits and arguments to be made on that. But if we're dealing with the proposal to delete the adverse possession law, then that has merits independent of what the merits of the second proposal would be. So if I may, Mr. Chairman, for orderly procedure, insist that we really address one proposal or the other; if the Chair feels that discussion would be facilitated by dealing with the land title action proposal, that we do that and not mix in arguments on adverse possession. In other words, I'd like to know the merits of doing this, or I'd like to debate that.

CHAIRMAN: Thank you, Delegate Waihee.

DELEGATE HALE: Point of information, Mr. Chairman.

CHAIRMAN: State your point of information.

DELEGATE HALE: I hope that the questions asked of me are not counted against my time for speaking.

CHAIRMAN: Delegate Hale, will you restrict the rest of what you started to No. 1; confine your remarks to Amendment No. 1 and we will take up the second proposal by itself.

DELEGATE HALE: I appreciate the problem, Mr. Chairman, but it's going to be very difficult because one depends on the other. And unless that state--

CHAIRMAN: I'm sorry, Delegate Hale, can you keep your remarks to--

DELEGATE HALE: All right. My first amendment then is that the State should land-court all property. If you land-court the property, there is no adverse possession. It does not go against land-courted property. The point is that so much of the land in the area I come, from--the titles are so unclear and there are Hawaiian families-- I maintain that it's going to hurt Hawaiian families more than any others, because there are Hawaiian families living on fairly large tracts of land, anywhere from an acre to a hundred acres--these are the people who chose to live in Kona, while the rest of the family has gone to the mainland, to Honolulu, they've settled all around the world and left the land there. It is not being used.

These people could not get title to even part of this land because the titles are so unclear. I'm sure those of you in the legal profession realize this is a problem. The titles are so unclear that they cannot borrow money from Farmers Home Administration, they cannot borrow money from the Federal Housing Administration because they cannot prove they have any real interest in that land. And I say--

CHAIRMAN: Delegate Hale, your total time right now is 15 minutes, so would you wind up.

DELEGATE HALE: I'm just asking that you consider. Now maybe the wording isn't good, I don't know--this was written by a person who should know. He suggested that these proposals both go together, that if you are going to eliminate adverse possession, you make the State responsible for putting all the disputed lands in the land-court system, which already exists in this State, against which there is no adverse possession. This is a complicated subject, and I'll have to admit that I didn't know much about it. But now I'm in the real estate business and I can understand it. I appeal to you lawyers, please consider this. It's very, very important for all the people and particularly Hawaiian people.

CHAIRMAN: Thank you, Delegate Hale. Does anyone else wish to speak for the amendment? against the amendment?

DELEGATE VILLAVERDE: Mr. Chairman, point of inquiry.

CHAIRMAN: State your point of inquiry.

DELEGATE VILLAVERDE: I'd like to--if the delegate who proposed this amendment would yield to a question?

CHAIRMAN: Point of inquiry is out of order right now. Delegate Takemoto.

DELEGATE TAKEMOTO: Mr. Chairman, I wish to speak against the amendment on land title actions. First of all, in order to understand the situation, perhaps I can give a slight background on land court and the concept of adverse possession. Land court was developed for quiet title in 1903 as part of the Torrens Act. We have with land court an attempt to adjudicate property where the title is in question. Now basically, since 1903--there was a 75th anniversary recently--we have had in the land court itself almost one third of all the lands in the State of Hawaii already under land court. Now, with land court you have a guarantee of title and boundaries--the ones already adjudicated by land court. However, land court does take quite a while. There are, for example, many cases which have developed--I think there's one, in fact, from 1911--the Pioneer Mill case, which is still in litigation today.

What I object to about this amendment is that, first, we already have the State guaranteeing titles in the land court jurisdiction cases, and all the attorneys' fees and costs to secure land court titles to estates for all those in contention are going to be very expensive. For example, the one I gave--Pioneer Mill on Maui, which is still continuing--would take enormous amounts of money, and I think paying attorneys' fees for all those years would bankrupt the State itself.

But more important than that, there is another matter which is really at issue here--that with the amount of money right now in land court, many times large estates have actually conceded or made some sort of settlement because their attorneys have advised that it would be too costly for even the large landowners to continue to fight. If all expenses, including attorneys' fees, are then going to be paid by the State, you are not going to have settlements--you are really going to perpetuate large development. You're going to allow large estates to gain the upper hand and actually get title through land court, which in essence is exactly the opposite of what land court was made to do.

Land court has, in fact, attempted many times to adjudicate and give rights to the Hawaiians, besides--and this is just on the side--also helping explain the genealogy on which titles and claims to land court are based. For this reason, fellow delegates, I strongly urge you to vote against this amendment.

CHAIRMAN: Thank you, Delegate Takemoto. Does anyone else wish to speak against the amendment? for the amendment? Delegate Funakoshi.

DELEGATE FUNAKOSHI: Mr. Chairman, I rise to speak against this amendment. It eliminates a safeguard against the taking of land by private individuals, corporations and organizations. This action denies protection to those who need it most. Historically, the system of prescription and adverse possession has alienated natives from the land, from their homes. Fee simple ownership and titles on paper are not sacred, absolute concepts. Foreigners introduced the idea that land was something to own, a commodity to be bought and sold without regard--

DELEGATE SAKIMA: Mr. Chairman, point of order.

CHAIRMAN: Excuse me, delegate. State your point.

DELEGATE SAKIMA: I think the delegate's on the wrong subject.

DELEGATE FUNAKOSHI: Wasn't it combined?

CHAIRMAN: I'll call on you when it's necessary, Delegate Funakoshi. Anyone else wish to speak on this amendment? Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I think the intent--I think if I may be so presumptuous, the way we could handle what Delegate Hale is trying to get at--if she would consider the idea of making a substitute amendment, instead of doing this in two amendments.

CHAIRMAN: Is there any other discussion on this matter?

DELEGATE STERLING: Point of information.

CHAIRMAN: Delegate Sterling, state your point of information.

DELEGATE STERLING: Regarding this amendment, I introduced the original Proposal No. 9 on adverse possession, and I was informed at that time that I would also have to submit a proposal, which is No. 10, which I submitted on July 7. But because of the problems involved in costs and the State of Hawaii paying these costs--there's no way I can see that we could. The question of Hawaiians was primary, but I knew the language was weak, so I let it die in committee, Proposal No. 10. But I agree with Delegate Hale--that's why I seconded her motion--that they have to go together. But I allowed Proposal No. 10 to die in committee; this related to funding for expenses in land court titles. I go along with Delegate Waihee's suggestion that perhaps we could work something out here.

DELEGATE WAIHEE: Could we have a recess, Mr. Chairman?

CHAIRMAN: The Chair calls a short recess.

At 3:40 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:48 p.m.

CHAIRMAN: The Committee of the Whole is back in order.

DELEGATE HALE: Mr. Chairman, it's been suggested that I make a motion--

CHAIRMAN: Just a minute, you haven't been recognized. Does anyone else wish to speak? Delegate Hale.

DELEGATE HALE: It's been suggested that I didn't make the proper motion to begin with, that I should have made the motion that this amendment entitled "Land Title Actions" be substituted for the "Quieting Title" section in the committee proposal. Could I make that motion, please?

CHAIRMAN: Well, I thought that was your intent. You stated that if you lost this one the second one would die.

DELEGATE HALE: No, it would not. That's what was explained to me, that if we substitute the amendment, then you won't have to debate each motion--first you debate one, and make the amendment--

CHAIRMAN: Delegate Hale, if we change the title, we are not going to continue with the debate. The debate has been going on already.

DELEGATE HALE: That was suggested to me by Delegate Waihee that I--

CHAIRMAN: We're not going to continue with any more 10-minute speeches for each speaker, because I understood you exactly--what you're saying now. That's what I read you to mean. Now that the verbiage has changed, the Chair will not permit this to go on again.

DELEGATE HALE: Then may I speak last on my amendment?

CHAIRMAN: That's your privilege. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I speak against the amendment. Committee Proposal No. 12 is for the purpose of abolishing prescription and adverse possession

as a means of acquiring title, right or interest in and to real property. It is a well-known fact that the titles to much of the lands originally owned by Hawaiians were acquired through adverse possession.

CHAIRMAN: Excuse me, Delegate De Soto, are you speaking against the amendment?

DELEGATE DE SOTO: Yes.

DELEGATE HALE: Point of order, Mr. Chairman, the motion is to adopt land title actions in land court and the delegate is speaking on adverse possession.

CHAIRMAN: Let me just clear the air: the amendment on the floor, Delegate De Soto, reads: "The State of Hawaii shall pay for all the expenses, including attorneys' fees, in securing land court titles to all estates or interests in real property when title to these lands is in dispute." Now this is concerning the land court. Did you want to speak against this?

DELEGATE DE SOTO: Mr. Chairman, because whoever proposed these things created such a mass of confusion, is there a motion now on a motion?

CHAIRMAN: There is no motion on a motion.

DELEGATE DE SOTO: I stand corrected in that I thought these things were together at one point. Now they have been divorced? Thank you.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment, with reluctance I might say, because this would be great for us young attorneys. But it seems to me that we're getting in here and compelling the State to pay for all quiet title actions, some of which--as has been expounded over and over again--take years and involve multiple defendants. I don't know what kind of court costs we're getting into. I think this is a complicated remedy to a problem. Maybe what we need is a simple solution.

CHAIRMAN: Thank you.

DELEGATE HALE: Mr. Chairman, may I offer an amendment to my amendment? I would like to add at the end after "dispute" the words "for those people who cannot afford to pay."

DELEGATE STERLING: Second.

CHAIRMAN: Let me read the amendment: after the last word, "dispute," to add the words "for those people who cannot afford to pay." You may continue.

DELEGATE HALE: Mr. Chairman, first of all I'd like to apologize: some delegates have such soft voices that when they use the microphone, you still can't hear them. My voice is so loud that when I move away from the microphone you can still hear me. I do have a tendency to put it too close.

I would just like to say, I realize one of the main arguments against this will be the costs involved. But I am concerned about the area of committee concern, about ancestral lands being taken away from poor Hawaiians. I am concerned about the Hawaiians who are still living on those lands but cannot get title to them. If they could afford to land-court them, they would.

If you land-court, adverse possession is moot because adverse possession cannot go against land-courted lands, only against those properties that are in the regular system. In Hawaii we have two systems for recording deeds, and lands that are land-courted cannot be taken by adverse possession. So you can solve a problem, you could really do good for Hawaiian people, because they are the ones who are going to benefit most by clearing up the titles to their lands and making the State responsible for doing this.

CHAIRMAN: The Chair is somewhat embarrassed at this point here. At first we were going to speak on one amendment, then we were going to speak on both. I ruled that we would speak only on one, and I just heard that we're speaking about adverse

possession again. We're back to tying in both amendments. We are speaking solely on No. 1, the amendment to Amendment No. 1, which adds after "dispute" the words "for those people who cannot afford to pay." Ready for the question?

All those in favor of the amendment to the amendment signify by raising your right hand. Those against the amendment? The noes have it. Delegate Hale, do you wish to speak on your second amendment?

DELEGATE HALE: I'll reserve the right to be the last speaker.

CHAIRMAN: You really don't wish to speak?

DELEGATE HALE: Yes. I'll speak on my original amendment, but I'd like to be the last speaker.

CHAIRMAN: If you're going to forego your first opportunity--

DELEGATE HALE: I've already spoken on it.

CHAIRMAN: Delegate Hornick.

DELEGATE HORNICK: I wish to speak against the amendment, though it has merit, because it attempts to have the State absorb the costs of quieting title during adverse possession. I am of the belief that adverse possession should be abolished, as is recommended by the Hawaiian affairs committee. If the Chair will allow, I'd like to go into the reasons I'd like to see adverse possession abolished.

DELEGATE BARR: Point of information.

CHAIRMAN: State your point of information.

DELEGATE BARR: Would the Chair clarify exactly what amendment is now being discussed.

CHAIRMAN: For your information, we just voted down the one that looked--

DELEGATE BARR: Point of order. We just voted down an amendment to that amendment.

CHAIRMAN: Excuse me, the Chair stands corrected. The amendment that's on the floor is No. 1, which has to do with land title actions. After the amendment to the amendment, we're now voting on what's printed before you. All those in favor of the amendment before you, signify by saying--

DELEGATE HALE: Mr. Chairman, I reserved the right to speak last.

CHAIRMAN: You have the floor, Delegate Hale.

DELEGATE HALE: I'd just like to say that you voted down the one thing that would take care of the objection--the only objection I heard--which was the cost of it. But if you want the State to assume all the costs, that's all right too. But I urge your serious consideration on land-courting our lands, so we won't have two systems of land title in this State--one against which you cannot take adverse possession, which is the land-court system. That's the reason for this amendment. It's not possible to lose land by adverse possession if your land has been land-courted, but it's an expensive process which the average person cannot afford. The only ones land-courting their land are the big estates. I'm informed that Bishop Estate has land-courted all their land; and I'm aware that Shipman estates in the Puna area have land-courted all that land. As a realtor I sell hundreds of acres a year of land-courted land; no one can go against that land through adverse possession, but it's too expensive a process. Therefore, unless we can solve this problem in a rational way, I really feel a lot of people are going to be hurt. Thank you.

CHAIRMAN: Delegate Hale was the last to speak on her amendment. At this time we will vote on Amendment No. 1, entitled "Land Title Actions." All those in favor of

the amendment, signify by saying aye. Those opposed, by no. The noes have it. The amendment is lost. There's a second amendment, also introduced by Delegate Hale. Delegate Hale.

DELEGATE HALE: Since I wasn't allowed to combine them, I will now introduce my amendment to delete the quieting title section of Committee Proposal No. 12. I so move.

DELEGATE BURGESS: Second the motion.

CHAIRMAN: You have the floor.

DELEGATE HALE: I understand that I may speak first and last. There seems to be a lot of confusion about quieting title, and I do not purport to be an expert in the area. I have had my own personal experience, and I know that I was one small person in this whole process. But I feel that there must have been reasons for the legislature, in its wisdom and after thorough deliberations on this subject only, to time and time again refuse to enact this into law--and there have been proposals. I started to talk about some of them and I was ruled out of order.

I would like to refer to Senate Bill No. 660, which proposed this very thing; in the committee report it states: "After much consideration, your Committee has determined that complete abolition of the concept of adverse possession is too drastic a measure and unwarranted at the present time." They agreed that it should be tightened up and so they increased the time of prescription from 10 to 20 years on that particular one.

House Bill No. 15 was passed by the legislature and sent to the governor. This bill also tried to tighten up the present law relating to adverse possession by requiring that the claimant must have acted in "good faith" and with color of title. This bill was vetoed by Governor John A. Burns on June 1, 1973. As part of his veto message, Governor Burns said--and it's here for your perusal--"I am informed that this bill together with Act 26 (1973), which was enacted into law"--and that's the one extending the period of possession to 20 years--"...resulted from the efforts of the Legislature to resolve the complex problem of acquiring title to land by adverse possession."

He goes on to say that the legislature, in all its wisdom and with all of its legal counsel, drafted a bill that was too ambiguous to be approved: "The addition of the 'good faith' requirement may be desirable but the lack of a definition of the term may create problems." The vetoed bill was returned to the legislature and there was no override.

I had the Legislative Reference Bureau do a study and they reported back on these bills, that the senate judiciary decided that "complete abolition" was "too drastic" and instead amended the law to require 20 years; and in general they say the same thing as the governor. I would like to say that possibly some big landowners and corporations have acquired land by this process--I'm not denying this--but I'm saying we shouldn't throw the baby out with the bath. No title--and I've been told this by good legal counsel--can be cleared if there is no adverse possession as the law stands. And I understand there are other ways in which this could be handled. But I maintain that if the legislature has not been able to come up with other ways, it is certainly too complex a problem for us to solve right now. I urge you, please, to give this your serious consideration.

CHAIRMAN: Does any other delegate wish to speak in favor of the amendment? Delegate Burgess.

DELEGATE BURGESS: I yield to Delegate Hornick, Mr. Chairman.

DELEGATE HORNICK: Point of order, Mr. Chairman.

CHAIRMAN: What's your point of order, please?

DELEGATE HORNICK: I think it's appropriate to have debate go back and forth, both for and against, as opposed to having all those for at one time and all those against at another.

CHAIRMAN: You prefer to have it either way--is that what you're saying? Delegate Burgess, you have the floor. Go ahead, we won't restrict any speaker after this.

DELEGATE BURGESS: Mr. Chairman and fellow delegates, I speak in favor of this amendment. The abolition of quiet title will hurt all ethnic groups in Hawaii. It will mean there is no available method of quieting title to property, and that's an essential part of the law of every state in the nation. The adverse possession law has evolved over centuries as part of the common law and it is a necessary and desirable part of our law. To abolish it without thinking through the consequences, I think, would be unwise and a mistake.

Twenty years ago when I started practicing law in Hilo, the legislature had just passed a bill which made it easier to bring action to quiet title. It changed the law to allow for giving notice to all the world, so that in an action to quiet title, rather than a land court, it would be possible to clear title to a piece of property. And because of that statutory amendment, it was possible for the first time for a small landowner to go through a relatively simple procedure in circuit court and establish clear title to his property. A land-court action is very complex: you have to file an abstract, which is very expensive, and you have to have a metes and bounds description, which again is very expensive--so that land-court actions are terribly expensive.

But action in the circuit court can be done much less expensively. When Delegate Hale referred to her specific case to quiet title to her home, or her house property, for only \$600, that was a result of this statutory action by the legislature with its more simplified procedure. If she'd had to go through a land-court action, it would have cost at least several thousand dollars, even 15 years ago; now it would be at least \$5,000 to \$10,000, minimum. But as a result of that, I brought probably--in a period of 2 years in Hilo--about 40 actions to quiet title, all of them on behalf of individual homeowners who wanted to mortgage their homes or wanted to sell their properties and were unable to gain clear title for one reason or another. The actions were done almost entirely by proving possession of the property over a period of time. The clients I represented were of all races. It was not for the benefit of large corporations or large multinational organizations; it was simply a method for small landowners or real property owners to establish good title to their property. I submit that the Hawaiian titles especially are often not paper title. They are often titles that have come down by descent, where a grandfather or a great-grandfather dies without making formal conveyance and his property is inherited by his children; and they also often die without making formal conveyance, and it goes to the grandchildren...so that very often Hawaiian people--and I represented many of them in that type of action--don't have paper title. And in order for them to clear title to their land so that they can use it, so that they can mortgage it, so that they can lease it or sell it, it is necessary for them to do this.

I urge you not to take that provision away. There have been inequities, I am sure, and many of them should not have happened. But I submit to you that this has been applied and used in inequitable ways against other people as well. There should be a method of correcting those inequities, but I submit that this is an unwise way to do it and I ask you to vote in favor of the amendment.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, we're not talking about clearing boundaries, we're speaking about land that was stolen. The doctrine developed in other jurisdictions that would stay this trend of adverse possession and limit its application has not been adopted in Hawaii. This is taken from a California law review. We are talking about cases that are now pending and this is exactly what is happening. And because it costs too much for the Hawaiian, he loses his land, which is exactly what we're talking about--lands that were stolen from Hawaiians.

I'm not too worried about clearing somebody else's boundaries--that's not my problem. My problem here as a delegate elected by my people--where most of this goes on today in Kona--is adverse possession. We're talking about stolen lands. "If one has determined to enrich himself at another's expense the evil has many shapes. The first thing is covetousness (*pakaha*),... thrusting one's self on the hospitality of one's neighbor (*kipa wale*)...."* This is taken from the moral code of *ka po'e kahiko* as translated by David Malo. How long does this continue?

*David Malo, *Hawaiian Antiquities*, translated from the Hawaiian by Dr. Nathaniel B. Emerson, 1898 (Honolulu: Bishop Museum Press), p. 73.

We've come full circle. Marguerite Ashford's name was interjected in the discussion this afternoon, she who refused to sign the Constitution in 1950 because she was so averse to including the Hawaiian Homes Commission Act in it. Her son's name comes up in this document by the Hawaiian Sugar Planters' Association--Clinton Ashford--again saying it's all right to steal land from the Hawaiians. And this is what we're talking about--stolen lands.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Hoe.

DELEGATE HOE: Mr. Chairman, I rise to speak against the amendment. To quote Chief Justice William Richardson, adverse possession "is a concept foreign to the Hawaiian system of land use which was based upon respect for each other's property rights, and it has been a 'legal' tool effectively used to deprive many Hawaiians of their lands."

I feel at no time was a provision of this sort justifiable in Hawaii. By 1850, land had been portioned out to the people of Hawaii; also in 1850, foreigners were allowed to hold land in fee for the first time, and all lands were accounted for. By 1870, 20 years later, the first law enacting adverse possession in Hawaii was established. This law stated, coincidentally, that 20 years in adverse possession of the land was needed to claim title. In 1898, that law was amended to require only 10 years. Because much land was lost, and after much deliberation and pressure, the legislature in 1973 changed the law back to the 20-year period to reflect the original provision.

This law allows individuals or groups to claim, use and eventually acquire title to lands without ever paying just compensation to the true owner, and in many cases without ever making an attempt to locate the true owner. We prohibit our government from taking lands without just compensation; why do we allow individuals to do so? To quote Jon Chinen, it is unconstitutional for the government "to authorize private individuals to take land...without paying just compensation to the [true] owner."

With the failure of this amendment and passage of the original committee proposal, we would be abolishing the taking of land by hostile, exclusive, actual, continuous, open and notorious possession. We would not take away other methods of clarifying title for the true owner. Adverse possession is an archaic law adopted from Massachusetts. We are one of only six states which provide for its use in the statutes. Its justification, if indeed there ever was a justification, has long since disappeared. I urge you to defeat this amendment.

CHAIRMAN: Thank you, Delegate Hoe. Delegate Hornick, do you wish to speak?

DELEGATE HORNICK: Yes, thank you, Mr. Chairman. I speak against the amendment. Though it can be argued that the intent of adverse possession is to protect the individual who has occupied land in the innocent but incorrect belief that he is the rightful owner, in the overwhelming majority of circumstances the law has had the opposite effect and has been used by large landowners and private corporations to divest individuals of their lands.

The fact is that adverse possession has no history in Hawaiian common law and was transplanted from Western common law and instituted by statute here in 1870, exactly 20 years after foreigners gained the right to own land in fee simple. The kuleana act in 1850, which according to common misconception was a beneficent one, allowing native Hawaiian commoners to register their claims to land, in fact resulted in commoners receiving title to less than 1 percent of the land. Two thirds of Hawaii's land became concentrated in the hands of the king and 245 recipients of Mahele grants. The native Hawaiians' land base was further eroded by poor roads, inadequate accesses, the fencing-off of large estates enclosing kuleanas, diversions of water making the land useless for farming, and the denial of traditional rights to grow crops and pasture animals on unoccupied lands in the rest of the ahupua'a. Thus, since the Hawaiians could no longer gain a living on the land, they were often forced to leave it to seek other means of survival. This opened the way for lands to be adversely possessed.

It should also be noted that often when native Hawaiians remained on cultivated lands after 1850 but never applied for a kuleana, their continued possession of the land was deemed permissive rather than adverse, and they could not gain title to the land.

If the problem of adverse possession were only an injustice of the past, we would

not still be concerned about it; however, people are still losing their lands even today without compensation due to adverse possession. The problems with adverse possession are (1) that it does not attempt to locate the original or rightful owner of the land, (2) that it allows for the taking of land without compensation, (3) that it was brought to Hawaii and has been used for the benefit of special interests and (4) that it is unnecessary as there are other, more just means of quieting title to land. The fact that the legislature has yet to come up with the means, I think, attests more to the strength of special interest groups in preventing them than to the wisdom of so doing. I strongly urge the defeat of this amendment.

CHAIRMAN: Thank you, Delegate Hornick. Delegate Funakoshi, did you want to speak now, since you had the floor the last time?

DELEGATE FUNAKOSHI: I'll just finish it up. We now have an opportunity to protect the interests and well-being of those who have been forced into a system that favors the large landowner. We now have the chance to change a system that pays the least attention to the person who has the least. This provision in Committee Proposal No. 12 does not preclude others from enjoying this same right. It protects all of us who call Hawaii our home. I urge you to vote no on this amendment.

CHAIRMAN: Thank you. Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I rise to speak against the amendment. It is true that the doctrine of adverse possession is also used in some states on the mainland, but the situation is different in Hawaii and it would be to our benefit to rid ourselves of this doctrine. On the mainland this procedure is used mostly by states that have large open spaces which they want to see developed. This is their way of seeing that such lands do not lie "fallow" because of deed-holders who are not making active use of their land. In Hawaii, where land is very scarce and very precious, lack of development is hardly the problem. In fact, land is so scarce in Hawaii that adverse possession becomes a tool for developers to force their way onto the land and take lands from people--especially from Hawaiians, the poor, and others who do not have the knowledge or the finances to fight back.

There is a legal proceeding that opens this Tuesday in Hilo, which I think is a good case in point. The heirs of a Mr. Charles Thomas are trying to hold onto their father's 9.4 acres in Waipio Valley on the Big Island. The nine children had shared an undivided interest in the property. One of the children had sold his partial interest in the land to a millionaire stockbroker from Philadelphia. In 1960 this stockbroker, using his partial interest in the land, secured a warranty deed to the whole property through the Honokaa Sugar Company. In 1974 he filed suit to take all of the Thomases' land by adverse possession. He had bought a 19-percent share of the land for \$1,200 and now he was claiming all the land, worth \$98,000, as his own. The heirs of Charles Thomas are fighting in court to get their land back.

The doctrine of adverse possession leaves Hawaii's people vulnerable to too many coups d'etat of their land, such as the one I mentioned. To protect our lands we should adopt a prohibition on adverse possession, as advocated by the Hawaiian affairs committee. Therefore, Mr. Chairman, I strongly urge that we reject this amendment.

CHAIRMAN: Thank you, Delegate Okamura. Delegate Chung.

DELEGATE CHUNG: Mr. Chairman, I speak against the adoption of this amendment. Much has already been said, and I did research similar to Delegate Hale and have all the documents here but I shall not repeat these things. However, may I add a few things taken from American Jurisprudence, Second Edition. "The procurement of tangible realty by adverse possession is the creature of legislation."* If that is true, then the improvement--or rectifying the situation--can also be a creature of legislation, difficult and complex as it may be.

The other that I'd like to quote is from the same document: "The establishment of

*Predham v. Holfester, 32 NJ Super 419, 108 A 2d 458.

title by adverse possession is said to be based on the theory or presumption that the owner has abandoned the land to the adverse possessor."* Again we're talking about presumption and theory--not facts.

You have all heard of Robert Semenov, an authority on real estate. In his book he says the incidents of adverse possession are actual, continuous, hostile, notorious, visible and distinct. Actual means building a home or structure, clearing the brush, growing crops, putting your animals in there, growing timber, planting something and so forth. It has to be continuous, uninterrupted possession for the statutory period. Hostile--it has to be hostile, you've got to move in and say--the hell with you, I'm here--and raise your flag and say--what are you going to do about it. It's unfriendly, an enemy--that's the kind of attitude you've got to have to take the land. And it's got to be notorious, you have to let everybody know you're taking over, and what are they going to do about it. It's got to be visible--you've got to make it apparent that you are there.

Based on what Delegate Okamura talked about on constructive possession, as in the case he indicated, this has happened: a person can come in and take only a small portion of the land under this constructive possession factor and eventually claim the total area, as indicated in this Waipio property. And, as Delegate Sterling said, it's legalized stealing. That's the way it seems, and therefore the principle seems to be wrong. Can we say that a man can burglarize a home and say--I'm going to be notorious about it, hostile, let the whole world know about it. We're talking about property, but yet we make a demarcation on real property against personal property. But basically I see it as stealing. We say the life of the land is preserved in righteousness--ua mau ke ea o ka 'aina i ka pono--but sometimes, as a Hawaiian told me, ua mau ke ea o ka 'aina 'aihue--the life of the land is preserved by theft. The 'aina.

In Kona we heard testimonies, and I can still remember a lady saying, "We Hawaiians, we are strangers in paradise." Neil M. Levy did tremendous research on native Hawaiian land rights. In the California Law Review (Vol. 63, No. 4, July 1975), he talks about the concern for preservation of the last remaining kuleana, the rights of the Hawaiian people. The last sentence reads: "But without a concomitant commitment by the legal system to preserve a land base for Native Hawaiians, their future on the very Islands that nurtured their culture is bleak." Therefore, I submit, with due respect to Delegate Burgess' concern, which is well taken, these are man-made laws and the challenge is before us to remake the law, to improve the law in some fashion so that all these title-finding problems could be handled in a better way than legalized theft. Therefore, I am strongly against the amendment.

CHAIRMAN: Thank you, Delegate Chung. Delegate Ihara.

DELEGATE DENNIS IHARA: Mr. Chairman, I rise to speak against the amendment. Originally I had some difficulty with the proposal, and I can understand the kind of ramifications which Delegate Burgess expressed. However, today I am urging the Convention to adopt the spirit of Committee Proposal No. 12 and its section on quieting title.

As previous delegates have said, adverse possession as it is in our present law is really a foreign concept. It is contrary to the Hawaiian concept of 'aina, of being close to the land. For too long not only Hawaiians but also old-time residents in Hawaii were suddenly deprived of their lands because of strange laws. There are many cases in which common, ordinary people, not knowing law, were suddenly pushed off their land, and all perhaps because of a feeling of aloha, of allowing someone to share their land. And after some years of possession, those very people turned against them and took the land. I ask you--is this justice?

CHAIRMAN: Thank you, Delegate Ihara. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak against the amendment and also to support the proposal contained herein in Committee Proposal No. 12. I won't go into all of the things that have been said in favor of the repeal of adverse possession,

*Downing v. Bird (Fla) 100 So 2d 57.

but I'd like to point out that a previous speaker was very enlightening in that nothing said to date with respect to the legislature has ever credited them with any kind of extreme wisdom, except with respect to this particular issue.

I speak against this amendment and in favor of the repeal of adverse possession. The repeal of adverse possession compels the legislature to use this very same wisdom to develop more equitable mechanisms for clearing land title so that all people will be equal, the rich and also the poor.

CHAIRMAN: Thank you, Delegate De Soto. Delegate Hayashida.

DELEGATE HAYASHIDA: Mr. Chairman, after hearing the eloquence of my fellow colleagues, I sort of put away four pages of notes that I had typed up. I just want to say one thing to my fellow delegates: Fellow delegates, after hearing all of the pros and the cons of adverse possession, I ask you to make right the wrong of adverse possession. Thank you.

CHAIRMAN: Thank you, Delegate Hayashida. Delegate Ontai.

DELEGATE ONTAI: I have a question. I was told--

CHAIRMAN: Will you please state the question.

DELEGATE ONTAI: All right. I understand only about 15 or so states or maybe less have adverse possession laws, and some--

CHAIRMAN: For your information, six states have it.

DELEGATE ONTAI: Six states. Well then, I shall continue my speech. With only six states adopting adverse possession, I think we'd be wise to take that into account. Are we one of the six dummy states? I use the word dummy for emphasis. It tells us something--six out of fifty states.

Adverse possession is no doubt legal stealing, out-and-out stealing--no question about it. Adverse possession is a device in which a person merely uses another person's land--he did not buy it, he did not pay for it, he knows he's doing something wrong, and fortunately for him, and unfortunately for the other person, the law allows him to steal it. Senator Hayakawa of California says--or he might say--that person stole it fair and square. I say he stole it fair and square only because our legislature in 1901 (or sometime around there) did pass a law on adverse possession, because at that time, as most of you know, the big landowners--sugar, pineapple--and other land-grabbers were in control of our legislature, lock, stock and barrel almost; that was the basis for their passing this law. It was not for the good of the people, it was for the good of special interests.

Throughout the years this same group controlled our legislature, till not long ago; a new group of legislators came in not too long ago and, unfortunately for adverse possession, the developers who came about in the last 10 years--I would say they have tremendous influence on the legislators--combined with the group that had passed the law in 1901 for their own protection, the combined forces of two groups--that's the result of adverse possession. It's still there on the books, and it will be for a thousand more years, at the rate we're going. It is only this body that has superior powers to make right what has been wrong for 70-something years. If we don't do it now, it will be 10 more years before another opportunity. Don't expect your legislature to come up with something to abolish adverse possession.

We just passed a motto a week ago, for the State--ua mau ke ea o ka 'aina i ka pono. If we're going to stay with the thought of that motto, I urge you delegates to do away with adverse possession--I'm speaking against the amendment--otherwise, we are hypocrites for adopting a motto that says to do something right and then we do it wrong.

CHAIRMAN: Thank you, Delegate Ontai. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I would just like to briefly address a couple of the points that have been made. It is my understanding that all the other states have adverse possession, and not just six. Secondly, I do not believe that adverse possession

favors large landowners; it cuts across all economic lines--rich, poor--and all ethnic lines. It does not favor large landowners any more than it does the small property owner, the small homeowner, the person who has a small kuleana he is using.

Let me ask--if adverse possession is abolished, then how does the person who owns property and does not have clear record title--how do they ever clear their title? Let's take as an example a small homeowner, a Hawaiian person who does not have a clear title of record. Let's suppose they've lived on that property for 30 years, and let's suppose their parents lived on the property for 40 years before them. But because of the unclear title--it is not a good paper title, and, believe me, that happens many, many times--especially in Kona there are many properties, many real properties in Kona, where the record title is very garbled, and it's absolutely impossible to determine who has good record title.

Now how does that person, if we abolish adverse possession, how does he ever get clear title? I've heard references by several delegates who say let's do it another, more equitable way. Adverse possession is an equitable way, because if that person can prove that he and his family have been in open possession of this property for more than 20 years--they claim they own it, they've paid taxes on it, they say nobody else owned it--that's what is meant by adverse and hostile, they don't acknowledge that anyone else owns it--then under the law, if they've had it for 20 years under those circumstances, the law considers them the owner. It's not unjust, and it's not a license to steal. In the situation posed by Delegate Okamura, if those are all the facts of the case, I would think that the heirs of Mr. Thomas would probably prevail in the case, because you have to show that you have good title to more than a part. And in the situation posed by someone else--that a good person lets someone share in his property and then that bad guy steals it--you have to show more than that under the law of adverse possession.

I really urge you, delegates, to vote in favor of this amendment. Otherwise, if we abolish adverse possession, we're going to do a disservice to everyone. We're going to have thousands of pieces of real property in the State of Hawaii whose titles can never be cleared in any equitable way.

CHAIRMAN: Thank you, Delegate Burgess.

DELEGATE SAKIMA: Point of inquiry or information. I'm confused because a speaker previously said that all states have adverse possession--or maybe they don't title it adverse possession, but the way to clear quiet title--and we've heard that it's only six states, and I'm wondering how the other 44 states do get good title on paper. How do they do it, then? It seems that this sword cuts both ways. We hate to penalize some people who are living this way now. I'm just wondering how we're going to do it because we don't want to hurt some people.

CHAIRMAN: Delegate, your question is well taken.

DELEGATE SAKIMA: The question is--if anybody has the real, true answer--do all states have it, or don't they?

CHAIRMAN: The information given to me was that there were six states that have adverse possession. Now there may be other means of quieting title not as adverse as the one in Hawaii--the big discussion going on today is the notorious and outrageous way of taking title--and other states may have a different technique for doing it. Offhand, I couldn't answer your question.

DELEGATE WAIHEE: Mr. Chairman, if I may, there are six states in the United States that have statutes on this adverse possession statute. The other 44 states use common law rules, none of which are adverse possession methods, or variations of it, to quiet title. There are, however, other legislative means that could be developed by the legislature to quiet title, were adverse possession not to be on the statutes. What those are, exactly, I don't know right now.

CHAIRMAN: This is a continuation of that--I'm sure, if this were passed, the legislature would find ways that they could quiet title. All this discussion we've heard this afternoon has been on stopgaps all along the way. Delegate Barnes.

DELEGATE BARNES: Mr. Chairman, I'd like to remind the delegates that we are

here designing a constitution. We have a slightly different role, as I see it. We are social engineers. As social engineers, what we need to do is look at the problems of the society around us and fashion laws, or in this case a constitution, to meet those problems.

Now, adverse possession came from England, in the very early years of England's history when the land was not filled with people, and the purpose was to put all that land into productive use. It came to the mainland states and, as we see, its basis is common law, this idea. In other words, it traces back through the judicial system, judicial decisions--tracing back to Massachusetts, which was the first place that English influence came, and this idea was passed on along the mainland. But now it's reached Hawaii, and here we are in the 20th century and I say, look around, do you see any lands sitting idle, where there aren't at least 20 people who are doing something with it, planning to do something, building, tearing down, whatever.

Obviously our culture and society in this age today really has no use for this adverse possession concept. It doesn't help us solve the problems of these Hawaiian people, which my fellow delegate from my district has alluded to. But we need a more flexible land-use-planning tool or land-ownership tool than this 20-year adverse, open, notorious type of law. I have every confidence that the Hawaiian affairs committee has gone to every part of the Hawaiian community in our State and found out their opinions on this. They don't want it; therefore we can, I believe, take this tool, pull it out of the land-use planning and ownership bag and let the legislature take the problem away.

The problem is the record title system--that's the problem. So let's let the legislature deal with that, which I'm sure they will in their next session. Again, I speak against the amendment.

CHAIRMAN: Thank you, Delegate Barnes. Anyone else wish to speak for or against the amendment? This is the final speech for the day.

DELEGATE HALE: I'd like to, first of all, begin by defining these words that have different meanings to different people. "Open" means that everybody can see that somebody is on the land. "Notorious" means it has to be something that is well known to everybody. It's not in the sense of a notorious criminal--he's notorious because people know about him. This is notorious because people know that you're on the land. The whole concept of adverse possession means that it has to be hostile; it cannot be with the permission of the landowner. It has to be against his wishes. And the concept is--if you see someone on your land, you kick him off and the court will kick him off. But if somebody stays on land under a color of title, thinking that they own it, for 20 years and they can prove it and everybody knew that they were on the land--it was not hidden, it was not something that was not common knowledge, and it was not with the permission of the landowner if you could find him--this is what adverse possession is all about.

I have talked to many lawyers. I'm not a lawyer myself--as you can see, I'm probably a frustrated lawyer because I didn't have the opportunity to study law--but I notice that, among the delegates today, the lawyers have all disappeared. Perhaps in this emotional atmosphere they don't want to tell you what they really think about this, except one. I would like to say that if this amendment is voted down and if quiet title stays in this proposal, I warn you--you're going to have a community reaction against this, when people finally find out what they have done. You have made it impossible to clear land titles. And to the gentleman who can't find any empty land, I invite you down to South Kona, where I lived for 20 years and have property, and where there are hundreds and thousands of acres that no one can do anything with because the land titles cannot be cleared, unless somebody is going to live on that land in an open, hostile, notorious way, under color of title, for 20 years and then has the money to go to court and prove it.

I'm saying no one claimed the land I was on. I didn't steal it from anyone; nobody claimed it at all; there was nobody who came to court and said, this is my land. The problem was that the chain of title was broken somewhere back in the late 19th century--somebody made a mortgage to somebody unknown and the title company, because they could not find a record of that mortgage having been satisfied and cleared, would not give clear title. And that is the problem; nobody knew who the mortgagee was, nobody claimed the land, I didn't have to pay anybody. I had paid for that land to a person who thought he was the rightful owner, and that person eventually lost his land because a big ranch came in and proved that they didn't own all of it. So the court split part of

it between the ranch and the other, but not on adverse possession. It was on the right to the people on the chain of the title and how it had gone down. Adverse possession had nothing to do with the owner who had sold it to me, when he lost part of his lands. But if he had lost his land, I would have lost my home if I had not gone to court to quiet title--

CHAIRMAN: One minute left.

DELEGATE HALE: --because I had lived on the land for 20 years.

There are no other methods yet and, if we abolish this now, we're leaving the whole thing in limbo. The legislature has not been able to figure out a way to do it in all these years and just to force them to do something that they have not been able to find a way to do--that no other state has found a way to do--I say, is tragic. And you're going to hurt as many or more little people as you are big people. I urge you to adopt my amendment.

CHAIRMAN: That was the last speech.

DELEGATE BURGESS: Mr. Chairman, if I may make a suggestion--

CHAIRMAN: You've spoken twice already, Delegate Burgess, you're out of order.

DELEGATE BURGESS: I don't intend to speak for or against the motion, Mr. Chairman. I just want to make a suggestion for consideration by this body. That suggestion briefly is this: it's late in the day, it's the birthday of Queen Liliuokalani--

CHAIRMAN: Delegate Burgess, you're out of order. You've spoken. We're on a motion of this floor issue. A vote's in order.

DELEGATE WAIHEE: Mr. Chairman, I move that the Committee of the Whole rise and report back to the Convention that we're making progress on this issue.

DELEGATE HALE: Second the motion.

CHAIRMAN: There's been a motion to rise and report; there's no debate on this. Delegate Penebacker.

DELEGATE PENEBACKER: Mr. Chairman, we've been bending rules all day around here.

CHAIRMAN: There's no discussion, I'm sorry.

DELEGATE PENEBACKER: I beg to differ with you, sir. There was a motion to the same effect before, and you bent the rules. Now we've been sitting here for 4-1/2 hours, we've finally come to the conclusion of this discussion. Let's take the damn vote.

CHAIRMAN: There's a motion on the floor to rise and report. All those in favor of rising and reporting say aye. Opposed, no. All those in favor of rising and reporting, please stand. All those against the motion, please stand. The ayes have it. The motion is carried.

At 4:52 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Saturday, September 2, 1978 • Evening Session

The Committee of the Whole was called to order at 4:58 p.m.

Delegate Blake presided as Chairman.

CHAIRMAN: The Committee of the Whole is back in order. We have heard the last speaker on this subject, and at this time the next step is for the vote. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, on behalf of the Committee on Hawaiian Affairs, I strongly urge this body to move for approval of Committee Proposal No. 12.

DELEGATE PENEBACKER: Mr. Chairman, I second the motion.

DELEGATE WAIHEE: Mr. Chairman, if I may, could we have a short administrative recess?

CHAIRMAN: The Chair calls a short administrative recess. Keep your seats.

At 4:59 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:00 p.m.

CHAIRMAN: The Committee of the Whole is back in order. For the information of all, the motion on the floor is the amendment to Committee Proposal No. 12 to delete section 5, which has to do with quieting title. Any questions on what we're voting on?

DELEGATE DE SOTO: Mr. Chairman, could we have a roll-call vote, please?

CHAIRMAN: All those in favor of a roll-call vote, signify by raising your hand. A roll-call vote is in order. Will the clerk call the roll.

DELEGATE PENEBACKER: Mr. Chairman, would you indicate what we're voting on?

CHAIRMAN: A roll-call vote has been called for on the amendment that's on the floor. That's Amendment No. 2 introduced by Delegate Hale to amend Committee Proposal No. 12 by deleting section 5. A roll-call vote has been called for.

DELEGATE PETERSON: Mr. Chairman, may I rise to a point of personal privilege?

CHAIRMAN: Would you state your point of personal privilege.

DELEGATE PETERSON: Inasmuch as we're having a roll-call vote, I wish to state that though I am not in favor of legalized stealing--however, there are different interpretations of what would be best for those who are in favor of this. And so, out of my deep respect for the people who are against this amendment, I would like to explain my vote prior to the vote.

CHAIRMAN: I'd like to call to the attention of the group what a point of personal privilege is. Now, point of privilege is if something in here is bothering or causing some inconvenience to you or there's too much noise and you can't hear what's going on, this is the intent of personal privilege. Mr. Clerk, will you please call the roll.

Roll call having been ordered, the motion to amend Committee Proposal No. 12 by deleting section 5 failed to carry by a vote of 10 ayes, 54 noes and 38 excused; with Delegates Burgess, Campbell, Hale, Kimball, Kono, Lacy, McCall, Miller, Paty and Peterson voting aye; Delegates Alcon, Anae, Barnard, Barnes, Barr, Chang, Calvin Ching, Haunani Ching, Chong, Chung, Crozier, De Soto, Dyer, Fujimoto, Fukunaga, Funakoshi, Goodenow, Hagino, Hamilton, Hanaike, Hayashida, Hino, Hirata, Hoe, Hornick, Dennis Ihara, Les Ihara, Teruo Ihara, Ishikawa, Iwamoto, Izu, Kaapu, Ledward, Marion Lee, Odanaka, Okamura, Ontai, O'Toole, Penebacker, Sakima, Sasaki, Shinno, Shon, Silva, Stegmaier, Sterling, Sutton, Takitani, Uyehara, Waihee, Weatherwax, Wurdeman, Yamashita and Chairman Blake voting no; and Delegates Andrews, Blean, Cabral, Donald Ching, Laura Ching, Chu, Chun, de Costa, DiBianco, Eastvold, Ellis, Fernandes Salling, Fushikoshi, Harris, Hashimoto, Hironaka, Hokama, Ikeda, Kaito, Kojima, Rachel Lee, Lewis, Liu, Marumoto, Nakamura, Nishimoto, Nozaki, Pulham, Souki, Stone, Taira, Takahashi, Takehara, Takemoto, Tam, Tamayori, Villaverde and Yoshimura being excused.

CHAIRMAN: The amendment fails.

DELEGATE WAIHEE: Mr. Chairman, at this time--

DELEGATE PENEBACKER: Mr. Chairman, at this time I'd like to apologize for my abrasive action toward the Chair prior to the roll being taken.

CHAIRMAN: Thank you. Delegate Waihee.

DELEGATE WAIHEE: --I move that the Committee of the Whole rise and report and recommend to this Convention that Committee Proposal No. 12 be adopted with no amendments.

DELEGATE BARR: Second.

CHAIRMAN: It is moved and seconded that we rise and report and recommend that the committee proposal be adopted with no amendments. All those in favor of rising and reporting, signify by saying aye. Opposed, say nay. The ayes have it. The motion is carried.

At 5:09 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on HAWAIIAN AFFAIRS

Committee Proposal No. 13

(Articles XI [X], XII [XI], XVI [XIV] and XVIII [XVI])

Chairman: DELEGATE HARTWELL BLAKE

Saturday, September 2, 1978 • Evening Session

The Committee of the Whole was called to order at 5:12 p.m.

Delegate Blake presided as Chairman.

CHAIRMAN: The Committee of the Whole will come to order. The Convention has referred Committee Proposal No. 13 to this Committee of the Whole for consideration. There is only one amendment, which will be marked No. 1. The first title is "Public Trust," the next is "Office of Hawaiian Affairs; Establishment of Board of Trustees," and the third title is "Powers of Board of Trustees." Does everybody have that amendment? At this time, the Chair would like to call a 5-minute recess.

At 5:20 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:25 p.m.

CHAIRMAN: The Committee of the Whole will please come to order. The Convention has referred Committee Proposal No. 13 to this Committee of the Whole for consideration. We have before us an amendment submitted by Delegate De Soto. This is purely an administrative amendment. If there's no objection from the floor, I would like to have the delegates go through this amendment here before we get into any other discussion. Is there any objection from the floor? Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, the amendment before this body for consideration, coupled with my encouragement for the adoption of Committee Proposal No. 13, is a matter of housekeeping. This proposal attempts to define, as the committee intended, the terms "native Hawaiian" and "Hawaiian." It does this through sections 4, 5, 6 and 7 of Committee Proposal No. 13. I encourage the adoption of this amendment.

DELEGATE WAIHEE: Second the motion, Mr. Chairman.

CHAIRMAN: It has been moved and seconded that the amendment be adopted. Is there any discussion on the amendment? The question--all in favor of this amendment say aye. Opposed, no. The ayes have it. The motion is carried.

At this time, I have to remind you again about procedures. Again I ask you to be courteous to one another--and by courtesy I don't mean reading the newspaper or talking to one another or joshing around on the side. And if we entertain this courtesy, maybe we can be out of here by 6:00. Also, again the Chair will recognize everyone who wishes to speak. As you all know, there will be roll calls if necessary. At this time, the Chair recognizes Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I speak in favor of Committee Proposal No. 13 relating to Hawaiian affairs, which establishes a public trust entity for the benefit of the people of Hawaiian ancestry. I am again honored to stand on this convention floor and speak on behalf of the Committee on Hawaiian Affairs, our constituencies and the many citizens who testified at our public hearings in support of Committee Proposal No. 13.

Mr. Chairman, as you well know, and fellow delegates, I was elected from District 21A, the Waianae Coast--the home of the largest Hawaiian community in the State of Hawaii. Forty-five percent of the residents of the Waianae Coast are of Hawaiian ancestry--a Hawaiian constituency of more than 12,000. It is no wonder, then, that Committee Proposal No. 13 is very close to my heart and to my mind.

The primary purpose of proposal 13 is to grant to Hawaiians the right to determine the priorities which will effectuate the betterment of their condition and welfare. Proposal 13 amends Article XI of the Constitution of the State of Hawaii by including in Article XI that portion of the trust created by Section 5 (f) of the Admission Act for the benefit of native Hawaiians. It establishes the Office of Hawaiian Affairs and an elected board of trustees to administer the trust created for the benefit of all Hawaiians. The board of trustees is granted the authority to formulate policy relating to the affairs of all Hawaiians. It unites Hawaiians as a people and allows Hawaiians to affirmatively better their condition by giving them the opportunity to assume the trust obligation imposed on the State by Section 5 (f) of the Admission Act and to discharge the trust obligation by careful assessment and planning for the future welfare of all Hawaiians. The goal of the Office of Hawaiian Affairs is to address the modern-day problems of Hawaiians which are rooted in as dark and sad a history as will ever mark the annals of time.

Before the advent of the foreigner, the Hawaiians had succeeded in developing a culture that was truly remarkable. They took from the 'aina and from the sea for sustenance. In the words of Ralph S. Kuykendall, one of the most thorough of the historians of Hawaii, Hawaiians were "a healthy, robust, intelligent, and good tempered folk" who lived religiously, arduously and intelligently.

As evidenced by the feats of the Hokule'a, the pre-Captain Cook Hawaiians were great sailors, traveling long distances in canoes. They were great navigators, with an almost mystic knowledge of the stars. They were great fishermen. They were great farmers and engineers. In the raising of taro, the Hawaiians perfected a technique of building irrigation ditches, a feat requiring no little industry and ingenuity, which has never been improved on. They were great doctors, skilled in the use of herbs. They were a great and proud people.

The land system before the coming of the foreigner was inseparably a part of religion and government. To destroy one was to destroy the other. The Hawaiians worshipped nature, which expressed itself in a system of rules--kapu--that regulated their daily lives. The islands were divided into kingdoms, each ruled by a king. In land matters, as in many others, the king's words were supreme. Part of the land the king reserved for himself for his own private use; the rest he portioned out to his subordinates, who in turn portioned it out to their subordinates, all the way down to the hoa'aina, who tilled the soil.

In the life the Hawaiians lived before the foreigners, there was no future orientation. The gods were immediate to the common people and so were the kings: they gave directly and took away directly. Tomorrows were only a succession of todays. This was, thought the Hawaiian, as it should be; it was all he knew. If you took away his religion, his government, if you took him away from the 'aina or from the economy that he knew, you destroyed him. And many people did do this.

With the first real influx of foreign invaders near the end of the 18th century, the change from the Hawaiian subsistence economy--and with it the whole cultural structure--to an exchange economy began at an astonishingly accelerated speed. Mr. Chairman, by 1820, when the first missionaries arrived, Kamehameha II had formally abolished the kapu system, thus knocking the props from under the old system of religion. The fur trade, the sandalwood trade, the whaling trade, and their accompanying influences had already infected the native culture and had neglected to provide any healing power.

The new ideas and practices, incomprehensible to the Hawaiians yet powered irresistibly by the superior prestige and force of the invaders, broke the force of the old kapu system. It also weakened the tie between the commoners and the chiefs, who had been their leaders from time immemorial.

By 1840, native morale had all but been destroyed. The new ways may have been superior, but to Hawaiians this was little compensation for the destruction of the old and

the familiar. Thousands of Hawaiians died. From the missionary estimate in 1826 to the official Hawaiian census in 1919, the number of full-blooded Hawaiians had decreased from 142,650 to 22,500, while the Hawaiian death rate had correspondingly increased until it exceeded considerably the death rate of any other race inhabiting the Islands at that time.

Mr. Chairman, the Hawaiian had become hopelessly land-less. All the stories that have been told with respect to the Great Mahele and that divisioning of land--finally the inevitable happened: our mo'i wahine Queen Liliuokalani was dethroned--a bloodless revolution but a queen deposed, a legitimate monarchy overthrown. Many, many injustices have been documented in our history. All these injustices have caused us now to stand in public and bare our souls once more, bare our souls so that someone, someplace will begin to listen.

Mr. Chairman, fellow delegates, if there must be a statement of need before Committee Proposal No. 13 is accepted or adopted by this Convention, then surely the following statistics indicate it: according to the 1975 census updates, the present Hawaiian population is a young one; there are roughly 60,000 Hawaiians, or approximately 54 percent of the total Hawaiian population, who are under the age of 20. It is my dream and the dream of my people that the Hawaiian today be given the opportunity to provide for betterment of the condition and well-being of these young Hawaiians, to address the contemporary problems which Hawaiians face--of crime, inadequate housing conditions, welfare rolls, education. Committee Proposal No. 13, Mr. Chairman, I submit, attempts to build the steps for native Hawaiian people so that they may realize, or at least decide some point in, self-determination.

All kinds of people have helped us in the planning. Your Committee on Hawaiian Affairs begs this Convention to consider, and submits that this native Hawaiian office is essential for the protection and the preservation of the Hawaiian race. I ask all of you to consider this and adopt this proposal. Mahalo.

CHAIRMAN: Thank you, Delegate De Soto. Any further discussion? Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, do you propose we take this section by section or shall we take the proposal in its entirety?

CHAIRMAN: We will take it in its entirety.

DELEGATE KAAPU: This makes it considerably easier and a lot faster. The proposal of a Hawaiian trust is analogous to creating an entity like that of the University of Hawaii, which has the power to hold and own property, to create and administer programs and to govern itself under certain general laws of the State as well as the Constitution.

Its need is not in order to bring about immediately, by the enactment of this proposal, any new benefits to Hawaiians, but to do as the Constitution ought, which is to set the framework by which resources can be managed and benefits achieved through setting the frame by which those who are to receive and enjoy these benefits might in some democratic manner govern the disposition of these resources and settle on policies among themselves through the process of election and through the process of scrutiny by those to whom they are responsible. That in general is what the proposal for a Hawaiian trust creates. There are several sections which I'll touch on quickly.

First is the change in the article title in the Constitution to reflect the broader scope of the concerns it now handles. Secondly, there is a redefinition of the public trust, of those elements in the Admission Act which are of benefit to Hawaiians, by setting forth clearly what those two categories of beneficiaries are to make it more easily handleable to administer--and that is, that the beneficiaries of the public trust under Section 5(f) are in fact the general public and native Hawaiians. The next section is on creation of the Office of Hawaiian Affairs and establishment of a board of trustees. The Office of Hawaiian Affairs would of course be that administrative body that would handle all the programs; and it is so constructed that it might handle both programs from which the benefits are directly present--to only those of one-half Hawaiian ancestry as well as to those of any part-Hawaiian ancestry. It allows for an umbrella organization which could someday embrace the Hawaiian homes commission, all of the Hawaiian home lands department

and all the functions. It also provides a receptacle for the possible receipt and administration of any reparations that might be coming in the future.

The board of trustees is created as the governing body. It's to be made up of beneficiaries who are native Hawaiians themselves under the broader definition of that meaning. Also of that term, it sets forth that each Island shall be represented and the legislature shall determine the means by which the board is elected, and the qualifications and means by which those qualifications are proven. In other words, the legislature will determine the details during the implementation period, which is 2 years after ratification of this act and which would provide for the election of directors of the Hawaiian trust, to take place at the next general election subsequent to that time.

The next section defines "native Hawaiian." We have further amended this definition so that the language would be clear in all documents related to that. We have already talked about the effective date for establishment of the Office of Hawaiian Affairs, which is set forth in the next section, and there is a statement that any legislation "shall not diminish or limit the benefits of native Hawaiians..." in case that was contemplated by any. That in essence is the nature of the Hawaiian trust entity, which is dictated and demanded by the ease of modern resource management more than anything else. But it does have the added benefit of allowing those who are direct beneficiaries to set their own policies and govern their own affairs through a democratic process.

CHAIRMAN: Thank you, Delegate Kaapu. Does anyone else wish to speak on the subject? Delegate Peterson.

DELEGATE PETERSON: I'm happy to speak a few words in favor of this proposal. I think it's time that native Hawaiians have more impact on their own future, and the transfer to Hawaiians of the responsibilities of self-government is only right and proper. I think that the extension to Hawaiians of all the rights without having a limitation of blood is only a proper extension of these other benefits. So I'm pleased to speak in favor of this proposal.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Sakima.

DELEGATE SAKIMA: Mr. Chairman, I have a couple of questions that are really bothering me.

CHAIRMAN: Would you state the questions one at a time, please.

DELEGATE SAKIMA: I'm sure someone in the Hawaiian affairs committee can answer this: does this meet the constitutional question of having an election for just people of one race in this State? Having an election for those of Hawaiian ancestry only?

DELEGATE WAIHEE: I'll answer that question, if I may. I believe it meets the test because what we have here is that we're dealing with a trust entity and we're delegating the running of the trust to the beneficiaries, which is the normal setup when you're setting up a trust like this, where you elect the board of directors for the trust. I think that the provision itself also allows the legislature to work out the apportionment problem--to thereby get around any problems we might have with a one-vote, one-man situation. I think as far as the election itself is concerned, I believe--and I think the legal counsel concurs with the committee--that it would be constitutional.

DELEGATE SAKIMA: My other concern, Mr. Chairman--although in the committee report it says this is going to be similar to the University of Hawaii, the university comes under the legislature and this, I've noted, is a very autonomous body. It's almost like another county. So I'm just wondering whether we are not going to have another county formed in the State of Hawaii.

DELEGATE KAAPU: Mr. Chairman, in answer to that, I used the analogy of the university only in that it is a body that may hold and receive property, receive gifts, administer programs and conduct its own affairs under general law, and under the legislature in that case. To that extent it is analogous; beyond that, it is a trust that administers to its own beneficiaries only those resources to which it is already entitled. It may additionally receive appropriations from the legislature, but under those conditions it would be subject to such provisions as the legislature would make.

CHAIRMAN: With regard to legal counsel, this has cleared with legal counsel. Any further discussion? Delegate Barr.

DELEGATE BARR: Mr. Chairman, I would like to address the concern that was just raised. In the Constitution as it exists now, there are a couple of sentences that I think are instructive. In Section 2 of Article XI, it states: "The State and its people do further agree and declare that the spirit of the Hawaiian Homes Commission Act looking to the continuance of the Hawaiian homes projects for the further rehabilitation of the Hawaiian race shall be faithfully carried out." And at the end of Section 3, one of those "Provided That's" that I didn't mention earlier when I spoke, is, provided "that all proceeds and income from the 'available lands', as defined by said Act, shall be used only in carrying out the provisions of said Act."

It seems to be clear that it was the intent of the Admission Act that we recognize a special claim, a special interest on the part of an aboriginal people in these Islands. And if that effect sets up a separate county, or a separate trust, or a separate university or whatever, it is well past time that we take that step so that we as people meet the obligation that we have to do justice to that aboriginal people.

CHAIRMAN: Thank you, Delegate Barr. Delegate Sterling.

DELEGATE STERLING: May I add to that? The basic interest of Congress, to rehabilitate the Hawaiian people, continues and the errors of the Hawaiian Homes Commission Act, 1920, were rectified by setting up a second trust in the Admission Act. Rather than attempt to draft a second rehabilitation program, Congress delegated the task to the state legislature. The first such legislation in Hawaii was House Bill No. 1469 of the ninth state legislature, 1977, a bill to provide for a native Hawaiian program, governed by a board of trustees who would be native Hawaiians, elected by native Hawaiians in several regions throughout the State. But this bill for a native Hawaiian program was confronted with Section 97, relating to the budget, and it failed because of that.

This was part of the Admission Act. But we set this up, as the chairman so beautifully stated, as the receptacle not only to comply with the Admission Act but for any other possible benefits that may be coming to the Hawaiian people.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Uyehara.

DELEGATE UYEHARA: Mr. Chairman, I have one concern that I'd like someone to answer for me.

CHAIRMAN: Would you state your concern.

DELEGATE UYEHARA: I'm concerned about the language in establishing the board of trustees. As I read it, according to this wording the nine persons who will be elected-- it doesn't say how long their terms will be, and I'm wondering if they are going to be forever or if there is some kind of provision that states that there's a rotation of those who are elected.

DELEGATE CROZIER: Mr. Chairman, may I answer that? There are the words "in accordance with law." That's how it's going to be done; the legislature is going to make the final decision on that.

CHAIRMAN: Does that answer your question?

DELEGATE KAAPU: One additional point, Mr. Chairman: it also says "not less than 9 members," so it could be, Mr. Chairman, that there could be more, depending on the legislature.

CHAIRMAN: Any other discussion? Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I have a point of information I'd like to address to anyone who can answer it.

CHAIRMAN: State your point of information, please.

DELEGATE BURGESS: The question is on Section 4, which says that the lands granted to the State by Section 5(b) of the Admission Act--and those are the lands that are referred to as "crown lands"--would be administered by the trust. My question is--what lands are those, what's the area involved, and are those presently all the lands owned by the State of Hawaii, or a portion?

CHAIRMAN: You're on the first page, are you not?

DELEGATE BURGESS: Yes, I'm looking at the first page of the committee proposal, on Section 4, "Public Trust," the second line. Those are crown lands--the lands granted to the State by Section 5(b) of the Admission Act--those, as I understand it, are crown lands. I want to know specifically what lands are entailed--all the lands presently owned by the State of Hawaii? or if not, what approximate portion are they? What lands we are putting into the trust is what I want to know.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I will attempt to answer that question. We're not taking any lands and putting them into any kind of trust, just grabbing lands from the State, or any place else. In the Admission Act, it identifies those lands as "available lands" as defined by said act; and all proceeds to come from these available lands shall be used only in carrying out the provisions of said act. These lands are identified in the Admission Act as "available lands," so they may have been ceded lands or public lands.

CHAIRMAN: Delegate Burgess, does that answer your question?

DELEGATE BURGESS: No, Mr. Chairman, my question is--what lands are covered by this second line of Section 4? It excludes available lands, so it's not the available lands--those are different. I'm trying to find out about the crown lands. It's my understanding--and this may be wrong--that the crown lands are now owned by the State of Hawaii; they are a substantial part of the lands presently owned by the State.

DELEGATE STERLING: Mr. Chairman, may I continue what the chairman was saying? The largest--

CHAIRMAN: Yes, Delegate Silva?

DELEGATE SILVA: I'd like to ask for a short administrative recess.

CHAIRMAN: So ordered.

At 5:52 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:55 p.m.

CHAIRMAN: The Committee of the Whole will come to order. Delegate Burgess, was your inquiry answered?

DELEGATE BURGESS: Yes, it was, thank you.

CHAIRMAN: Is there any other discussion on the floor? Delegate Goodenow.

DELEGATE GOODENOW: Mr. Chairman, I am very much in favor of this, but I have one question that I must ask which has to do with Section 7, the definition of "native Hawaiian." I need some information on this. Is there a system set up to establish the relationship between today and 1778? Have there been records kept, or what is the answer to this?

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: I was going to say if the delegate had looked at her amended copy, there is a definition in the back there. She's looking at the old copy.

CHAIRMAN: Just for your information before we move on, Delegate Goodenow,

the amendment that was on the floor clarifies "native Hawaiians" and "Hawaiians." One is by blood quantum and the other isn't. This trust will embrace all. However, Hawaiians under the Hawaiian Homes Commission Act will still continue with the things that they are entitled to or under the Organic Act or the act set up by the U.S. Congress. Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I think the question may have run a little bit beyond that and that is that--and the answer would be, all of those who are now qualified for the Hawaiian homes program would be native Hawaiians for all of the other programs that don't require blood quantum, but some of the Hawaiians will not qualify presently for Hawaiian homes. However, when it comes to voting and determinations of who is Hawaiian, the question of how that is proven often comes up. In this proposal, the matter is left to the legislature to determine the procedure whereby that may be done. Among the many procedures that are known are statements, birth certificates, testimony by those who know, court records and other things. But the legislature is left with the discretion of setting up procedures for determining that.

CHAIRMAN: Delegate Goodenow, has your question been answered?

DELEGATE GOODENOW: Yes, thank you.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: I just wanted to clarify for those of us--Delegate Burgess was satisfied with his answer, but to clear the record so the rest of us know what transpired in our little secret caucus here--what we need to make clear is that this proposal does not transfer to the trust any state lands. What is concerned is that Section 5(f) of the Admission Act sets out categories of individuals or persons who are to receive the revenues from all public lands that were given to the State of Hawaii. Now these categories are generally like agriculture, education and one category in there, one of the five categories (or two, depending how you look at it) is native Hawaiians. So what the trust would do would be to mandate the section of these revenues from public lands which are to be given which are presently mandated by the Admission Act to be held in trust for Hawaiians--would be transferred directly into this new entity which we are calling the Hawaiian affairs trust. So what we're talking about in this paragraph is not the transfer of lands but the transfer of revenues that are generated by public lands.

The second part of the article, Section 6 I believe, which talks about the disposition of lands and so forth in the rest of this proposal, is futuristic. What we are allowing here is for the corporate entity, or this trust entity that would be established--allowing this trust entity to have the ability to own and receive gifts of land, including, maybe--if we ever get anything from it--reparations. This vehicle would have that ability. So I think if we clarify this--we're not taking away any public lands, we're merely directing some of the revenues that are supposed to go to the Hawaiian people.

CHAIRMAN: For all the delegates present, that was what Delegate Burgess' inquiry was and the answer given by Delegate Waihee. Any other discussion?

DELEGATE WAIHEE: If there is no further discussion, I move that we rise and report to the Convention that we recommend adoption of Committee Proposal No. 13 with one amendment.

DELEGATE BARR: Second.

CHAIRMAN: It has been moved and seconded that we rise and report that we recommend adoption of Committee Proposal No. 13, with one amendment. Those in favor say aye. Opposed, say no. The motion is carried. I want to commend the group for the courtesy and quiet.

At 6:03 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on TAXATION AND FINANCE

Committee Proposal No. 14

(Article VII [VI])

Chairman: DELEGATE JOHN ISHIKAWA

Wednesday, September 6, 1978 • Morning Session

The Committee of the Whole was called to order at 8:48 a.m.

Delegate John Ishikawa presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The Convention has referred Committee Proposal No. 14 to this Committee of the Whole for consideration. In addition to the committee proposal, we have 21 proposed amendments to the proposal to consider.

The Chair requests that delegates having questions regarding amendments take the opportunity during a recess to ask the mover of the amendment. The Chair also requests as a courtesy that delegates who have the floor state on which side of the question they are speaking before debating. Delegates will be allowed to speak 10 minutes for the first time and 5 minutes the second time. Delegates will not be allowed to yield any of their time to another delegate, and the mover of the primary amendment may request that he or she be allowed to speak last on the question. Any frivolous or dilatory motions intended to delay deliberations, and motions calling for a recess or roll-call vote will be out of order subject to an appeal. No question may be laid on the table, the previous question cannot be ordered and a motion to postpone indefinitely shall not be in order.

Finally, the Chair may call brief recesses for administrative purposes, as deemed appropriate.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Why is roll-call vote out of order?

CHAIRMAN: Only in those instances where the Chair may feel it's completely unnecessary. Obviously we will comply with most of the requests for roll call if there are seconds.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Yes, Delegate Sterling.

DELEGATE STERLING: On the two minority reports on taxation and finance, are you going to hold off? Are you going to set those on file? What is the disposition, sir?

CHAIRMAN: Both authors of those minority reports will be offered the opportunity to summarize their reports at the appropriate time.

Committee Proposal No. 14 is now on the floor for discussion. The Chair will first recognize the chairman of the Committee on Taxation and Finance to summarize Standing Committee Report No. 66. After that, the Chair will permit, if so requested, that the minority reports be summarized. Delegate Lewis.

DELEGATE LEWIS: I yield to Delegate Takahashi.

DELEGATE TAKAHASHI: Mr. Chairman, I'd like to rise to a possible conflict of interest. I'd like to declare to this body that I have recently been appointed to the Hawaii Housing Authority and that the Hawaii Housing Authority will be able to provide additional housing opportunities to people of low and moderate income with the passage of certain amendments proposed in the revenue bond and special purpose revenue bond sections of this proposal.

I do not feel that I have a conflict of interest because I have no financial gain from this program. In this area, my primary goal is to be able to provide cheaper housing opportunities to the so-called gap group without jeopardizing the credit of the State or its political subdivisions. I would, therefore, be participating in the discussion, and I will be voting.

CHAIRMAN: Thank you, Delegate Takahashi. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, your Committee on Taxation and Finance has spent many hours analyzing and debating Article VI on taxation and finance. This includes nine informational meetings, five public hearings and four decision-making sessions, the last of which was concluded last Thursday morning at 2 a.m.

The subject matter involved complex legal terminology used for bond covenants and other legal documents and required a lot of hard work on the part of your Committee, and I wish at this time to sincerely thank the members of the committee for their patience and their understanding in dealing with very complex subject matter.

The committee proposal is 21 pages long and contains many substantive changes, as well as a number of technical wording changes, proposed by the state bond counsel. The 20-page committee report discusses the critical issues before the committee and attempts to set forth the pros and cons on each of these issues, as well as setting forth the rationale for each of the proposed substantive changes to Article VI.

The first major area of change relates to the State's debt limit. Currently the state debt limit is 3-1/2 times a historical 3-year moving average of state revenues. It has been argued that this particular debt limit, which is related to legislative authorizations, is in fact no debt limit at all. And it is not operated as any type of restriction on state debt policies. The present maximum debt limit is \$2.3 billion, while the actual outstanding general obligation bonds are \$1.1 billion, leaving over a \$1-billion cushion in debt limits. This spread has enabled the legislature to build up over \$1 billion of authorized but unissued general obligation bonds since the 1968 constitutional convention. The committee's proposal would tighten up the debt limit considerably and shift the focal point from authorized bonds to bonds actually issued and outstanding. The proposed formula is commonly referred to as a debt service ratio formula. The formula establishes debt limits tied to the actual debt service, which represents both principal and interest payments on the debt, and establishes a debt ceiling which reflects the total debt costs of the State and the impact of such borrowing on current and future budgets.

The debt ceiling is designed to reflect a reasonable relationship to the State's ability to repay its debt. Although the formula measures maximum debt service against a historical 3-year moving average of state revenues, your Committee designed this debt limit so that approximately 15 percent of each current revenue dollar would be applied to maximum debt service. To put it another way, it is intended that not more than approximately 15 cents on each current revenue dollar of the State can be allocated to the repayment of the State's debt, thus assuring that the remaining 85 cents on each current revenue dollar will be available to provide for needed services and programs. The proposed limit would be 20 percent until 1982, at which time it would drop to 18-1/2 percent and remain at that level thereafter. This formula would permit the state administration to complete its planned financing program of selling an average of \$168 million a year for the next 5 years.

Your Committee also provided an important safety valve, an escape clause, which would allow the governor to bypass the debt limit by declaring an emergency condition and obtaining a two-thirds vote of both houses of the legislature.

Your Committee next dealt with the question of a constitutional lapsing provision and adopted a provision which would require the lapsing of legislative authorizations

which are not encumbered within 2 years after their authorization. This provision was designed to limit the amount of authorized but unissued bonds. A lapsing provision also strengthens accountability, particularly from a planning point of view, at both the executive and legislative levels of government.

Thirdly, your Committee provided for certain exclusions from the state debt limit, primarily in areas such as airport or harbor revenue bonds, where the debt is self-supporting from the revenues of the particular operation. And in the case of airport revenue bonds, the landing fees and aviation fuel tax are pledged to the repayment of airport revenue bonds.

Most of the exclusions from the debt limit, which start at the top of page 10 of the committee proposal and go to the top of page 15, merely involve a rewording and combining of sections and do not represent a change in substance. The only two substantive changes are contained in subparagraphs (c) and (h): subparagraph (c) relates to special purpose bonds and will be discussed next; subparagraph (h) excludes from the debt limit contract or loan agreements where the State incurs a contingent liability as a guarantor. These currently involve approximately \$40 million of prospective guaranteed loans--although \$40 million has not been issued to date--primarily for Hawaiian homes commission housing projects, aquaculture projects, loans to farmers and Hawaii Housing Authority projects. These guaranteed loans are currently included in the existing debt limit formula but would be excluded in the new formula, and this exclusion is consistent with the position taken by your Committee to exclude from the debt limit those activities and functions which are basically self-supporting.

The second exclusion from the debt limit involves special purpose bonds and, as enumerated on page 6 of the committee proposal, starting at line 14, these include four major areas: first, manufacturing, processing or industrial enterprises; second, utilities serving the general public; third, not-for-profit corporations providing health care facilities; and fourth, low- and moderate-income government housing programs. It should be pointed out that the legislature presently has power to authorize the issuance of bonds for these categories. Consequently, the only constitutional issue before the committee was whether these types of bonds, where the State incurs no legal or moral obligation, should be excluded from the debt limit.

The two principal reasons your Committee chose to recommend the exclusion of these bonds from the debt limit are: first, the bonds would be tax-exempt from federal income taxes and the savings and interest costs could be passed on to the people of Hawaii; and second, the bonds would be issued solely by the credit of the enterprise--for example, Hawaii Housing Authority, with no credit pledged directly or indirectly by the State. And finally, the State would be prohibited from ever using any public funds to pay on these bonds, even in the event of a default.

The next issue relates to a constitutional spending limit. In testimony before your Committee, the necessity of establishing some form of limitation on state government spending received wide support. Basically, the movement to control government spending, here and elsewhere in the country, has its origins in the genuine concern of taxpayers that the costs of government should not consume an increasing proportion of their income. Your Committee concurs that discipline needs to be exercised in the development and execution of spending policies and that the Constitution is a proper place to exert and motivate such discipline.

Accordingly, your Committee adopted a spending limit proposal, which appears on the bottom of page 18 and the top of page 19 of the proposal, which mandates the legislature to establish a spending limit for the State's operating budget--which states that the growth of general fund appropriations, excluding federal funds, shall not exceed the growth of the State's economy as determined by law. This language is similar to that approved by the voters of Tennessee earlier this year, and your Committee also provided that the legislature could exceed this limit only by a two-thirds vote of each house and then only after public disclosure, including "the reasons therefor." To put the proposed spending limit in another perspective, I'd like to quote briefly from an article that appeared earlier this year in the *Sunday Star-Bulletin and Advertiser*, which explained the Tennessee plan; it stated that while this plan establishes limitations on increased spending, it does not prevent the legislature from exceeding these limits if clear-cut needs exist. As the limitations are fairly lenient, "the chief value of the proposal [may

be] the psychological effect it will have on legislators. If they choose to increase spending faster than the growth in the economy, they must go on record in favor of the dollar amounts and rate by which the limits will be exceeded."* This is very similar to the truth-in-taxation--or the so-called Florida--law adopted in Hawaii to control the rate of increase in property taxation. The concept throws "the spotlight of publicity on the pressure groups and legislators who endorse the continued growth of government v. the private economy."*

As a supplement to the spending limit, your Committee added clarifying language at the bottom of page 19 of the proposal, which establishes a clear request for a balanced budget, that can only be exceeded during emergency conditions relating to "public health, safety or welfare."

Your Committee also eliminated the potential method of circumventing the spending limit by preventing the legislature from passing off to the counties new programs or increases in the level of service under existing programs without also reimbursing the counties for the costs involved. This, of course, would help county government. During last week's Second Reading debate on local government, statements were made that nothing more was to be done for the county government. This provision, which is contained at the bottom of page 20, contradicts those statements. The proposed amendment will be extremely helpful to county governments in long-range planning, and this is particularly explained in the committee report, in the last paragraph on page 13.

Some of the other changes being proposed include the establishment of a council on revenues, which will advise both the legislative and executive branches of government on budget preparation, appropriations estimates and budget execution processes. Presently the governor, the house and the senate often use different budget estimates, and this council should eliminate that problem. Although not binding, the council on revenues is expected to have a strong influence on the executive and legislative branches, particularly because there must be a public disclosure and the reasons therefor, if the legislature in appropriating funds, or the governor in preparing the budget, exceed the council's estimated revenues.

Finally, your Committee has proposed that a tax review commission be appointed every 5 years and charged with the responsibility of evaluating the State's tax structure and tax policy and making recommendations to the legislature. As you are aware, taxation is one of the most powerful tools available to government to bring about social and economic change and the legislature in recent years has not had the time to address tax policy, as opposed to the day-to-day work in bringing conformance to federal tax laws. This would remedy that situation and mandate a periodic review of Hawaii's tax laws from an overall policy viewpoint.

There are a number of other changes contained in the committee report; I have attempted to cover only the highlights of the report, but I'll be free to answer any questions.

CHAIRMAN: Thank you, Delegate Lewis. We have two minority reports offered by Delegates Marumoto and Lee. Does either of you wish to speak in a summary form on your minority report at this time? Delegate Marumoto.

DELEGATE MARUMOTO: Mr. Chairman, thank you for the opportunity but I'll address the points in my minority report at the time I speak on my amendment, Amendment No. E1, which seeks to strengthen the spending limit. Thank you.

CHAIRMAN: Let me make sure I understand that--at the time that you are talking to your amendment, or prior to the deliberation on that section?

DELEGATE MARUMOTO: At the time I make a motion on Amendment No. E1.

CHAIRMAN: Very good. Thank you, Delegate Marumoto. Delegate Lee, as to your minority report--

*From a letter by Tennessee Taxpayers Association to each Taxpayers Association and Expenditure Council, March 9, 1978.

DELEGATE MARION LEE: Yes, Mr. Chairman, I have prepared Minority Report No. 12, which is before all the delegates, on their desks today. I will not read the entire report, as I will cover the points at the time that I speak to my amendment, No. B2. I would like to say in summary, however, that basically my minority report does not concur with that section of the committee proposal which states that there should be issuance of special purpose revenue bonds to assist--and the various areas that it goes into. Primarily, the reasons I do not concur include the following. One would be the fact that I do not feel that it is a function of government to aid private or semiprivate enterprises. Another reason is that I feel the special purpose revenue bonds would primarily be aiding large business corporations rather than small businessmen, and that the savings to consumers would be a secondary factor. Third, that although Hawaii is one of the few states that does not have special purpose revenue bond financing, Hawaii is considered a very unique state, not to be compared with other, mainland states. And last, that although there is no legal obligation, I definitely feel there is a moral obligation on the State. It is not unreasonable to assume that, in the case of any type of default, the State would step in to protect its name and credit ratings and possibly have to bear a loss. But this is just a brief summary and I'll go into it more at the time of my amendment.

CHAIRMAN: Thank you, Delegate Lee. Delegate Hale.

DELEGATE HALE: Is this the time to ask the committee chairman a question? He did say he would answer questions.

CHAIRMAN: I believe the chairman referred to being available to answer questions at the time of debate. If you have one in general, I will see if he's willing to answer.

DELEGATE HALE: He mentioned--and it's in his report--that the goal was to get the debt service down to approximately 15 percent, but they have only reduced it to 18-1/2. I would like to hear that justification.

CHAIRMAN: Thank you, Delegate Hale. As we have no amendment related to this debt ratio formula, would the committee chairman like to comment on that question?

DELEGATE LEWIS: Yes, I'll be happy to respond. Delegate Hale, what has been done is that the debt service ratio is tied to a 3-year moving average--a historical average--rather than current revenues. And the reason for this is that you can have considerable fluctuation in current revenue; in a given year, your measurement is against growth, or against the revenue picture of the State, and you might have a 10-percent increase in revenues one year and only 4 percent the next. So this might cause your debt limit to fluctuate, whereas if you have 3 years, it tends to have a leveling effect. But by going back 3 years, you're measuring against a lower revenue base than you would if you measure against a current revenue base--and when I say this, you have to assume that revenues are increasing as they have on a historical basis. But if they were to continue to increase, then you'd be measuring against a lower revenue base if you use a 3-year moving average than if you use the current average. So what was done--a number of staff runs were made using both the 20-percent figure and the 18-1/2-percent figure, which I believe appears in your committee proposal, and those were correlated with what that ratio would have been if it was measured against current revenue. The committee made a 5-year historical analysis as well as a 5-year projection, and on a historical basis this relationship between the 3-year historical average and the current average was 3.2 percent; and with respect to it, on a proposed basis it was 2.8 percent, which averaged out to approximately 3.2 percent. So if you have an 18-1/2-percent debt ratio, which appears after 1982 and which is the ultimate goal we're shooting for--if you take that separation and that 3.2-percent difference, that would leave you with a 15.2-percent current debt service ratio based on current revenues--again this is an estimate. But as a matter of calculating it--and the committee's goal was designed to reflect debt service to current revenues--this would reflect approximately 15.2 cents on each revenue dollar will be available to repay debt service.

CHAIRMAN: Thank you, Delegate Lewis. Delegates, I would like to intercede here. This subject matter is quite complex in many areas, and I don't want us to get sidetracked into too many points of information. I would suggest that we go through the amendments first and when we're finished considering all of them, should there be a certain subject matter not considered by amendment, that you either speak to the committee members or the chairman during recess or, if you insist and if we have time, we will

address those questions then. Otherwise we can be here all morning speaking to parts of the proposal or committee report on which there are no amendments. So at this time the Chair would appreciate it if we could go on to the amendments. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, just in response to your comments: if a delegate does have a question, even though it's not specifically related to an amendment but it ties in with a particular amendment, your committee chairman would be happy to attempt to answer it. But I concur with Delegate Ishikawa--if it's totally unrelated, it can be deferred to later. But if a delegate has a question related to an amendment, even though it does not involve a specific one, I would be happy to answer that question.

CHAIRMAN: Thank you, Delegate Lewis. We are now ready to proceed with the consideration of amendments. Since Amendment No. A1 has been withdrawn, we shall proceed to Amendment No. A2, offered by Delegate Ikeda.

DELEGATE IKEDA: Mr. Chairman.

CHAIRMAN: Delegate Ikeda.

DELEGATE IKEDA: I move for the adoption of the amendment designated A2 to Committee Proposal No. 14.

DELEGATE TAKAHASHI: I second the motion, Mr. Chairman.

CHAIRMAN: It has been moved and seconded that we adopt Amendment No. A2, submitted by Delegate Ikeda. Is there any discussion? Delegate Ikeda.

DELEGATE IKEDA: With the permission of the Chair, I would like to yield to Delegate Lewis.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: Your Committee did not have a chance to get into this particular subject--we got into the subject, but not in this proposal. But I discussed this matter with several members of your Committee and I do not have any objection to this amendment. What the amendment primarily does, inasmuch as this is in the category of exclusions from the debt limit--this amendment puts a ceiling on the amount of that exclusion. And as I indicated in my opening remarks, this amendment involves contingent liabilities as a guarantor. To use an example, if the Hawaiian homes commission were to loan proceeds for homes to qualified applicants, those loans can be guaranteed by the State; this means that in the event of default, the State will back up that loan. And that's what is referred to by a contingent liability as a guarantor.

Another example would be in the area of aquaculture; if the legislature determines that as a policy matter it wants to promote aquaculture in the State, it could authorize the issuance of loans to aquaculture enterprises and this would be guaranteed by the State. Basically these loans are ones that would probably not qualify for revenue bond financing or special purpose bond financing because of the nature of the security. In the case of the Hawaiian homes, for example, they are unable to pledge the land as security, so there's a question as to security for Hawaiian homes commission loans. So this is a method of doing that. By putting a limit of 6 percent on the principal amount of all outstanding general obligation bonds--in other words, this type of exclusion cannot exceed that, and if it does it will then be counted against the debt limit. That is the purpose of this particular amendment, to put it in perspective. Presently there are \$40 million of authorized guarantees, which does not mean the loans have actually been executed, but they have been authorized by the legislature; and this amendment, allowing 6 percent of the general obligation bonds outstanding today, would put this limit up to \$78 million.

CHAIRMAN: Thank you, Delegate Lewis. I believe you were speaking for the amendment?

DELEGATE LEWIS: I was speaking for the amendment.

CHAIRMAN: Thank you. Is there any further discussion?

DELEGATE KONO: Mr. Chairman.

CHAIRMAN: Delegate Kono.

DELEGATE KONO: I'd like to speak for this amendment, and I think it requires a little bit of explanation, a little bit of background. Just to give the delegates an idea of the deliberations of the committee, at the time we went through the decision-making, this was an extremely hazy area and we covered it in a very short period of time. And in my estimation, the time was insufficient and the consideration given the subject matter, keeping in mind its importance, was insufficient for the magnitude of the problems that may be created by this particular section.

The section is well intended, because under the present debt limitation--which limits the debt in terms of the gross amount of debt that can be issued--this type of loan guarantee, which now amounts to about \$40 million, could be covered and was covered under the debt ceiling. However, under the new definition of debt ceiling, which is based on a debt service concept, this type of loan guarantee is not covered under the debt ceiling. So in other words, all the work that the committee did in arriving at a 15-percent debt-service-to-revenue limitation would be circumvented by this provision because the State would be morally obligated to make good on any loan default, which in effect may amount to \$40 million. In fact, it could amount to more than that, because the legislative act that authorized the agricultural loans was open-ended; so we'll probably have more loans of this sort that are already authorized, which are not presently reflected. This is exactly the type of loan that got New York City into its financial difficulties--it wasn't the only thing, of course, that created the difficulties, but it was a major contributor. New York in the early 1960s, was the first state to go into moral obligation loans to subsidize housing projects, and since they had a 20-percent default rate on this type of bond, they began running into severe financial difficulties, while at the same time their tax base was eroding.

Unless we strengthen this particular section, the debt ceiling that we worked so hard to achieve--that 15-percent ratio--would be meaningless. The 15-percent ratio is based on bond-rating companies' recommendations as to what would probably be the limit that would justify an AA rating for this State, so it is a prudent limit. But it seems to me that we would be defeating the purpose of creating that 15-percent limitation if, at the same time, we knew there was a gigantic loophole that could be taken advantage of and that would put the State's credit at risk. So I would strongly urge everyone to vote for this amendment.

CHAIRMAN: Thank you, Delegate Kono. Is there any further discussion? I know we started with probably one of the most complex amendments but if there's no further discussion, we shall get to the question--unless Delegate Lewis would like to make closing comments? There being no further discussion, the question on the floor is Amendment No. A2, to amend subsection (h) on page 14 of Committee Proposal No. 14, as offered by Delegate Ikeda. All those in favor, please signify by raising your hand. All those opposed, please signify by the same sign. The ayes have it, and the amendment is carried.

The next amendment on the floor is Amendment No. A3 offered by Delegate Kono. Delegate Kono.

DELEGATE KONO: Thank you, Mr. Chairman. I'd like to move for adoption of the next amendment, No. A3.

DELEGATE BLAKE: I second the motion.

CHAIRMAN: It has been moved and seconded that we accept Amendment No. A3. Delegate Kono.

DELEGATE KONO: Thank you, Mr. Chairman. This deals with the same subject matter as the previous amendment. What it calls for, however, is another way of tightening up this particular provision. Whereas the last amendment would limit the amount of debt as a percentage of the total outstanding general obligation debt--which would amount to about \$78 million, that being 6 percent of the total outstanding general obligation debt of about \$1.3 billion now--this particular provision would require the State to maintain a prudent reserve in an amount to be no less than 10 percent of the total amount of the State's obligations, to be incurred by this loan-guarantee program. I think that this would be very useful and it would protect the State's credit. Presently the \$40 million authorized

by this loan program--which are moral obligation bonds, or moral obligations in the sense that whenever a default would occur on these loans, the State would be obligated to make good on the \$40 million of the loan commitment--under that program, the legislature did not see fit to authorize any amount to be held in reserve. And this is the same thing--it's tantamount to buying a house and not taking out any fire insurance on it. And of course it's the same situation that got the social security into difficulty; there are not sufficient reserves in the social security system to provide for all the benefit payments that are coming due now. So what the situation amounts to is that in the event there is a 20-percent default on these loans to aquaculture projects and to the Hawaiian homes loan program--20 percent of that \$40 million would be about \$8 million and, at the time that the default was incurred, without any reserves the State would have to materialize an additional \$8 million to pay for these defaults.

So the question is--do you handle it at the time the default occurs, or do you protect yourself ahead of time by providing that additional insurance, by having a reserve clause? The department of agriculture has realized the importance of having a reserve requirement, and on their \$2.2-million loan presently outstanding, they do have a reserve of about 10 percent. And in discussions with representatives from the Hawaii Housing Authority and the Hawaiian homes commission, it was indicated that they could live with this 10-percent reserve. In my opinion, it's absolutely necessary to have a 10-percent reserve, especially when you consider that the major use of this type of loan funding would probably be for housing projects, and that the experience of New York was with a 20-percent default rate--it was a housing project in Michigan that had a 16-percent default rate. This is not to say that they all have such high rates; the default rate depends, of course, on the types of people that you're serving and the economic conditions of the time. We don't have enough figures to indicate what the national average for housing loans would be, but according to the information we have, I think 10 percent is a conservative reserve figure.

Now, we could leave it up to the legislature to determine what the reserve requirement would be, and in that respect the language presently included in the proposal we have does provide for a "reasonable proportion" in relation to the total amount of outstanding debts to be held in reserve--and that is a step in the right direction. However, it does not mandate that the legislature take out any minimum amount. Considering the fact that the legislature has never seen fit to require a reserve clause, I think it would be a strengthening of the constitutional language and in the best interest of the State's financial position to require that at least a 10-percent amount be held in reserve.

I would also appeal to all the elected delegates here--there are 38 delegates running for elective office, and if you really examine your interest in finances, I think most people here will agree that finances are not one of the highest concerns of the delegates here. My feeling is that if the whole matter is left up to the legislature, the chances are they may never see fit to put in a prudent debt limit, or a reserve requirement limit; and therefore, I think we would be insuring our future by putting in a 10-percent requirement.

CHAIRMAN: Thank you, Delegate Kono. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak against the amendment. Language was included at the last minute to clarify what was meant by a "reserve" in Committee Proposal No. 14, subparagraph (h) on page 14, and the word "reasonable" was added to this language. As indicated by Delegate Kono, the legislature can establish what is a reasonable reserve. In addition, the legislature has addressed this problem; in the case of farm loans, the legislature in the statute did require that a proper reserve be established. They mandated this to the department of agriculture.

The concern at this point--there were meetings held yesterday with representatives from the department of agriculture, Hawaiian homes commission, and Hawaii Housing Authority, as well as budget and finance. The question of reserves was discussed, but there was no clear indication as to the impact of requiring a 10-percent or a 15-percent reserve--how this would affect each of the programs. For example, for the Hawaii Housing Authority, the security that could be pledged on their loans might be of such a substantial nature that a 10-percent reserve requirement would not be necessary. Perhaps only a 1-percent reserve would be "reasonable," whereas in the case of an aquaculture loan perhaps a 15- to 20-percent reserve might be required. To mandate at this point--without

further discussion on the matter, without having a chance to look into it further--that a 10-percent reserve be established, I think, would be a mistake. I think the safeguard is provided in the term "reasonable reserve" and this does allow the legislature to address the problem.

CHAIRMAN: Thank you, Delegate Lewis. Is there any further discussion? Delegate Kono.

DELEGATE KONO: Mr. Chairman, I'd like to address the concerns that the chairman of our taxation and finance committee, Delegate Lewis, has raised.

First of all, the Hawaii Housing Authority didn't seem to have a really significant objection to the 10-percent inclusion. Regarding the Hawaiian homes program, which would be using the same type of loan, they have not held any amounts in reserve. I believe the Hawaii Housing Authority has had certain amounts in reserve and, not to be in any way critical of this program, I do think that it would show more prudent financial management on their part to require a reserve; and it seems to me there is more of a need to require a reserve for the Hawaiian homes commission program than there is for Hawaii Housing Authority programs, because it is my understanding that the Hawaiian homes commission does not want to be in the position of having to sell off their land or give up any of their assets, which would probably be necessary in the event of a loan default unless the State were in fact to pick up the amount of that loan. So it is my understanding that the State eventually would have to make good on any defaulting of loans in the Hawaiian homes program.

The other thing that was brought to light is that there does tend to be a rather high rate of delinquencies in the Hawaiian homes program. I think the nature of the loans is rather risky; housing projects in general for low- and moderate-income housing tend to be rather risky. I think that the Hawaiian homes program--without having looked into their financial program, I tend to think this does fall in the category of a risky venture.

Therefore, I think the 10-percent mandate should be established. I agree with the chairman of the taxation and finance committee that we really haven't had enough information about the subject matter; however, I would urge the delegation to include a 10-percent reserve requirement now, and we can reconsider it on Second Reading. I do think prudent financial management would dictate that we have at least a 10-percent reserve, which we can reconsider over the next few days. I think it is extremely important that we do consider adding this reserve requirement, something that will be maintained in the Constitution probably for the next 10 years. So I urge everyone to vote for the amendment.

CHAIRMAN: Thank you, Delegate Kono. I believe Delegate Kono was the mover and he did not request to speak first and last, so is there further discussion?

DELEGATE LEWIS: Mr. Chairman, just one point of clarification. I will not speak further on the merit, except to indicate that the statement was made that, with respect to Hawaiian homes commission land, in the event there is a default they might be required to sell the land. Just as a matter of information to the delegates, as I indicated earlier the Hawaiian homes commission is prevented from pledging its land as security; therefore, if there was a default, there would be no requirement that these lands be sold.

CHAIRMAN: I'll have to count that as a debate against the amendment.

DELEGATE STERLING: Mr. Chairman, I have a question, and perhaps the chairman of the taxation and finance committee could help me out. I believe that the Hawaiian Homes Commission Act has a home-loan-guarantee section in it...

CHAIRMAN: Is that the question?

DELEGATE STERLING: ...as one of the funds. Yes, this is a question, because I don't want to be voting for this proposal without this question being answered. Perhaps if the chairman can answer it--

CHAIRMAN: Thank you, Delegate Sterling. Would the committee chairman like to respond to that question?

DELEGATE LEWIS: The chairman is not that familiar with the contents of the Hawaiian Homes Commission Act; however, it is presumed--I would assume that this authority does exist because the legislature, in a series of special acts, has authorized funds for these loans and this was contained in the--excuse me, it is contained in the Hawaiian Homes Commission Act, the original act; and in Act 229 of this year, passed by the legislature, they authorized an additional \$10 million for these purposes. So the chairman would have to support the statement that there is authorization for these home loans.

CHAIRMAN: Thank you, Delegate Lewis. Is there any further discussion? If not, the question on the floor is to amend subsection (h) on page 14 of the committee proposal, to read as in Amendment No. A3. All those in favor please signify by raising your hand. All those opposed, by the same sign. The noes have it, and the amendment is not carried.

The next amendment, No. A4, is offered by Delegate Peterson. The Chair would entertain a motion. Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, I move that we adopt Amendment No. A4, which is an amendment to Article VI, Section 3. Essentially, this is a housekeeping amendment, and I refer you to--

CHAIRMAN: Delegate Peterson, may we have a second before we start discussion?

DELEGATE CAMPBELL: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Delegate Peterson's Amendment No. A4. Any discussion? Delegate Peterson.

DELEGATE PETERSON: I refer you now to page 8 of the committee proposal, to the paragraph beginning on line 6, between lines 6 and 15, which has been deleted in its entirety by the committee. This portion, which refers to the use of debt for the purpose of operations in the current year, has been transferred to subsection (i) on page 14. Subsection (i) is another of several exclusions from the debt limit. The change is that rather than being a proscription which does not allow any use of debt for current operating expenses, this has been moved to the section which would only eliminate--or which would not allow any such debt to be counted against the debt limit. What we're saying is that it has been watered down by moving it to subsection (i). Any debt issued for current operations should be excluded from the debt limit; by placing it here, we do not allow the use of debt for current operations for any reason, as the present Constitution allows. What we're concerned about is that in many places where there are financial difficulties, they begin to borrow money to use for current operations. An example we could use would be somebody going to the bank to borrow money to buy food and pay the rent, to take care of current needs. This is not a financially sound way of financing a family or a government, and in order to prevent such use of debt for current operations, we would like to add a simple statement such as in the amendment proposed, which would not allow any debt obligations to be issued for current operations. By transferring this section to subsection (i) on page 14, it merely says that any debt issued for current operations shall not be counted--or shall be counted against the debt limit, and rather than just counting it against the debt limit, I think we should eliminate its use altogether.

CHAIRMAN: Thank you, Delegate Peterson. Further discussion? Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak against the amendment. Before getting to the substance of the amendment, I'd like to make one comment--that it has not been watered down by moving it to subsection (i). As indicated in my opening remarks, there was a restructuring of the entire debt limit section because the original section, which was established by the 1968 constitutional convention, provided for exclusions from a debt limit that was related to authorizations, authorized bonds only. It had nothing to do with issued bonds. The restructuring which your Committee is recommending to the Committee of the Whole is to move from authorized debt to issued debt, and as a result there were deletions of paragraphs where the only reference was to authorized debts and paragraphs were moved around. There has been no substantive change in its present form in subsection (i) from what it was in the original section.

Turning to the merits of the proposal, this was a matter which came up before the

committee, and it was decided not to put this language in the Constitution as it might prevent the State from pursuing worthwhile programs financed by the issuance of debt. Even though the programs might not be strictly capital improvement programs, the problem is that language like "current operation," which is in the suggested amendment--while it might be intended to cover the day-to-day expenses of government, and while most of us would say that borrowing should not be applied against such expenses--could also be construed to cover other programs. For example, the State at one time authorized a veterans' home loan program supported by the issuance of general obligation bonds. This was an operating program with the State and not a capital improvements program, and it was carried in the operating budget.

Furthermore, Act 105, the omnibus housing act of 1970, authorized the issuance of \$20 million to assist low- and moderate-income home buyers in making down payments. The same act authorized \$10 million in general obligation bonds to be issued so that the State could participate with private lenders in making participation loans to qualified buyers. These programs were operating programs of government, and I believe it would be unwise for us to adopt language which could affect these as well as similar programs which the legislature might adopt in the public interest at some future time. Therefore, I urge you delegates to vote against this amendment.

CHAIRMAN: Thank you, Delegate Lewis. Is there further discussion? Delegate Peterson.

DELEGATE PETERSON: I would just like to respond to two issues that were raised by the chairman of the taxation and finance committee. The first concerns the issuance of housing loans and housing bonds; these are now authorized to be issued as special revenue bonds or revenue bonds, and will not be included against the debt limit. I would like to draw your attention to page 9 of the proposal, which gives the topic paragraph for the exclusions which we are referring to, of which subsection (i) is a part. On line 21 of page 9, we read: "In determining the power of the State to issue general obligation bonds or the funded debt of any political subdivision, the following shall be excluded"; and then turning to subsection (i): "Bonds issued by or on behalf of the State or by any political subdivision to meet appropriations for any fiscal period in anticipation of the collection of revenues for such period or to meet casual deficits or failures of revenue...." This amendment would not prevent the State from issuing tax anticipation bonds or other bonds for the purpose of getting cash in advance of its expected receipt. That's the cash-management problem. What we're attempting to do is to prevent the issuance of bonds to pay for current operations, which would be allowed by having the exclusion under subsection (i), which are exclusions from the debt limit. All this means is that if they issued bonds for current operations, they would not be excluded from the debt limit; so they would be counted against the debt limit, but they would still be allowed. Because of the many problems associated with issuing debt for current operations, I urge you to vote for this amendment.

CHAIRMAN: Thank you, Delegate Peterson. Is there any further discussion? If not, the question on the floor is to amend Article VI, Section 3, by the addition of the paragraph in Amendment No. A4. All those in favor of the amendment, please signify by raising your hand. All those opposed, by the same sign. The yeas have it and the amendment fails.

DELEGATE BARR: Mr. Chairman.

CHAIRMAN: Delegate Barr.

DELEGATE BARR: Before we proceed to section B, I would like the Chair to note that I have an amendment that I would like to offer to section A, but it was not prepared in time to give to the clerk yesterday at 5:00. The clerk informs me that it may be distributed tomorrow, so I would like the delegates not to consider this matter forever closed in our Committee of the Whole.

CHAIRMAN: Fine, thank you very much, Delegate Barr.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: Question and information: In the event that we are able to complete our deliberations on the 21 amendments today, would it be possible to have this amendment distributed today so that we can complete the deliberations?

CHAIRMAN: I'll refer that question to the clerk, but if they are not able to print them today and we do not continue tomorrow, your amendment may have to wait till Second Reading.

DELEGATE BARR: I would have to object to that. I offered to print them and distribute them myself. I'm trying to cooperate, but I don't think the Convention should be unreasonable.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: It would seem that, in light of the fact that it's only 9:55 now, that this could be printed and distributed while we are still deliberating today and perhaps taken up at a later point.

CHAIRMAN: If you'll excuse me, I will check with the clerk. If there's no objection, the clerk shall print the amendment and have it ready for later today.

We will now go on to the group B amendments, on special purpose revenue bonds, and we have three amendments.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: Before getting into a discussion of special purpose revenue bonds, the chairman of your Committee on Taxation and Finance merely wants to declare, for those who have not heard this in prior testimony, that your chairman is an employee of Hawaiian Electric Company; and in these special purpose revenue bonds, one of the categories that would be covered would be financing for local electrical facilities, which would apply to Hawaiian Electric Company. I merely wish to make this statement for the record.

CHAIRMAN: Thank you, Delegate Lewis. The statement shall be recorded in the journal.

DELEGATE KONO: Mr. Chairman, I'd like to move for the adoption of Amendment No. B1.

DELEGATE CABRAL: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Amendment No. B1. Is there any discussion? Delegate Kono.

DELEGATE KONO: Mr. Chairman, I wonder whether now, at the initiation of all the items in this section on special purpose bonds, it wouldn't be in order to hear the minority report that was prepared by Delegate Lee, because it does relate to all matters under this section.

CHAIRMAN: Delegate Kono, when I offered Delegate Lee the opportunity to speak to her minority report, she did summarize it and said she would speak to the particulars at the time of her amendment. If she wishes, she could also speak to this amendment at the same time.

DELEGATE KONO: Okay, thank you very much. I would refer the delegates to Minority Report No. 12 that was prepared by Delegate Lee regarding the subject of revenue bonds, as I think it will clarify what I intend to speak to. My particular amendment calls for the removal of industrial, manufacturing and processing bonds from consideration under the special purpose revenue bond section. If the delegates will recall,

special purpose revenue bonds are now authorized to be issued for various types of private industry, including nonprofit hospitals, utilities and housing programs, in addition to the industrial, manufacturing and processing firms.

The reason I would move to eliminate industrial bonds is that I feel this is the only real private industry that is being given this special treatment in the entire section. Although I do agree with the need for certain types of bonds, such as housing bonds--let me clarify that by saying that I think there is a socially redeeming purpose to having special purpose bonds for housing, for utilities and for private hospitals, for various reasons that I will get into in a later amendment--I do not feel that the same socially redeeming purpose really applies to industrial bonds. And I think that any socially redeeming purpose that does pertain to industrial bond financing by the State is overridden by the potential for political abuse of this type of debt instrument.

The purpose of industrial revenue bonds is to encourage industry to relocate in the State of Hawaii--that's the ostensible purpose for industrial development bonds. The reason these bonds encourage industry to locate here is because tax-exempt bonds will be issued by the State on behalf of private industry. Therefore, according to information that I have, this would mean a 1-1/2- or 2-percent reduction in the interest rate that could be obtained by the industrial firm. The thinking here is that this 1-1/2- or 2-percent interest rate reduction would there by encourage firms to relocate in Hawaii. I think that this reasoning is incorrect, and this is backed up by studies that have been done on large corporations. In a study detailed in a report entitled The Reconsideration of Industrial Development and Income Tax Exclusions, the report says that when such a subsidy was passed on to one large corporation, studies indicated that the subsidy was wasted--the business had derived relatively little benefit and the plant location was not likely to be substantially influenced by the program. So I think that this type of financing will not encourage strong firms--large corporations that really have something to add to our economy--to relocate here in Hawaii. Certainly the 1-1/2- or 2-percent interest rate will not be the factor that will persuade them to locate in Hawaii. There is the argument that small ventures would benefit, such as agricultural co-ops. However, there are other types of financing the State can engage in on a small scale, including general fund revenues, cash CIP programs, and general obligation debts, that I think would better address this particular problem, rather than the direct grant of a tax-exempt bond to a small private corporation.

Also, there are problems with small industries that I don't think the State would want to be liable for. I think--not to get into politics but, the Kohala task force is an example. Only one of the six companies is doing well and I think this indicates that government does have great difficulty in determining which enterprises will succeed. Also, the tremendous litigation and investigation expenses that we're going through now demonstrate the hazards to the State, financially, in entering into any arrangement of this sort with companies that have questionable financial statements.

Now, getting into the potential for political abuse, I think that anytime a government enters into the private arena where profit potential is great, there is the inclination for political kickbacks, and there is the possibility of government corruption. Many studies indicate that, in fact, corruption does occur on a rather grand scale nationwide. I don't think this pertains to such a great extent in Hawaii, and I think one of the reasons is that we don't have instruments such as industrial revenue bonds. But just to give a few examples of the kinds of cases I'm talking about, where there is a profit potential and where there are allegations of political kickbacks--Kukui Plaza is one, and that case was one of a cost-plus real estate for low- and moderate-income housing. This means that the developer was guaranteed a profit by the city. That is not an unusual situation; it occurs in most municipalities, the reason being that for various reasons it is not in the best interest of the city to engage in competitive bidding, and therefore they give the contract out to one developer. Well, you can see the tremendous potential there; if a developer feels he's got a guaranteed \$2-million profit, he's going to be willing to give a little bit back to the people who aided and abetted him in getting that contract.

We also have a situation on the Island of Hawaii regarding the Hawaii Housing Authority, whereby a subdivision is coming up and it has been revealed now that some of the HHA bids are not actually put out on a competitive bid basis. Rather, they're just given to certain developers. So you can see the potential there for political abuse, and there are allegations now that the developers were tightly connected with certain politicians in the State.

Furthermore, in today's paper, the headline of the Honolulu Advertiser refers to the "glare of [the] GSA probe..." and the article goes on to say that "GSA personnel are suspected of having received illegal kickbacks from contractors and suppliers to the government, it was learned yesterday." So this type of thing goes on all the time. What I'm saying is that by getting into industrial bonds, we're just introducing another element of potential political abuse; we're just dangling another carrot in front of the politicians, and taking another step toward the encouragement of machine politics. And I do want to say that by referring to those particular examples, that I didn't mean in any way to be critical of the present administrations of the city or the State, but it just so happens that the potential for abuse is there. I think we all recognize it, and I think--

DELEGATE SAKIMA: Mr. Chairman, point of order.

CHAIRMAN: Please state your point.

DELEGATE SAKIMA: A question to the Chair: Was Kukui Plaza built on bonds and was the Kohala task force money from bonds?

CHAIRMAN: Is there anyone who might be able to answer that question? Delegate Kaapu.

DELEGATE KAAPU: I can only speak to the first half of the question and the answer is no.

DELEGATE KONO: Delegate Sakima, the point of my remarks is not to indicate--

CHAIRMAN: Please, Delegate Kono.

DELEGATE TAIRA: Mr. Chairman.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: If I may contribute--to the best of my recollection, the answer to the second part is also no.

CHAIRMAN: In that case, the Chair would have to rule in favor of Delegate Sakima's point of order. Delegate Kono, I'll allow you a quick explanatory comment, but please get back to the question at hand.

DELEGATE KONO: Okay, may I just return to that because I would assume that a project of the magnitude of Kukui Plaza would have to have been financed by a bond obligation of some sort, and certainly the Hawaii Housing Authority's must have been based on a bond. However, that was not the direct connection I was making, it was not the bonds that were involved; it was the type or contract that is established in real estate development. And the connection I'm trying to make here is that industrial development bonds have the same potential for political kickbacks that real estate development projects and housing projects have. I think it would be unwise for us to get into this type of thing, where the potential political abuse is great.

I'd like to summarize quickly and say that I don't see the rationale for having industrial development bonds. I think it's a specious argument to say that it will encourage large, well-financed companies to relocate in Hawaii, and I think because of the potential political abuse, that we should not engage in this type of financing. We've done without industrial bond financing throughout the history of the State, and I don't think now is the time to be getting into it.

CHAIRMAN: Thank you, Delegate Kono.

DELEGATE ALCON: Point of inquiry, Mr. Chairman.

CHAIRMAN: Point of information, Delegate Alcon, will you state your question?

DELEGATE ALCON: Is it the intention of the movant to delete the words after "to assist" in line 17 of page 6, ending with the words "general public" in line 18?

CHAIRMAN: Thank you for your question. Delegate Kono, would you care to respond to that?

DELEGATE KONO: The intent is to delete the industrial, manufacturing and processing.

CHAIRMAN: Has that been clarified for all delegates? This amendment is written a little differently. Delegate Sterling.

DELEGATE STERLING: I rise, Mr. Chairman, to speak against the amendment. The first delegate proposal that I introduced for special purpose bonds was dated July 7, and I did believe it was a matter for the Convention to consider. Regarding my immediate predecessor's comments, at the hearing it was very clear from the investment banking companies, Blyth Eastman Dillon and E. F. Hutton, who finance many of these bonds, that they have very, very tight controls. I'd like to make that very clear.

What we're talking about here in special purpose bonds is the fact that we do have a debt ceiling and the special purpose bonds will not affect the debt ceiling of the State. We do have a flaw, and that's the fact that only 12 percent of the total land area of the State of Hawaii is so limited and carries the full load. This includes residential and industrial on the commercial properties. We also have another flaw and that is the cost of capital, how much does it cost us. We are a state and we have to go out and borrow money. When you consider the fact that on tax-exempt bonds there are moneys available to our state at 6-1/2 percent--these are not my figures, these are figures from the investment bankers--as compared with 9-1/2 percent, it's a tremendous savings, the difference between 6-1/2 percent and 9-1/2 percent. And according to some of the testimony at the hearings, this amounts to millions of dollars. And we had assurance by the investment bankers that they had very tight controls; they were talking in billions of dollars that could be made available to our state. Keep in mind that we are still a buyer state and we have to compete on the open market to borrow money. Let me digress a minute. My staff researched this based on statements made by Mr. Andrew Ing, financial vice-president at Hawaiian Electric Company, that the cost of capital--any savings in the cost of capital--must be passed on immediately to the consumer. When you figure the difference between 6-1/2 percent and 9-1/2 percent--you go out and borrow \$10 million or \$15 million--that's a considerable saving.

This would also allow hospitals to expand, to meet the tremendous need, at 6-1/2 percent again a considerable saving. I'm not too familiar with the Island of Oahu, but on my Island this type of bonding would allow our present companies to expand with needed facilities by bringing in clean outside money, and we have willing bankers. This is proven in the testimonies offered and proven in the journals kept by the taxation and finance committee. It would expand operations on our Island, creating many, many new jobs. We have a lot of small companies up there, and again I'm not too worried about the government sticking its fingers in this because of the controls that would be insisted upon by investment bankers--such houses as E. F. Hutton, Blyth Eastman Dillon--and they made this very clear in their testimony before the committee. The figures again are fantastic and the states that have special purpose bonds--I think Blyth Eastman Dillon has poured billions of dollars at 6-1/2 percent into those states where this is allowed.

And again I say this is a constitutional matter because of certain IRS rulings. And I urge you very strongly, when we're looking down the line--at hospitals, industrial expansion for local companies--the difference between 6-1/2 percent and 9-1/2 percent money, the amount of jobs it would create, the fact that we are still a buyer state--we must go out to buy products, we have to go out to buy money--the savings in the cost of capital. I urge you very strongly to give special purpose bonds, including the statements included in the minority report, give this very careful consideration, because it does mean an awful lot to our State.

CHAIRMAN: Thank you, Delegate Sterling.

DELEGATE HALE: Point of information.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I think there's some confusion. I think Delegate Kono's amendment--

CHAIRMAN: Will you please state your question?

DELEGATE HALE: Yes, my question is--I assume that what you are doing in your amendment is just to delete the rest of the sentence--you're not deleting hospitals or public utilities--

CHAIRMAN: Delegate Hale, will you please address the question to the Chair?

DELEGATE HALE: Yes, I think the way it's written, it's very unclear and Delegate Sterling referred to hospitals. It's my understanding that this does not delete hospitals, and I think it should be made clear.

DELEGATE KONO: Mr. Chairman, I'd like to clarify that.

CHAIRMAN: Delegate Kono, will you please proceed to clarify that?

DELEGATE KONO: In listening to Delegate Sterling's comments, he did misread the intent of my motion. It was to delete, on line 17 only, the words "manufacturing, processing or industrial enterprises," and it in no way affects utilities, hospitals, or the housing programs.

CHAIRMAN: Thank you, Delegate Kono. This is twice now that we've dealt with this question. Are we clear? Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I rise to speak against the amendment. There are those who are against special purpose revenue bonds on a philosophical basis, applied to any category, and I at first had my reservations. There are those who oppose the application of special purpose revenue bonds to a certain category, and that is to the manufacturing, processing or industrial enterprises, which is the subject of this amendment. By having placed the first amendment last--that was offered by Delegate Izu--it forces us to concentrate upon a detail rather than upon the concept first, which is unfortunate in my view, but I must speak therefore against the amendment, on the detail.

The question of honesty in government and the misuse of governmental powers and resources, I think, is not relevant to this particular issue because it is a matter to be handled by other laws, against stealing and the like. And I wish to clarify one matter, which I would not address myself to were it not raised by the movant in support of the amendment, and that has to do with the Kukui Plaza project, with which I had some degree of contact. The project was not financed by any government bonds, it was totally privately financed. The public input was in making available to the private developer a parcel of land owned by the city, at a lease of a dollar a year for 75 years, in return for which certain things would be done through private financing that were felt to be in the public interest. And in cases like that, as in other cases, misuses can occur. These have to do with the people involved, and the correction in that type of abuse is having laws against the specific abuses and diligence in watching the project.

Now when it comes to the use of special purpose revenue bonds for manufacturing, processing and industrial enterprises, it has only one effect and that is, it makes available to those enterprises within this State the advantages of tax-free bonds; no other advantage accrues. There is no liability on the part of the State. In fact, in the language of the proposal, there is a requirement--there is a prohibition, against the use of any funds by the State for the redemption or securing of these bonds. So the lenders and the others who would make their moneys available for investment in this State, under a tax-free arrangement, could look only to those operations as their security. And I see no disadvantage, and I see great advantage, in making available for investors the tax-free benefits that might enable some of the few small, starting industries to compete more favorably in the money market. And for that reason, I cannot be against special purpose revenue bonds in any case, nor can I be against special purpose revenue bonds to apply to this particular category either.

CHAIRMAN: Thank you, Delegate Kaapu. Delegate Shon.

DELEGATE SHON: Yes, I rise to speak in favor of this amendment, and I think it is on basic philosophical grounds. Before this Convention began, a legislator warned me to look out for this proposal before it was even written, but I think it was perhaps

referred to the wrong committee. It should have been referred, in my opinion, to the committee on health and welfare, because I regard it as corporate welfare. I do not believe that the State should be handing out "freebies" to the largest and richest corporate entities that might invest, or might do business, in our State. I do not see the direct public interest in this; I do not believe that they are the ones who need help; and I do not believe that this is going to directly benefit small, marginal businesses, the ones with the highest risks. I do not believe these bonds are going to be issued for that purpose. I think the primary beneficiaries of this are those corporate entities which need this the least, and the argument that this is automatically going to be passed on to the consumer, I think, is inaccurate. Quite frequently what is passed on the consumer is whatever the market will bear, and if the corporate entities make more profits out of this, there is no guarantee that those profits are going to be poured back to the consumer by lower prices--no guarantee at all.

I think that, on basic philosophical grounds, we have to ask ourselves--who is going to benefit? why are we doing this? why do the manufacturing, processing or industrial enterprises need this? I simply don't see where this is anything other than corporate welfare.

CHAIRMAN: Thank you, Delegate Shon. Further discussion?

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I speak against the amendment. I share the concerns of the movant and the other delegates who have spoken in favor of the amendment. I was on that committee and spent many hours with those people, and with all the members of the committee, in debating and discussing and analyzing the potential--the benefits and the potential disadvantages--of this type of special purpose revenue bond.

I came to the opposite conclusion of the people who favor this amendment, and I'd like to tell you the reasons that I came to the conclusion that we should use special purpose revenue bonds. First, Hawaii is a capital-short state. We don't have the economic base that a lot of states on the mainland do to attract large amounts of private capital. Secondly, Hawaii faces severe challenges in the future if it's going to survive economically: Hawaii is, of all the states, the most uniquely and solely dependent on oil, and in the next 10 or 15 years unless we can develop alternate sources of energy, Hawaii is going to drastically suffer. Dr. John Craven--I'm sure many people have heard his talks on the potential of Hawaii to become an energy exporter by developing ocean thermal energy conversion, or geothermal energy on the Big Island and perhaps another island; the potential for developing solar conversion or windmills, or a lot of the other potentials that Hawaii has, to become energy-self-sufficient and actually to export energy.

However, all of those potentials for Hawaii depend on capital--private capital, and large amounts of private capital. Right now, without this special purpose revenue bond for manufacturing, processing and industrial uses, Hawaii is at a big disadvantage with all the other states. All the other states--except, I think, one other--I think 47 or 48 of the states all have the authority to use tax-exempt bonds in order to attract private capital. Hawaii does not have that ability right now, and I think Hawaii needs it. I think we shouldn't send our state legislature or state administration into the fight of the future, the fight for capital, with one hand tied behind their back. I think it's a potential that we have to give them; that 2-1/2 percent differential between conventional financing and tax-exempt financing amounts to many, many dollars.

Now, I'm concerned about the abuses just as some others are. However, I think that we have at least three protections against abuse in the procedures. First of all, it has to be for a public purpose. We can't use special purpose revenue bonds just to start a new store; Liberty House, for example, couldn't just go out and issue special purpose revenue bonds. It has to be for a public purpose. The legislature has to specifically say that this type of venture serves a public purpose. Without that, the bonds cannot be issued. Secondly, the executive must analyze it and be satisfied that it is a public purpose--either the state or county. So you have those two checks--you have the executive and you have the legislature. Finally, you have one other check, which is the market

itself. Private purchasers will not buy these special purpose revenue bonds unless they are satisfied that the project is feasible. There is no credit of the State that can be used to back up these special purpose revenue bonds. So there are no "freebies" given to any private company or private industry. There is a prohibition, specifically--and I would refer you to the bottom of page 6 and the top of page 7 of this proposal--it says: "No special purpose revenue bond shall be secured directly or indirectly by the general credit of the issuer"--and the issuer is the State or the county--"or by any revenues or taxes of the issuer other than receipts derived from payments...under [a] contract...." And then the last two lines of that, lines 4 and 5, it says: "[N]o moneys other than such receipts shall be applied to the payment thereof." That's an absolute prohibition in the Constitution against any moneys of the State of Hawaii being used to pay any of the special purpose bonds, even if they're in default.

So my conclusion is that although there are potentials in every government function--there are potentials for misuse and potentials for abuse--I think, as some of the other delegates have said, the way to handle that is through general laws, it's through vigilance, it's through electing good officials, but I would not want to take away from the State this very beneficial provision just because of a fear of potential abuse, and I would urge you to vote against the amendment.

CHAIRMAN: Thank you, Delegate Burgess. Delegate DiBianco.

DELEGATE DiBIANCO: I rise to speak in favor of this amendment. I am one of those delegates who was referred to by a previous speaker, one who has philosophic objections to the whole concept of special purpose revenue bonds. I've never quite been convinced that government should be involved in funding private enterprise, and as I think I once rather glibly advised the chairman of the taxation and finance committee, it bothers me that private enterprise is capitalistic when they're handing out the profits and socialistic when they're handing out the risks. That's basically, I think, what we have with special purpose bonds.

However, addressing myself to this particular amendment, I don't have the expertise in this area that I wish I had and many of the previous speakers have, but I tend to view this in rather simple terms. There's a big difference between providing special purpose revenue bonds for hospitals or for public utilities--both of which enterprises in many countries are completely public and governmentally controlled by their very nature, and in this particular country, for some reason, to some extent are owned by either private or semiprivate organizations--public utilities and what have you. It's quite a different thing, however, to give special purpose revenue bond support to manufacturing, processing or industrial enterprises. These are the private companies that don't serve any public purpose whatsoever; and, contrary to the immediately preceding speaker, there is no requirement in this particular constitutional amendment proposed by the Committee on Taxation and Finance that any activity for which a manufacturing, processing or industrial enterprise might seek the special purpose bonds--that any activity must have a public purpose. All it says is that the legislature must find it to be in the public interest. The legislature could find it to be in the public interest to expand, for example, the sugar industry, and on that basis could therefore float the special purpose revenue bonds for \$20 million, \$30 million or \$50 million simply to help the Hawaiian Sugar Planters' Association. If you read the language, where it says to assist "manufacturing, processing or industrial enterprises," what the words "processing enterprises" mean--it's just a polite term for the sugar industry. I don't think that the State of Hawaii should be putting its good name and its bond rating on the line for these private enterprises. If I was convinced, as Delegate Sterling has pointed out, that we would be opening up new jobs and we would be helping the small businessman, then I would vote against this amendment. But I don't think that the ma and pa grocery stores are going to be the direct beneficiaries, or even the indirect beneficiaries, of these special purpose revenue bonds. These bonds are going to be floated in the millions of dollars and they're going to be given out to the very biggest corporations, the only ones that the State would feel secure enough in standing behind. Those companies are going to make a large profit because they'll be issuing bonds, rather than corporate debentures, at a substantial savings to them.

There is no requirement in this constitutional amendment that that savings be passed on to the consumer. We're going to have to depend upon the good graces of the boards of directors of those large corporations as to whether or not in fact the consumer will ultimately benefit from the profits which these large corporations will make. Frankly,

I believe all we're going to be doing with these special purpose bonds--as it relates to manufacturing, processing or industrial enterprises--is that we may be lining the pockets of a few of the rich. I don't think it's in the best interest of the State to give this kind of support to private enterprise--we're not a socialist state or a socialist country. Giving money to hospitals and public utilities is one thing; giving money to private industry is quite another, and I urge you to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Lee.

DELEGATE MARION LEE: Yes, Mr. Chairman, I would like to comment on some excerpts from a Star-Bulletin article dated March 30, 1978, by Mr. Jensen Hee. Mr. Hee contends that--

CHAIRMAN: Delegate Lee, will you please state your position on this first?

DELEGATE MARION LEE: Sorry, I rise in favor of this amendment. In the article, he states that the idea of attracting new industry, as provided by such bonds, is not a viable alternative for Hawaii due to the type of economy that presently exists in the State, and that recent studies conducted by the Department of Planning & Economic Development, entitled The Hawaii State Plan Study: Economy; a Technical Study and Hawaii Economic Research Report, 1977--that these studies reveal that the primary industries in Hawaii are tourism, defense and federal civilian expenditures. And next in line would be the sugar industry, pineapple industry and diversified agriculture. Studies show a decline in the pineapple and sugar industries due to their prospective development elsewhere; so these industries would be the ones that would be bolstered by such industrial bond financing. He also states that Hawaii is not like Pennsylvania, or Alabama or any other state where industrialism plays a heavy role in the economy due to the natural resources.

I would also like to note that the increase in industrial development bonds has caused municipal bond rates overall to rise by approximately 1/4 percent, and that the avoidance of these special types of industrial development bond financing has contributed favorably in the assessment of credit quality of the State's general obligation bonds.

CHAIRMAN: Thank you, Delegate Lee. Delegate Taira.

DELEGATE TAIRA: Thank you, Mr. Chairman. I'd like to speak against the proposed amendment. The debate today has been very good; it's been one where all sides have brought up good arguments either for or against the amendment. I'd like to contribute my 1-page commentary here.

I oppose the deletion of manufacturing, processing and industrial enterprises from the category of special purpose revenue bonds as it was proposed by the committee. There are several reasons why I oppose this deletion. First, I believe that the category of special purpose revenue bonds should be kept as broad as possible so that there is potential for assisting a wide range of enterprises, and we need this very badly in Hawaii.

Secondly, the term "manufacturing, processing or industrial enterprises" constitutes a category which the internal revenue service, as I understand it, has determined will be eligible for the issuance of tax-exempt bonds. And I don't think it is in the public interest if we were to turn right around and impose a constitutional barrier for the issuance of such bonds.

I also believe that the availability of such bonds will provide an incentive to manufacturing, processing and industrial enterprises to be both careful and creative in developing projects which are beneficial to them, as well as beneficial to the general economy.

And finally, given the circumstances of a changing economy here in Hawaii, and the need for us to diversify our economic base, I think it would be awfully unwise to exclude from state-assisted financing those enterprises which may not be evident today but which years from now would be both desirable and helpful to the Hawaii economy.

For these reasons, Mr. Chairman, I urge that the amendment be rejected. Thank you.

CHAIRMAN: Thank you, Delegate Taira. Delegate Hornick.

DELEGATE HORNICK: I speak in favor of the amendment, and my concern is that what is supposed to be the check on this system is its greater danger. I feel we are paving the way for legislators and would-be legislators to be approached by wealthy businessmen with the offer that "I'll get you elected if you get me my special revenue bonds."

CHAIRMAN: Thank you, Delegate Hornick.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I wonder if someone could answer a question. On page 8 of the standing committee report, in paragraph 3 it says: "While the legislature clearly has the authority to authorize special purpose revenue bonds, their exclusion from the debt limit is a constitutional matter." My question is--what we are talking about then is just excluding this from the debt limit, by taking these words out; we are not stopping the legislature from issuing special purpose revenue bonds for these purposes. Is that true?

CHAIRMAN: Thank you, Delegate Hale. Before I open this up for discussion, as to who might want to answer this question--previously someone asked if the Chair would respond to the question, and the Chair does not care to. Also, the chairman of the Committee on Taxation and Finance has stated, for the record, his potential conflict. However, because of the subject matter, the Chair at this time--if there are no objections from the floor--would like to allow the chairman, if he so wishes, to respond to such questions of information. If there's no further objection, the question is on the floor. Would the chairman of the taxation and finance committee wish to respond to Delegate Hale's question?

DELEGATE LEWIS: Yes, the chairman, with those guidelines, would be happy to answer the question. The reason we're talking about counting against the debt limit is that a decision was made--and the chairman would say it is a proper decision--that areas such as revenue bonds or special purpose bonds, which are self-supporting enterprises, not be counted against the State's limited general obligation funding ability.

In other words, general obligation bonds should be reserved for providing funds for educational facilities and such facilities that cannot be self-supporting. This is the reason that the legislature, although they may authorize special purpose bonds or revenue bonds and have them count against the debt limit--the legislature, in its wisdom, chose not to do this. So this is the reason why constitutional language is needed. And the chairman might add that, as a result of the supreme court case that took place 3 years ago in relation to antipollution revenue bonds--this question was addressed by the supreme court, and the supreme court did find that antipollution revenue bonds were for a public purpose, but they did not find that they fit within the existing definition of revenue bonds, which, I might add, was drafted in 1968 before the environment became popular and before antipollution revenue bonds became a factor.

DELEGATE HALE: Thank you. Could I follow up the question? My next question is--if the State issued special purpose revenue bonds and they did count against the debt limit, why does the State object to this? My question being that if manufacturing and industrial development is in the public interest, and it has a public purpose, why not count it against the debt limit?

CHAIRMAN: Would the committee chairman wish to respond to that question?

DELEGATE LEWIS: The legislature obviously would have the option to do this. Your chairman's response was mainly on the basis that, since there is a limited pool of available funds that should be used for general obligation bonds, where you pledge the full faith and credit of the State--in other words, the taxing power of the State--that this group of bonds should be limited to those activities which are not self-supporting, such as providing for educational facilities. Well, education would be one of your primary examples--park facilities would be another example. I might add, Mr. Chairman, with one other point--may I respond to one question?

CHAIRMAN: Which question is this now?

DELEGATE LEWIS: Point of information. By approving this amendment--with respect to a statement made, with respect to processing and the sugar companies being able to use this, the word "processing" was added because this would allow the sugar industry to float antipollution revenue bonds--that's the only method with which they could do it. If this amendment is approved, this would prevent the sugar industry from floating antipollution revenue bonds or antipollution special purpose bonds to cover such things as the pollution problem that was addressed on the Hamakua coast of Hawaii, and other similar problems. So it's just a matter of information, there's actually--

CHAIRMAN: Delegate Lewis, I believe there was no direct question on that, so we would probably want to confine that to someone else's debate. Is there any further discussion on this matter of Amendment No. B1? Delegate Hoe.

DELEGATE HOE: I'd like to speak in favor of the amendment proposed by Delegate Kono. I feel that there are many funds already available to large enterprises in Hawaii, from matching funds on both state and federal levels and in some cases subsidies. And if we are indeed encouraging additional jobs, for example, which might be in the public interest, it seems to me that what we should do is encourage smaller-scale enterprises rather than the larger-scale enterprises. And therefore, I would speak in favor of this amendment.

CHAIRMAN: Thank you, Delegate Hoe.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Before we proceed, Delegate DiBianco, do we have any other delegates who wish to speak for the first time to this amendment?

DELEGATE NOZAKI: Mr. Chairman.

CHAIRMAN: Delegate DiBianco, would you be willing to wait until we start the second round? Delegate Nozaki.

DELEGATE NOZAKI: I speak against the amendment. Our state economy appears strong but in actuality it's tenuous, as we depend on tourism, agriculture and the military. This part of the proposal would result in a sturdier income and therefore a broader economic base, by encouraging the development of diverse ventures. It would stimulate related business activity and provide employment that supports the objectives of government agencies, such as the Department of Planning & Economic Development or department of agriculture. Some of these businesses, which are important to our economy, could flounder under normal market conditions. Therefore, I see a need for an option such as this.

Many other long-range benefits can be foreseen by supporting this proposal. In case of a military pullback or a drop in agriculture production, our economy would be in serious jeopardy. However, if we provide the opportunities to broaden our economic base, the negative impacts would be lessened. For example, if our truck farmers could obtain funds for processing plants, many possibilities become available, such as fumigating, packing and shipping fresh fruits or even freeze-dried fruits for export. We have many exotic foods here, for which there is a market; even marketing canned preserved fruit is a promising venture. Opportunities such as these would create new jobs and increase revenues as well as strengthen our economy. The greatest benefit is that this is one way we can encourage and stimulate the private sector in times of economic need.

CHAIRMAN: Thank you, Delegate Nozaki.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Yes, I have another question that was raised by Delegate Lewis' last answer. It's my understanding that the sugar-processing companies had until this year to do something about pollution. How did they solve this problem, since this was not possible under the legislature's law that was ruled unconstitutional? How did they solve the pollution problem?

CHAIRMAN: Thank you, Delegate Hale. Does either the committee chairman or anyone else wish to respond to that question?

DELEGATE PATY: Mr. Chairman.

CHAIRMAN: Delegate Paty.

DELEGATE PATY: They went to the same sources they normally go to for financing any project and have to pay the premium in order to accomplish it.

DELEGATE BLAKE: Mr. Chairman.

CHAIRMAN: Delegate Blake.

DELEGATE BLAKE: I'd like to speak against the amendment. We discussed this long and hard in the taxation and finance committee and I too am in favor of--I mean there are many checkpoints needed to protect--to see that none of these funds are expended foolishly or to curtail some of the misgivings on contributions, etc. But we are tight for money, this is true. What was just said about pollution from the plantations--I know this is a big problem. Way back in 1964 when the federal government first came in to talk about water pollution, and it seemed like the entire Hanalei coast was going out of business-- And all of these things do cost money, and these companies represent much of the workforce throughout the State of Hawaii, and as Delegate Burgess mentioned a while ago when he covered the thing--I thought rather thoroughly--what we did in the committee--

I certainly speak in favor of the proposal and ask you delegates to vote against the amendment.

CHAIRMAN: Thank you, Delegate Blake. Any further discussion? Delegate Ontai.

DELEGATE ONTAI: I have a question, prefaced by a statement.

CHAIRMAN: Please make your statement very short.

DELEGATE ONTAI: Okay, it seems to me that this proposal as written by the committee--there is no prohibition against a small manufacturing or processing company getting into the act and getting some of the goodies that this proposes to give, and my question is--to whoever can answer--how would it work if a small manufacturing or processing firm, say with 20 workers, would like to borrow \$100,000 through this special purpose revenue program? How would it work--is it possible? or is it so small a figure that they'll be laughed at and told it's impossible, it's not workable. Can someone answer that?

CHAIRMAN: Thank you, Delegate Ontai.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Are you going to respond to the question, Delegate Hale?

DELEGATE HALE: I will attempt to answer that and then I will speak for the amendment. I'm president of a local development corporation organized under section 502 of the Federal Small Business Investment Act. We are authorized to lend up to--the Small Business Administration is authorized to lend up to \$350,000 for any small business--which would take care of your concerns, Delegate Ontai.

The State has a capital loan program in which they can contribute to the local share, which is 20 percent--the business might have to come up with something, where a local development corporation could take the business's share of that 20 percent. We have financed two small businesses--three small businesses on our Island, one of which went belly-up and the county took it over and bought it out. But the other two, with all the restraints by the Small Business Administration, are still very much alive and are paying back their loans. And that's the reason--that was the example I was going to use to speak for this amendment. There are procedures in the State, through the federal government, through the state government capital loan program, for small businesses--

and from the Small Business Administration to take care of any business up to \$350,000, which is considered small business. What we are talking about here, in this amendment, is eliminating--

CHAIRMAN: Delegate Hale, may I interrupt you at this point to see if Delegate Ontai's question has been answered, before you start proceeding into your--

DELEGATE ONTAI: Not quite. I live in Ewa Beach and supposing I want \$100,000. How would I go--

CHAIRMAN: Delegate Hale, will you please be seated? Delegate Ontai has the floor.

DELEGATE HALE: I can answer that.

DELEGATE ONTAI: How would I go to Kona to use your program? I'm from Ewa Beach--

DELEGATE HALE: I can answer that too, Mr. Chairman.

CHAIRMAN: Delegate Hale, will you please proceed.

DELEGATE HALE: There are small business, local development corporations organized in every area of this State and if you'll just contact the Small Business Administration, you can find out where the local development corporation is in your area.

DELEGATE KAAPU: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: My point of order is this. The question that was raised by Delegate Ontai was how a small business could use this particular revenue source and the answer given by Delegate Hale concerns other forms of financing. I believe that she should confine herself to answering the direct question as to how a small businessman would use this source.

CHAIRMAN: Your point is well taken, Delegate Kaapu.

DELEGATE HALE: All right, my answer to that is that--

CHAIRMAN: Delegate Hale, he is correct because this source of financing is not available at this time, and therefore you are referring to a source of financing that might be different from the question on the floor.

DELEGATE HALE: That is true. I am referring to a source of financing that Delegate Ontai could use now. This is a source of financing that will become available if and when the people approve it, after we recommend it. But what I'm saying is that, in no case can I see that--

DELEGATE KAAPU: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Hale, are you ready to speak for or against the amendment?

DELEGATE HALE: Yes, I'm trying to speak for the amendment, if I'm allowed.

CHAIRMAN: Okay, before you go on, I'm not sure if we have satisfied Delegate Ontai. I would recommend, Delegate Ontai, that if you don't have a pressing need, could you speak to someone during the recess?

DELEGATE ONTAI: Well, I thought since the question was brought up that this only helps the big businessman--I thought it would be helpful for us to know how it helped small ones, perhaps to answer the questions of the various delegates who have talked about the small businessman.

CHAIRMAN: Okay, the Chair will recognize the chairman of the taxation and finance

committee to try to speak to this question, with regard to what might be the situation should this proposal pass. Delegate Hale, will you please be seated?

DELEGATE LEWIS: As I understand the question from Delegate Ontai, Delegate Ontai wants to know how this special purpose bond could be used for the category that is proposed to be deleted, particularly with respect to smaller businesses. It is my understanding that what would happen--that this would be enabling constitutional language which would allow the legislature to then set up guidelines, and the guidelines could be as strict as the legislature wanted to impose; and in turn the legislature would allow the executive branch of government, perhaps the Department of Budget and Finance, to then make a determination as to what enterprises--if this is a processing, or a manufacturing or industrial enterprise--would qualify. There is nothing in here to prohibit the smaller industrial or manufacturing or processing enterprise; obviously if the enterprise is too small, it may not be financially feasible to go into the costs involved on this type of financing, but there is no limitation as to size, and the ultimate decision would be made by the Department of Budget and Finance.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE HALE: May I now speak for the amendment?

CHAIRMAN: Yes, Delegate Hale. I will allow you your full 10 minutes, but at another time I will deduct the amount of time that you had previously spoken to the amendment.

DELEGATE HALE: Thank you, I shall not speak for 10 minutes.

CHAIRMAN: Proceed, Delegate Hale.

DELEGATE HALE: I would like to speak for this amendment, because I don't believe this is going to help small business. I believe it's designed only to help large businesses that can help themselves and which really don't need this kind of help from the State. I can't see the State going into a program of borrowing money for small business. We have the Small Business Administration on the federal level; we have a capital loan program on the state level, where the State can, right now, out of general fund money, loan money to small businesses, in cooperation with the Small Business Administration. And what this amendment addresses itself to is some new large enterprise--manufacturing enterprise--or some existing large enterprise, such as the sugar company, using the credit of the State to get low interest money. I really don't see how that can in the long run be necessarily in the public interest. I think it has been proven that the sugar industry was able to go out and get the money for their pollution problems on the market and they have been able--through other ways, through federal legislation--to keep the price of sugar up to stay in business. This will not really solve any problem.

I think if we look at the example of the Commonwealth of Puerto Rico, which used tax exemptions and bond financing and cheap labor to get industries to Puerto Rico, we will find that in the long run many of those industries have now found that the labor is not cheap and the taxes are not small, and that the incentives given to them were not realistic enough for them to stay in business in those areas. Our problems are much more difficult than just capital financing: there are problems of isolation, problems of transportation, problems of market, and all of these have to be solved. And just to say that we're going to offer this incentive to large enterprises by using the state credit to come here and locate, I think, is not in the public interest, and it violates my principles and my belief that the public fund should not be used to stimulate, or to actually underwrite--stimulate, yes, but not underwrite--private enterprise. I think when we begin to do this, we are violating the very basic concept of free enterprise, for which I stand. And I speak for this amendment.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE PATY: Mr. Chairman.

CHAIRMAN: Delegate Paty.

DELEGATE PATY: Thank you, Mr. Chairman. I'm speaking against the amendment. I think there was some concern being expressed here that should this amendment pass--

those speaking in favor of the amendment--that this would provide safeguards against large businesses dipping into the public till, and I don't think that's the case at all.

I think we have to face facts, we have to recognize that there are very few profitable businesses of any large size in Hawaii today. I think most of the sugar companies are barely above marginal. My firm is one of the best in the business and I don't know that we're even going to make a profit this year. But what I do want to emphasize is that what we're looking at is the question of trying to help some of these companies solve the problem of pollution control. The amount of money required to take care of discharge, to take care of smoke emissions, to take care of waste-water controls, is absolutely staggering. The amounts of money that have to go into these things contribute not one cent to the bottom line--albeit desirable, albeit they should be done, albeit in the public interest. But the fact remains that they are funds that are necessary, that would have to be acquired from the same sources that are necessary in order to provide a return on profits. If you're going to have to put in \$200,000 to help with your stack emission, you're not going out and buy the new tractor that you so badly need in order to get the job done, to stay in business.

I think it's unlikely, under the present situation, that the sugar companies would take advantage of the special purpose revenue bonds for pollution-control purposes. Many of the projects have already been taken care of, and I think it does afford the opportunity to do so if it becomes necessary; and I say do it, because some of these companies, if they don't solve their pollution problems, are going to face a very tough time in the next few years in deciding whether to stay in or not stay in the sugar business. And whether they do or don't may depend upon how much money they've got to put up in order to take care of the very stringent water controls and stack-emission controls and other things that are required today.

And so I'm suggesting--let's not use the sugar business as the straw man, as seems to be a popular thing with some people here, and recognize it as a very substantial, basic kind of industry that has some very deep problems; that might possibly, under some conditions, make use of the special purpose revenue bonds--and I don't know really that they would, but it's there if they do--and then look at this with the idea that if they are helped, if they are able to solve the kinds of problems that face them, then they are going to be able to afford the substantial economic base that we depend on so much. But if they don't have some of this help or if the help is not available to them, down the road someplace it may be. Now I'm not trying to put any scare tactics out, it may result that they would have to decide that, all things considered--the price of sugar is a very volatile thing and certainly we see no possible likelihood it's going to go very far in the future--that they may have to decide that it's not worth staying in the business. But this does afford the opportunity for that option, and for that reason, Mr. Chairman, I would recommend that we vote against the amendment.

CHAIRMAN: Thank you, Delegate Paty. Before I proceed, we have had 14 delegates speak for the first time. The Chair will encourage everyone else to speak for the first time but will also start to recognize people for the second time. However, Delegate Crozier was up before Delegate Shon, so the Chair will recognize Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman, I'd like to speak for the amendment. First of all, it's my impression that this type of mechanism--to give big manufacturers, or whatever processing people, an opportunity to come in and help out the economy--is usually used for economies that are depressed, and I don't think our State is in a depressed state at the moment. So I would speak against this.

I'm really into seeing our State become self-sufficient, and I could see how this "processing" could take care of agriculture; but it would deal with these big agribusinesses, and I don't think our intent is to have big business come in and start farms. I'd like to see where the small farmer has a break.

CHAIRMAN: Thank you, Delegate Crozier.

DELEGATE ALCON: Mr. Chairman, I rise on a point of inquiry.

CHAIRMAN: State your point of inquiry, please.

DELEGATE ALCON: Mr. Chairman, is the State going to be floating so many millions

of dollars worth of special purpose bonds every year, or is it going to be floated project by project?

CHAIRMAN: Is there anyone who wishes to respond to that question? Delegate Lewis.

DELEGATE LEWIS: The response would be that it would be after enabling legislation. If this were to take place, then it would probably be dependent--it depends on the industry involved, whether it's housing, or for a program of various housing projects. It would not necessarily be project by project, but it would be whatever loan requirements were needed in that particular year. In other words, it's not necessarily on a project-by-project basis, but it would be up to the Department of Budget and Finance to make the determination; they would make the ultimate determination as to what would be included.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE ALCON: Mr. Chairman, may I rise for another inquiry, please?

CHAIRMAN: Please be brief, Delegate Alcon.

DELEGATE ALCON: Very brief, as I always am. Is there a ceiling to the amount of the special purpose bonds that the State can issue?

CHAIRMAN: Does the chairman wish to respond to that? Very briefly also.

DELEGATE LEWIS: There is no ceiling. The ceiling would be imposed--the legislature could impose the ceiling at any time it wishes, and the Department of Budget and Finance as a further check could impose the ceiling at any time it wished.

DELEGATE KONO: Mr. Chairman, may I further clarify that point?

CHAIRMAN: Delegate Kono, proceed.

DELEGATE KONO: Speaking just to that particular question, there is no limit to the amount of total authorizations of special purpose bonds. However, done on a project-by-project basis, there is an IRS limitation of \$5 million on the amount that can be issued for any particular project, and I believe that applies for a 3-year period.

CHAIRMAN: Thank you, Delegate Kono.

DELEGATE BLAKE: Mr. Chairman, a question.

CHAIRMAN: State your question, please, Delegate Blake.

DELEGATE BLAKE: I would appreciate it if the Chair would clarify this point of who is actually responsible for special purpose revenue bonds. Is it similar to the GO bonds, or isn't it? Is the State of Hawaii responsible--or who's going to be responsible? I've heard this come up with two or three speakers, and I think clarification is needed here.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: Can I respond to both previous speakers? The \$5-million limitation is limited to those--

CHAIRMAN: Delegate Lewis, please, we do have just that one question on the floor. Would you respond to Delegate Blake's? Otherwise, you would start getting into the debate.

DELEGATE LEWIS: No, I do not wish to enter into debate, merely clarifying. In answer to Delegate Blake, there is no credit of the State pledged; in fact, there's a provision that prohibits the State from ever paying any debt service. So there is no state obligation, and that's contained in the language of the proposal.

CHAIRMAN: The Chairman doesn't want to cut off the questions, but we do have delegates wishing to speak for and against the amendment, and I'd like to proceed with that. Delegate Blean.

DELEGATE BLEAN: Thank you, Mr. Chairman. I rise to speak in favor of the amendment and against the concept of private special purpose bonds. And if you will allow me a few minutes to digress, because my objections are primarily philosophical and I would like to explain why. We seem to be entering into a very shady philosophy in our country, where we have socialism for the rich and free enterprise for the poor. I think this is a dangerous concept and I would like to dwell a little on my personal background, why I think this is dangerous.

It was 10 years ago this month that I finished a year in service as a VISTA volunteer in North Carolina, when I was much younger and I think much more idealistic, in an age which was much more idealistic--the late '60s. And I worked to try and get better housing, better medical care, better jobs--to work for the rights of minorities and the poor and the disadvantaged in this country. My biggest stumbling block was the big businessmen and their philosophy, which said in essence--why do we have to give handouts? why do we have to have a welfare state--this is socialism, they're lazy, why don't they go out and get a job? why don't they go out and work? I heard this philosophy from the National Association of Manufacturers, from the American Medical Association, and all the other big business lobbies in this country, and it's the main reason that we still have the major social problems and medical problems that we do in the richest country in the world. And I think that's a disgrace. But when big business gets in trouble, when they have a problem, they're the first ones to go to the government saying--give me a subsidy, give me a tax break, help me out, bail me out, how do I go and feed at the public trough. And that's what this bill is, and I think we have to call it for what it is: this is a big business payoff proposal, and I think it's wrong.

CHAIRMAN: Thank you, Delegate Blean. Delegate Shon, for the second time.

DELEGATE SHON: Yes, I'm speaking in favor of the amendment. First of all, I'd like to say that if this section was specifically for antipollution, I might have a very different attitude toward it, but when I originally lobbied for this kind of thing, it was on behalf of antipollution bonds. As I understand it now, it's no longer antipollution bonds--that's only one little part of it--and I would like to know somewhere further in the debate why this isn't limited to that.

Secondly, I detect that one of the purposes for this may very well be to further encourage the location here of manganese nodule-processing plants, and I would just like to give you my perspective of why this would not be needed for encouraging the location of manganese nodule plants. First of all, there is this tremendous amount of international money involved in this. The amount of money that we could assist in this, I think, would not be that significant, and the multinational corporations that are interested in coming here, in terms of the manganese nodules--even if there were no prospect of geothermal energy, even if they were totally dependent on oil--it still would be very profitable to have a processing plant in Hawaii, because the percentage of oil that is extracted from manganese nodules is relatively small, compared to the nodule itself, so that by reducing the nodule to its usable ore, there's a considerable saving in transportation costs; and the major hangup or inducement, or encouragement or discouragement lies more in the area of what do you do with these chemically treated tailings. It's not necessarily an economic incentive that they're looking for, but rather an environmental incentive for dumping in the ocean and for doing other things. But I do not believe that the multinational corporations are dependent upon this kind of revenue bond to locate here in Hawaii. So for those of you who are thinking--gee, we need all the spin-off jobs from manganese nodules and we've got to have these bonds for that--I don't believe that that is true. The amount of money involved, the amount of commitment they are making, the amount of savings in transportation costs is just going to be overwhelming and this would not make that much of a difference, I do not believe.

But I would like to reiterate that I think the antipollution-bond aspect of this is worthy of some consideration, if that was just what this is; but if this is for anything--for inducing people to come here for many, many other purposes--then I think it's unfair to simply say--oh, this is just to help that particular problem. If it's just to help that particular problem, it should specify, it should be limited to that.

CHAIRMAN: Thank you, Delegate Shon. Delegate Sterling, for the second time also.

DELEGATE STERLING: Mr. Chairman, I rise to speak against the amendment. I introduced a bill on July 7--I'm a minister, I receive \$50 a month from six churches in my Kona coast area. I did not participate in any of the majority caucuses--this is not a big business. The proposal that is being bandied about here addresses itself to the concerns of my constituents, of why Hawaiian people are leaving the Hawaiian Islands--because there are no jobs. I didn't confer with the sugar [industry people], or anyone else. When this thing first came up, I went to Fred Bennion to ask him what we could do because we had a ceiling and because we had a floor--what could we do to keep people home. And he said--Leon, your best bet really is to find the definition of special purpose bond.

The taxation and finance committee report did not change section 2. Still it's for a public purpose, the guidelines are simple; it's up to the investment bankers whether they finance these projects or not. Basically, my original proposal, No. 43, on economic development bonds--these are notes that I made even before I ran for the Con Con. I meant to provide an economic return through capital investment, more production, more production capacity, more jobs, more property and payroll taxes. These types of bonds combine the advantages of public financing with the responsibilities and risks of private ownership in operation. The assumption of such risks by the private sector enables them to take advantage of certain federal tax benefits. I resent it very much, as the mover of the original proposal, to think and to imply that I went into consultation with big business and multinational corporations. This again is slanted to the needs of my Island, why young people are leaving--because there are no jobs. I think this is the primary purpose of the bond. I didn't even consider multinationals coming in here. I doubt if Blyth Eastman Dillon would give \$10 million, \$15 million or \$20 million to the sugar companies, seeing how precarious the sugar industry is and how subject it is to the whims of Congress. I doubt that they could qualify for these kinds of loans.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Hale.

DELEGATE HALE: Could I ask another question that is pertinent, I think? And that is--was there any testimony before the committee of any business that said they would come to the State of Hawaii if we add this in our Constitution?

CHAIRMAN: Thank you. Is there anyone who wishes to respond to that question, as to testimony given before the committee? Delegate Lewis.

DELEGATE LEWIS: There were no particular witnesses that came and addressed that question, Delegate Hale.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE HALE: Thank you. Then I would like to speak again for the amendment.

CHAIRMAN: This would be your second time?

DELEGATE HALE: Yes, second and last time, and I won't take 5 minutes. I've been concerned all of my political life--and really adult life--as all of us are, with economics in a very practical way. I subscribe to the philosophy that what is best for our State is 100 small businesses each hiring 10 people a piece, rather than one big business hiring 1,000 people. And the reason for this is that if 50 percent of them went belly-up, as I supposed the statistics show for small businesses, you would have only 500 people out of work. When one big business hiring 1,000 people goes out of business, then you have 1,000 people out.

I think what we're talking about here is really a way to help a large concern, because we are certainly not going to float bonds for our State for anything less than millions of dollars. We're not talking about peanuts, we're not talking about hundreds of thousands of dollars. There are programs, there is general fund money, there are state programs to help people in the small farming--in small businesses and in small industries. What we're talking about is pledging the State to pay for or to underwrite--or to use the State's credit for large business. And I'd like to give you one example on our Island. We have

in our statutes what is known as improvement district bonds. Our county council floated over a million dollars for a development in the southern part of our Island, a real estate development--to put in water, roads, a golf course, tennis courts, and all the other developments for this real estate project. The real estate project didn't go: the golf course is still there, the tennis courts are still there, the roads and the water are there, but there are no people and that project has gone; they have defaulted on the bonds that were floated for this project and there is a real question--even though the law says that the County of Hawaii is not back of those bonds, and our credit was not pledged--there is still some moral obligation and there are even legal problems that are now being worked out in court as to exactly where we stand, and certainly the County of Hawaii has gotten a bad name for improvement district bonds because of this project. And I can foresee that a large multinational corporation that needs millions of dollars could use the state credit and come in here and start a big plant of whatever kind, and hire a lot of people. If it's not economically feasible with private capital to do this on their own, then I don't see why the State should underwrite this. It's a matter of philosophy that we're talking about here, really, and the philosophy is--do you think the state credit should be used to finance large business--and I say no.

CHAIRMAN: Thank you, Delegate Hale. Delegate Yoshimura.

DELEGATE YOSHIMURA: Mr. Chairman, I am speaking against this amendment. As an advocate of the small businessman and small farmers, let me say that leaving in this method of financing would enhance the economy of the State as far as the small businessman and farmers are concerned.

To refresh your memory, the counties--especially the County of Hawaii--are encouraging this type of financing to aid the flower growers, farmers and others by locating them in industrial parks or cooperatives with stringent controls, where the State, through this method of financing, can build the structures or empty shells and other improvements where each small-time entrepreneur can rent stores and space for use. For example, in Hilo we do have an old Hilo airport area where industrial parks can be created. And in Kona we have state-owned industrial areas adjoining the Kailua airport.

It also can be used to create cooperatives where the government has forced people to move out of rehabilitation areas--for example, relocating the market co-ops in the Chinatown area to near Fort Armstrong. By these examples, I believe that this will finance the economy of Hawaii, and especially the County of Hawaii. And I agree with Delegate Sterling that this will keep people here.

CHAIRMAN: Thank you, Delegate Yoshimura. At this time the Chair has been requested to call a recess.

At 11:18 a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:25 a.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

DELEGATE KAAPU: Mr. Chairman.

CHAIRMAN: Before we proceed, Delegate Kaapu, I have two comments to make. First of all, the Chair feels that some of the discussion is again getting on to the general concept of special purpose revenue bonds, and I would remind the delegates to confine their remarks to the question on the floor and that is with respect to manufacturing, processing and industrial bonds.

Secondly, it has been brought to my attention that we have now, since I allowed Delegate Barr to submit his amendment--we've had three amendments presented to the clerk's office. I believe the courtesy has been provided, and at this point the Chair will not allow any more amendments for consideration today. Shall we now proceed? Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, there is one point that I think ought to be made here and that is this: that 48 or 47 states have this, and we are one of the few that doesn't. What is the reason for that? Many of us advocate unicameralism because one state has it

and it works, whereas the other states have a different form which works also. But why is it that 46 or 47 states have this and we don't. I submit it is because--it's not because each of them in their own wisdom contrives this program; but it is because the internal revenue service has determined that when a state certifies that a certain category of bonds are in the public interest, the IRS is willing to give those bonds a tax exemption. So I would think that all the states simply wish to give their constituents and enterprises within their economy eligibility to receive this tax exemption, and that is the basis for supporting this special purpose revenue bond and for not excluding any category from it.

CHAIRMAN: Delegate Shinno.

DELEGATE SHINNO: Mr. Chairman, I speak against this amendment. After hearing the pros and cons in regard to special purpose revenue bonds, I cannot understand why a bond which is to be used for the public interest is so objectionable. Furthermore, as I see it, this special purpose revenue bond is to be subsidized by the federal government, which benefits the people--which is to be passed on to the people of Hawaii for their benefit.

CHAIRMAN: Thank you, Delegate Shinno. Is there further discussion?

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I would like to just briefly address some of the comments that have been made, and mostly the people who have been speaking in favor of the amendment are those I have a great deal of respect for. I would like to ask them, however, not to vote in favor of this amendment just on general philosophical grounds, because a businessman--in big business--a businessman's point of view on particular issues which are significant to you may disagree with your own point of view, and you may have strong feelings against big business for one reason or another. I would ask you not to let that general feeling cloud your decision on this case. Forty-eight states permit this type of financing, and in those states you have the same feelings, of big businessmen and small businessmen; and please don't let that general philosophical ground cause you to make a decision which is not a good one.

I would like to make it clear that although there was reference to being a subsidy, this is not a subsidy to business. It's not businessmen feeding from the government trough; it is not government funding of private enterprise. In none of these special purpose revenue bonds would there be any state funding of any project. It's entirely private borrowing by the enterprise involved, and the state credit--there is no moral obligation. And in fact, to cover that and specifically preclude any moral obligation from being created, the committee specifically put in the provision of prohibition against any state funds being used, so that if there is a default, even if the administration feels a moral obligation to pay, it would be prohibited from doing so in the Constitution.

There has been talk about the credit rating of the State being affected by these special purpose revenue bonds. Well, you know, let's not take statements out of the air. We've had testimony on that specific point, and the experts told us that there would be no effect whatsoever on the credit of this State, because the credit of the State is specifically not pledged to support this type of bonds. So I think we just have to realize that we're not putting up the good name of the State, and it's not government borrowing money for private purposes. This is just making available to particular enterprises in particular circumstances, and on particular guidelines and safeguards that the legislature and the executive will set forth, to allow it to be done.

Now if we go along with the amendment, if we prohibit the issuance of these special purpose revenue bonds for manufacturing, processing and industrial enterprises, how will we permit--or what will happen if we have a manganese nodule manufacturing concern that wants to go into that business on the Big Island? It's true that just permitting this won't, in itself, make the entire difference. But let's look at a practical example. We know that vast amounts of capital will be needed for projects like that; let's suppose \$100 million is needed--of borrowed money. Now, if that enterprise has to borrow that money at conventional rates, let's suppose it would have to pay, say, 10 or 11 percent

per year interest on that \$100 million. If it was borrowed with tax-exempt funding, it would have about 2 or 2-1/2 percent lower interest to pay each year. Now, that 2-1/2 percent per year amounts to \$100 million, that's \$2.5 million of savings for a year. Now if the State has the ability to offer that to a company that is considering going to California to do its processing--or coming to Hawaii--that \$2.5 million savings per year could make the difference. As some of the delegates have said, that in itself may not make the complete difference--that's true, it's just one of many factors that have to be taken into account. But it could make the difference, and it could bring to the State of Hawaii something that is extremely beneficial, that would provide jobs and would be in the best interest of the entire state. And really, all we're doing at this point is deciding whether we want, in the future, to give the State that ability, or if we want to shackle the State and say absolutely not, under no circumstances can you do that. I would vote to give them that ability.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Ching.

DELEGATE LAURA CHING: Mr. Chairman, may I direct a question through the Chair to either Delegate Lewis or Delegate Paty?

CHAIRMAN: I shall take that into consideration. Please state your question.

DELEGATE LAURA CHING: Correct me if this question has already been asked. How would the State monitor the expenditure of such special purchase funds, and are there any safeguards against improper usage of such funds by corporations? For example, if the funds were to be used for pollution control, what assurance and safeguard do the people have that such funds would indeed be used for such a purpose?

CHAIRMAN: Thank you, Delegate Ching, I believe your question is appropriate. Does someone wish to respond to the question? Delegate Lewis.

DELEGATE LEWIS: In response to Delegate Ching's question, if the antipollution bond statute is any indication what would take place--in 1973 the legislature adopted enabling legislation to permit antipollution bonds to be issued. The enabling legislation was some 40 pages long; it had detailed provisions to protect the State in terms of not having to incur any expense, including overhead expense or any other type of expense, and the provision, as far as that enabling legislation, specified the purpose for which the money could be used, which was only antipollution. In the agreement that was entered into with the Department of Budget and Finance--that would have enabled the State to issue antipollution revenue bonds on behalf of the company--this was reiterated and there was a continuing requirement of a review by the Department of Budget and Finance, so there were adequate safeguards. They were provided in both the enabling legislation and the contract with the Department of Budget and Finance.

CHAIRMAN: Thank you, Delegate Lewis. Does that answer your question?

DELEGATE LEWIS: Mr. Chairman, may I add one point. The internal revenue service, in addition, has very stringent regulations on what can be included for antipollution and what cannot. They go to the point of taking a plant that, say, adds a smokestack which is designed to reduce sulfur dioxide emissions into the air, and they will examine all parts of that and they may indicate that one part will qualify for a tax exemption and another part of that same smokestack will not. So there is an additional review at the federal level by the internal revenue service.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Barr.

DELEGATE BARR: Yes, Mr. Chairman, your delegate from up-country Maui would like to apologize for adding a new voice this late in the discussion. It turns out that in the morning I do not have the energetic spring in my legs that would have given me the floor earlier.

CHAIRMAN: Let's hope we can get you to lunch so that you can continue doing it.

DELEGATE BARR: I would like to speak in favor of this amendment, and would like to highlight just a couple of reasons since I think we've covered rather many. It is not the intention of special purpose revenue bonds to have the State absorb any of the risks of business. It is not a source of risk capital in the sense of starting up new

businesses; the risk capital, or venture capital for new enterprises is not with special purpose and special use of revenue bonds. That is so because the full faith and credit of the State is not behind such bonds. In fact, the virtue of these bonds is that, because of internal revenue taxing policies, because of our federal revenue taxing policies, these bonds are tax-exempt and therefore the interest rate can be lower, because the effective return on the bonds for an investor is equal to a higher interest rate because of not being taxed. Therefore, the function of the bonds is in fact to make it more profitable for particular industries to undertake whatever that capital is going to be used for, and therefore it is in fact a subsidy--a subsidy, however, indirect of that industry, because the taxes that the federal government charges--and we've seen in recent years they manage always to spend more than they tax--the taxes that they charge they must get from somewhere else if they do not get them from the profits of the businesses aided by these bonds.

Therefore what we are doing in effect is spreading some of the tax load elsewhere. Now in the case of the State of Hawaii, since we take in more federal money than we give in taxes, there is a certain virtue in these bonds because we are exporting some of our tax load. But as a matter of fact, looking at it from the perspective of the country as a whole, we ought to think very seriously about whether we want to have a blanket phrase such as "manufacturing, processing or industrial enterprises" or whether we might be a little more specific. If there is virtue in antipollution bonds, let's specify only antipollution bonds. If there is virtue in geothermal energy, let us specify only geothermal energy. But a blanket opening leaves us with some considerable risk. And to highlight that risk, I'd like to go back to a comment that was made earlier--that the question of corruption is not relevant--and I submit that that is crucially relevant. Where government has favors to give, government favors some over others; and in order to keep government out of a position of favoring one company to undertake a particular enterprise over another company, the best approach is to let the companies, through the free enterprise system and through the profit structure, determine who will do it and succeed at it, rather than have the government be the decision-maker on who gets the favors. Therefore, I speak in favor of this amendment.

CHAIRMAN: Thank you, Delegate Barr.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: Thank you. I rise to speak for the second and last time in favor of this amendment. I think the best way to illustrate the point that those of us are trying to make who speak in favor of the amendment is simply to describe what would happen if in fact the special purpose revenue bond was issued to a particular company. If a company or an industry received a special purpose bond and was unable to meet its obligations in this regard, obviously all those persons who had purchased the bonds issued would simply be out of luck. They would lose their investment--their \$5 million or \$10 million, whatever the case may be. It is true that the State of Hawaii does not stand behind this bond issue with its credit; however, it does stand behind it with its good name. If the State of Hawaii were issuing these bonds and these bonds failed, I don't think it would behoove the State of Hawaii to go throughout the United States, to all of the investors, and say--well, you should have read our Constitution, our full faith and credit were not pledged to these special purpose revenue bonds, and you're out of luck. And then go back to those same investors the next year with general obligation bonds and say--would you like to purchase some of our GO bonds?--our good faith and credit stand behind these. I think our ratings would deteriorate if in fact there was a failure.

If in fact we could be convinced--I could be convinced--that these special purpose revenue bonds were going to aid the small businessman or to create more jobs, as I said earlier, I would be in favor of them. But I've never been able to see the correlation between these bonds and the creation of more jobs. I don't think--and I think Delegate Barr adequately pointed it out--that the purpose of these bonds is to aid new ventures. New ventures are always risky and it's not the high-risk venture that we're interested in subsidizing with these special purpose revenue bonds; it's the existing industries that are looking for ways to increase their profits, and I don't think that the government of this State or the counties has any business in assisting that.

The only other point I think I would make is that if--as some of the proponents of the original language of the committee have insisted, who were against this particular

amendment--that if what we're trying to do here is just broaden the economic base of the State by providing new incentives for manufacturing and processing industries, then why didn't we make it as broad as possible and include retailing? Why didn't we broaden it and include the service-oriented industries, such as doctors and lawyers? Why didn't we include the construction industries? There are a lot of things we could have done if in fact we were committed philosophically to broadening the entire base of our economic structure, to allowing everybody to have government subsidies. In point of fact, we're not doing that and these are not just special purpose bonds--they're special purpose bonds for only special industries, and I object to it.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Peterson, followed by Delegate McCall.

DELEGATE PETERSON: Mr. Chairman, I wish to speak in favor of this amendment. There are several reasons I wish to speak in favor. The allowance of the use of the State's name will only go toward marginal projects. Projects that can make the financing on their own will go to the money market on their own, as they now are doing. The only kinds of projects which need this kind of financing are the marginal projects; they're the ones that have the most potential for problems.

One of the reasons suggested for the use of special purpose revenue bonds is that the interest rate will be lower. This is not necessarily so. What this truly means is that the interest rate will be lower than the market rate would be; but for high-risk projects the interest may still be very high, and the bonds could be issued at the high rate even though they are highly risky.

Another problem that has been mentioned is that this puts economic decisions into a political decision-making process, opening it up to favoritism, influence-trading. One of the problems we will be faced with if this is passed is that some industries and some manufacturing plants and some processing plants will be allowed to do these things while others will not. This is the kind of decision-making which should not be allowed in the economic realm.

Another question that was discussed is the subject of interest. Interest is a two-edged sword. Interest income is taxed, providing income to the government; so by reducing interest, we are also reducing income taxes to the federal government. Interest expense, on the other hand, is tax-deductible, which reduces the cost of taxes; and so for a company in the 50-percent tax bracket, the after-tax interest cost is only half what it is in the stated interest rate. So the federal government loses three times the amount gained by private businesses in the taxes they lose from this kind of project. So essentially this is a transfer from the federal government to the projects which we are allowing.

I would like to elaborate a little on the statement made by Delegate Kono to the effect that projects are limited to \$5 million. This is the case except for activities related to residential real property for family units, sports facilities, convention or trade show facilities, airports, docks, wharves, mass commuting facilities, parking facilities, storage or training facilities, sewage and solid waste disposal facilities, air- or water-pollution-control facilities, or facilities for the furnishing of water. So there are a number of exempt activities which are not limited to the \$5-million limit.

I also wish to speak concerning the statements made that the State's credit is not at risk when we issue special purpose revenue bonds. This is essentially true in that people who buy these kinds of bonds realize that they can go only against the industry which is the recipient of the bonds. However, there is a difference between the legal obligations and the moral obligations; especially in the State of Hawaii there is this difference, and I think there have been two recent examples in the State which demonstrate this difference. The first is the situation with the local bus system, when it was unable to pay its own way and was taken over by a governmental body which is now running the bus system; and we just had another example with Young Brothers barges which, when it was unable to pay its own way, was taken over by the government. So even though there is not a legal commitment, Hawaii has historically taken over private industries that have been unable to pay their own way. I wish to follow this up with the statement of the State's bond counsel, who in February of 1975 advised that since the state government is the legal issuer of the bond, it obviously follows that if any attempt were made by the bondholders to realize on such bonds in any way--he's speaking of industrial development bonds--to realize on such bonds in any way, it would be necessary that the creditors

sue the governmental body, at least by naming it in the suit. It would also be necessary that the governmental body respond to such suit in order to avoid having a default judgment rendered against it for the full amount of the default. Since the tenant has defaulted on the lease, it would seem to follow that the tenant would not pay the cost of the proceedings so that the State would have to pay for the legal costs involved.

So even though there are several questions, legally there is not a binding requirement. There is a historical state response to businesses felt to be in the public interest which cannot pay their debts, that the State will assume these debts, and the bond counsel has indicated that even though the State would not be primarily liable, it would probably be sued by any person if the issuer--or the industry for which the bond was issued--were to default.

Another question that has been raised is that there are some who feel that public money should not be used to directly or indirectly finance public or private industries. I think that question has been well covered. I think one area which may not be as well covered is in the statement by--in testimony provided by the Department of Budget and Finance, which found that in a study of the state debt management program, the consulting firm of Peat Marwick Mitchell & Co. found, through their discussions with bond market analysts and underwriters, that the avoidance of special types of debt issuance such as industrial development bonds had contributed favorably to the assessment of the credit quality of the State's general obligation bonds. And the conclusion by the Department of Budget and Finance was that a strong point was made by those critics who advocate that the privilege of issuing tax-exempt bonds is a public trust and should be used primarily to meet public needs.

For these reasons, I encourage you to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Peterson. Is there further discussion? Delegate McCall.

DELEGATE McCALL: I wasn't going to speak, but I just couldn't help it. As far as being worried about the purchasers of the bonds, it seems to me--

CHAIRMAN: Delegate McCall, would you please state your position.

DELEGATE McCALL: Oh, I am certainly against the amendment.

CHAIRMAN: Thank you.

DELEGATE McCALL: As far as worrying about the purchasers of the bonds, I think this is rather peculiar--that we should think they are naive enough not to take into account the risks. They buy hundreds of millions of dollars of bonds a year on the mainland and I'm sure they look at the problems there. As far as high risk marginal operations and this sort of thing--same thing, they'll pay a higher interest if they're high risk, and that's no real problem. And whether we want to bring in marginal businesses--I certainly think if there's a public purpose in bringing in a marginal business, and/or to create jobs, start aquaculture or what have you, I think that's a good thing. I see nothing wrong with that. Certainly one of government's jobs is to produce jobs for the people, and this is generally a use of these bonds if they go to industrial-type operations. I think we're getting far afield in our arguments. This whole thing is for a public purpose and they seem to forget that. The types of things that one of the delegates mentioned that are exempt from the \$5-million limit--if you notice, they are all public purpose types, even if they may happen to be operated by private individuals--the stadium, our bus system, housing developments probably for the poor, in most cases (if not for the poor or the needy, it would not be a public purpose). I don't see anything wrong with these at all.

CHAIRMAN: Thank you, Delegate McCall. The Chair would also like to remind the delegates again, we are beginning to get off the subject matter. Please confine your comments to the amendment that suggests that we delete manufacturing, processing and industrial enterprises. Delegate Ontai.

DELEGATE ONTAI: I'm against the amendment and for the proposal as written by the committee. For the benefit of those who are against the State assisting big business, I might say that we have industrial-type bonds that exist today, which are very similar to these special bonds.

With industrial bonds, if a private industry or person leases state land, he could get the buildings built by having the State sell bonds for that particular company. We have--I know of at least one case at our Honolulu airport right now; one airline has built a big building there--I think a half million dollars, or somewhere in that area--they lease state land and they go to the State--the State sold bonds for them, they're called industrial bonds. It's very similar--only the land happens to be leased from the State. But that private industry--it's a big airline and a giant of its kind in its own field, perhaps bigger than the sugar companies combined, or at least in that category. So what I'm saying is this--if you vote for the amendment, you don't cure the ills that exist, if you can call them ills. I don't think they are ills, but I'll get to that in a few moments. If you're not going to help private industry, then go all the way and eliminate those industrial-type bonds that exist--at the airport for sure and perhaps other areas. The only difference is that one uses government land; the bonds sold at the airport for that particular airline are solely for that one airline's benefit, and the sole purpose is to make money for itself, and there's no doubt about that. So I'd like to bring that to your attention. If we pass the amendment, that's just awkward, it doesn't stop the other kind of industrial bonds. We have to be consistent. I'm going to argue in favor of the proposal as the committee suggested it. I'm for industrial-type bonds, also.

To correct the record, it has been said over and over, several times today that only big business gets help from the government. That is not true. For small businesses, there are a lot of provisions for them to get help. I'll name you some: state farm loans--they are all for small farmers, big ones too but also small farmers, and I think there are quite a few small farmers who get help from the state farm loan. They lend money directly and guarantee your loans with the bank. They also lend directly from their fund if you can show the need and you can't get a loan. The federal farm loan program helps small farmers and big farmers. The federal CDC that Delegate Hale spoke about so eloquently is there to help small businesses. The State has a small business loan program for non-farmers. I named you four. Minority races in Hawaii can apply for minority help under another special program. So there is a lot of government help for small businesses. Unfortunately, most small businesses do not know about them, and some know but just don't want to go to them and apply; but there are small business helps and they have been in existence for a while. These are not new things, they've been here at least 10 years or longer, perhaps much longer than that. FHA is one--to buy a home for the average person. It is true the proposal that the committee wrote--

DELEGATE ALCON: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order.

DELEGATE ALCON: I don't think the speaker is speaking on the amendment but is giving out some other information.

CHAIRMAN: Your point is well taken. Delegate Ontai, I have asked the delegates to please try to comply with--

DELEGATE ONTAI: As I said, I'm against the amendment for the reason that it was said that this proposal as written by the committee helps only big business. As we have heard, it does not only help big business; small business could come in--of course we're not sure exactly how the mechanics will be worked out.

I say that private industry is the backbone of our economy. Private industry provides jobs, and I think factually they provide most of the jobs in the State and we hope they provide more. We hope government does not start providing all the jobs. Private industry needs help, the big businesses and the small ones--there is no doubt, not only the small ones, the big ones too. I'm not saying--what I'm saying is to give them both help if we can, rather than give one nothing, because you don't have any right before you today, for small business, that you should cut off your nose to spite your face. We need employment in Hawaii; it's been in the worst slump in many, many moons--the past four years, and the future is not too bright. The sugar industry has been taking the brunt of the criticism today. I might mention, I'm not in bed with the sugar industry; their bed of molasses is not my bag, really. But I'm going to speak in all fairness to the sugar industry. The sugar industry is depressed, no doubt about that. It is dying. I can equate it to an 80-year-old man or maybe a 70-year-old lady. Last year it almost died, as a matter of fact; I think the sugar companies and the business world were preparing a funeral for the sugar industry, when the U.S. Congress came to their rescue and the funeral was canceled.

CHAIRMAN: Delegate Ontai, sitting up here I notice the reactions of the rest of the delegation, and a point of order has been raised. If you will proceed along these lines, I will have to rule you out of order.

DELEGATE ONTAI: I only have one more sentence--a complicated one, but one sentence to go. The special purpose revenue bond does no harm to anyone today, if it's passed; it takes no skin out of the State's rear, it takes no skin out of any taxpayer's rear, neither does it take any skin out of any one of us sitting here today. And therefore, I am against the amendment and for the proposal as written by the committee.

CHAIRMAN: Thank you, Delegate Ontai.

DELEGATE HALE: Point of personal privilege, Mr. Chairman.

CHAIRMAN: State your point of personal privilege, Delegate Hale.

DELEGATE HALE: My personal privilege is, Mr. Chairman, I'm getting very hungry and I'm wondering if the delegates would agree to rise and report and continue this in the afternoon.

CHAIRMAN: At this point the Chair feels, as I have mentioned before in somewhat of a warning nature, the discussion has been deviating toward subjects that may come up in other amendments, and we have not been handling the subject at hand. And at this point I do feel, unless the delegates have a burning desire, we may be able to have one or two summary speeches and then proceed with the vote. The Chair would prefer that we vote on this before we rise and report. The Chair senses that we're ready to have one or two summary statements and then we may proceed with the vote.

DELEGATE KONO: Mr. Chairman, as the mover of the amendment, may I speak last on the issue?

CHAIRMAN: Prior to recognizing Delegate Kono, is there anyone with that burning desire? And I would really appreciate it if you would keep it short.

DELEGATE KIMBALL: Mr. Chairman.

CHAIRMAN: Delegate Kimball.

DELEGATE KIMBALL: I'd like to speak in favor of the amendment because the wording of the committee proposal, as I understand the special purpose revenue bonds, is to give the State the ability to grant tax-exempt funding for certain areas. I speak for the amendment because the wording of the committee proposal does not have any correlation to the terminology and classifications and categories of the federal statutes or regulations.

CHAIRMAN: Thank you, Delegate Kimball. Delegate Harris.

DELEGATE HARRIS: Thank you. I must admit that when this debate began several hours ago, I was very much against the amendment. I must say that after hearing the arguments, I have changed my mind. I now speak in favor of the amendment. It's clear to me that this is a direct subsidy to large business at the expense of small business. It's also clear to me that this measure will promote rapid growth at a time in Hawaii's history when we're trying to control and manage our growth. And in that regard, I must vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Harris. Delegate Lee.

DELEGATE MARION LEE: Mr. Chairman, I would like to speak for the second and last time in favor of this amendment. To expand further on a point that Delegate Peterson made earlier, that the federal government stands to lose approximately three times as much in tax revenues as the industry gains through the revenue bond financing program, the federal government could possibly react in two ways to this. First it could lessen the federal subsidies to states for certain public improvements; or it could possibly eventually eliminate the tax-exempt status of these bonds. And there is presently pending in the U.S. Congress legislation to eliminate tax-exempt provisions in these special purpose revenue bonds.

Now, to quote from a letter written from the Investment Research Department of Bank of America, from Mr. Merrill Ring, who is vice-president of the Bank of America--the letter is dated January 13, 1977--and says: "[T]he use of tax exemption in industrial bond financing for creative or innovative methods of public finance has been viewed harshly by most critics. As a result, there now are dollar limits governing the issuance of industrial aid bonds for planned construction and related production facilities. Considering the prevailing regulatory climate as well as the high visibility and uneven history of industrial aid financing, it follows that correspondingly higher public standards will be demanded of the administrators of such bond programs in adjudging their responsibility and performance." It also goes on to say that tax exemptions may be justified as a privilege only to the extent that a public purpose is served by the benefiting financing.

In the context of industrial aid financing, it is clear that little or no gain is obtained by the public where the tax-exempt privilege is accorded to private corporations for individual projects which fail to complement or enhance a general program for economic enhancement. Financing of this type is an abuse of tax exemption in the strictest sense, and more importantly it is a violation of public trust.

CHAIRMAN: Thank you, Delegate Lee.

DELEGATE PULHAM: Mr. Chairman.

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: I will speak against the amendment.

CHAIRMAN: Proceed.

DELEGATE PULHAM: I too have sat through this debate and unlike my colleague over there, I have probably gone the other way, for a number of reasons. First of all, in deference to the previous speaker, I don't see the point in us getting all bent out of shape on what might happen with the federal government by our miniscule contribution, when a large number of states are already involved in this; nor are we going to be able to tell the federal government what they're going to do about it in the future.

Number two, we need--and by this committee proposal, and the amendment would not--allow the legislature to outline this program, so essentially we're talking about something when we really don't know what the guidelines are. We are simply making a vehicle available.

And lastly, going back to one of the delegate's comments, if this will accomplish that which we need in our economy, then I see no reason to pass an amendment which would exclude it. When I think about our young people, and when I think about the need for interisland transportation, an interisland ferry system, the environment, the problems that we face, I would certainly hate to think that I was a party to eliminating a procedure which would allow us to do this. So therefore I will speak against the amendment.

CHAIRMAN: Thank you, Delegate Pulham.

DELEGATE HAGINO: Mr. Chairman.

CHAIRMAN: Delegate Hagino.

DELEGATE HAGINO: I just wanted to declare a possible conflict of interest. I work for Hawaiian Independent Refinery, which is a sister company of Gasco, and both of these companies stand to benefit from this proposal. However, I will vote because I feel that the effects of this proposal are not confined to the industrial sector.

CHAIRMAN: Thank you, Delegate Hagino. Your statement shall be entered into the journal.

DELEGATE CHUNG: Mr. Chairman.

CHAIRMAN: Delegate Chung.

DELEGATE CHUNG: My vote shall be against the amendment. Reason number

1 is because we seem to be really bent out of shape, in our concern about the future. The proposal has adequate controls to prevent--and if there is any corruption, well, let's put them in jail.

Number 2--from what I've heard we've been aiming at big business as an evil. Our economy depends, from the very beginning of Hawaii's history, on all business--including big and small. We've got to expand and increase our tax base, and we need money for this. As Delegate Sterling has said, we've got to keep our local people in Hawaii, with good jobs; and it takes money, men and good programs. All of these things are for the public good. The definition of public good is so broad, with so many different meanings, pro and con--and what I heard this morning really irritates me. I urge all of you to vote down this amendment.

CHAIRMAN: Thank you, Delegate Chung. At this time the Chair has stated the Chair's position. The Chair does feel that a lot of this discussion can also come up when we consider Amendment No. B3, and if there's no firm objection, the Chair at this time would like to recognize the movant to make the final statement.

DELEGATE KONO: Thank you very much, Mr. Chairman, I think that there has been a very worthwhile and productive discussion on the floor today and it certainly has brought up many points and concerns of the delegates regarding industrial development bonds.

I would hope in my last five minutes to give the delegates my perspective on the issue. It's not a highly emotional issue to me; to me, it's a matter of prudent financial judgment. I do not believe that this is a special type of compensation or benefit to big businesses alone, and I do not think that the privilege will be abused. My honest feeling, however, is that the negative aspects of this particular provision outweigh the positive aspects, and that's why I am against the financing of industrial, manufacturing and processing firms.

The real purpose of these bonds, I believe, is to encourage new industries to locate in Hawaii so that we may diversify our economic base, which is primarily dependent upon sugar, tourism and the military; I do think there is a need for encouragement of geothermal and other energy sources, and perhaps for bauxite and manganese nodule-processing firms. I do not subscribe to the argument that this should be used for small ventures, such as was pointed out by several delegates regarding farming enterprises. I would subscribe to the arguments that Delegate Hale eloquently put forth, that there are other means of financing these small firms and that the State should not use this particular vehicle for entering into what would probably be very risky types of ventures.

Regarding the encouragement of new industries to come to Hawaii, at one point--and I believe this was before 1969--the internal revenue service allowed a greater amount than \$5 million to be issued to encourage industries to locate within the State and this, of course, created the potential for great competition between states for various types of industries. Recognizing that this competition was not healthy and that it was being subsidized by the federal government in 1969, a \$5-million limitation was imposed upon the construction of facilities for the benefit of industrial, manufacturing and processing firms. This--as Delegate Peterson pointed out--amount can be exceeded for such socially redeeming purposes as antipollution. However, it does not apply to the encouragement of an industry to locate in any particular geographical area. To put the whole thing in perspective, according to the 1976 Peat Marwick Mitchell report on the sale of state and municipal bonds, there have been issued, between the years 1971 and 1975, \$200 million, \$470 million, \$270 million, \$340 million and \$520 million of industrial bonds; and that is not a very great amount when you consider that the State of Hawaii alone issues about \$225 million a year worth of bonds. And to further put this in perspective, this amount of industrial bonds only accounts for 2 percent of the total of all bonds issued in the United States by state and municipal jurisdictions. So this is not, and should not be, considered a motherhood issue, whereby this would be the panacea for diversifying the State's economy. Five million dollars is not going to be enough to encourage a manganese nodule firm to locate in Hawaii; the estimates that I've heard are that these plants would cost somewhere between \$150 million and \$200 million. We could only finance \$5 million of that, and given the 3-percent-margin differential, that would only amount to \$150,000 a year, and this is why I say that a large industrial firm would not benefit from this type of financing. And I reiterate the point that this is not the proper vehicle to encourage small farming enterprises either. This is why I arrived at the conclusion that the negative benefits

of the potential political abuses that can occur--number one, and number two, in the event of a default on these loans, the State would have to pay the litigation expenses involved in resolving these disputes in court and would face a potential moral obligation of satisfying the indebtedness or actually taking over the firm--far outweigh the potential benefits in having this type of financing on the books.

And that is why I would urge all the delegates to vote against it. We've lived in Hawaii all these years without it and we can certainly live without it in the future. So I would hope that all the delegates would not put this on the books because I think it's a privilege that can be abused; and if we ever get politicians in office who would seek to abuse this, that this is the proper vehicle for them to exercise their poor judgment on.

CHAIRMAN: Thank you, Delegate Kono. The question on the floor is whether or not we wish to amend Section 3--line 17 on page 6 of the committee proposal--to read as offered in Amendment No. B1. All those in favor of the amendment please--

DELEGATE KONO: Mr. Chairman, may I call for a roll-call vote on this issue?

CHAIRMAN: Are there 10 seconds for a roll-call vote? The Chair sees 10. Mr. Clerk, will you proceed.

Roll call having been ordered, the motion failed to carry by a vote of 37 ayes, 56 noes and 9 excused; with Delegates Barnes, Barr, Blean, Cabral, Campbell, Laura Ching, Chong, Chu, Chun, Crozier, DiBianco, Dyer, Ellis, Fujimoto, Funakoshi, Hanaike, Harris, Hayashida, Hoe, Hornick, Izu, Kimball, Kono, Marion Lee, Rachel Lee, Liu, Miller, O'Toole, Peterson, Shon, Takitani, Tam, Tamayori, Uyehara, Weatherwax, Wurdeman and Chairman Ishikawa voting aye; Delegates Alcon, Anae, Andrews, Barnard, Blake, Burgess, Chang, Calvin Ching, Haunani Ching, Chung, de Costa, Fernandes Salling, Fukunaga, Fushikoshi, Goodenow, Hagino, Hamilton, Hashimoto, Hirata, Hironaka, Dennis Ihara, Teruo Ihara, Ikeda, Iwamoto, Kaapu, Kaito, Kojima, Lacy, Ledward, Lewis, McCall, Nishimoto, Nozaki, Odanaka, Okamura, Ontai, Paty, Penebacker, Pulham, Sakima, Sasaki, Shinno, Silva, Souki, Stegmaier, Sterling, Stone, Sutton, Taira, Takahashi, Takehara, Takemoto, Villaverde, Waihee, Yamashita and Yoshimura voting no; and Delegates Donald Ching, De Soto, Eastvold, Hale, Hino, Hokama, Les Ihara, Marumoto and Nakamura being excused.

CHAIRMAN: The amendment fails. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I move that we rise and report to the Convention that we have not completed our consideration of Committee Proposal No. 14, and that we would need more time to complete our work.

CHAIRMAN: Is there a second?

DELEGATE KAAPU: I second the motion.

CHAIRMAN: It has been moved and seconded that we rise and report to the Convention that we have not completed our consideration of Committee Proposal No. 14 and that we need more time to complete our work. No debate being allowed on this motion, all those in favor of rising to report say aye. All those opposed, no. The ayes have it and the motion is carried.

At 12:23 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Wednesday, September 6, 1978 • Afternoon Session

The Committee of the Whole reconvened at 1:45 p.m.

Delegate Ishikawa presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. Before we proceed to the next amendment, the Chair has a few comments on the next amendment. I believe delegates have received three more amendments. The Chair's position on this is that since the rules were such and the practice has been such that these should have been received last evening, but in view of the courtesies extended for some of these late amendments, we shall consider this at the end of the session following Amendment No. J1, such that when these are distributed, I shall then designate numbers for you.

DELEGATE IZU: Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: Did I hear you say that we should have received it?

CHAIRMAN: No, you have not.

DELEGATE IZU: Okay, thank you.

CHAIRMAN: I have two other general observations to make following this morning's meeting. The Chair did not warn delegates with respect to specifically referring in their debates to other delegates, and I would remind you now to please refrain from specifically referring to your fellow delegates. I do realize that many of the references were made to delegates who were on the same side, but if possible please adhere to our rules.

Secondly, the Chair does want to thank the delegates for this morning's proceedings, in which the Chair feels many of the delegates did show a lot of courtesy to one another, and the Chair wishes that this will continue this afternoon.

If there are no further questions, we shall proceed with Amendment No. B2, which is still in the area of special purpose revenue bonds. The Chair will recognize Delegate Lee.

DELEGATE MARION LEE: Mr. Chairman, I move to adopt Amendment No. B2.

DELEGATE ALCON: Point of order, Mr. Chairman.

CHAIRMAN: One second, please. Is there a second?

DELEGATE PETERSON: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Amendment No. B2. Delegate Alcon, would you like to state your point of order?

DELEGATE ALCON: Mr. Chairman, I'm confused. I thought we just got through with B2.

CHAIRMAN: Delegate Alcon, that was Amendment No. B1.

DELEGATE ALCON: Oh, you had to have it renumbered. I'm sorry, Mr. Chairman.

CHAIRMAN: You're correct, it was renumbered. Delegate Lee, would you like to speak to your amendment?

DELEGATE MARION LEE: Yes, Mr. Chairman. I rise to speak in favor of Amendment No. B2. As evidenced by numerous testimonies this morning, there is large concern, I believe, by a lot of delegates here on the problem of special purpose revenue bonds. My amendment seeks to instill tighter controls upon this area by instituting a two-thirds vote of the legislature in order to pass any authorization of special purpose revenue

bonds; and that it be by separate bill for each area--that is, for utilities, housing, hospitals, manufacturing, that each be handled separately and at the time of each project.

It also adds a section which calls for a disclosure by the governor of a report on the cumulative amount of all special purpose revenue bonds. I really don't want to rehash all the different arguments that were given this morning, although I have stated before that I feel the whole system, the entire economy of our nation, is based on a free and independent private enterprise system, and I think the crux of the problem is that, I truly feel, it is not the function of government to expand and further expand as it has been, getting into areas of private enterprises, thus having more government regulation. I really think that is one of the key issues--whether we want to have government getting more and more into private industry areas. Also, the arguments that were mentioned this morning, about the moral obligation, are all in effect.

The primary purpose of my amendment, as I mentioned, is to instill a tighter control by making it more difficult to pass this type of special purpose bond authorization as it would need a two-thirds vote of the legislature, and I think this is a good safeguard. In such an important area, we would not want to have it passed so easily. Thus I speak in favor of my amendment.

CHAIRMAN: Thank you, Delegate Lee. Is there further discussion?

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: This morning I said that I firmly believe--and I still firmly believe--that the idea of special purpose revenue bonds is one that must be addressed by the Constitutional Convention. However, when we get into the specific administration of a legislative body like the legislature, I would draw the line here. In some instances, yes, we've gone into directing the legislature to accomplish certain things for certain purposes, but we're entering into an entirely separate field, which I don't think we belong in, when we set up these controls to be followed by the legislative branch of our government--or spelling out certain conditions.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Taira.

DELEGATE TAIRA: Yes, Mr. Chairman. Very briefly I'd like to speak against the amendment. Some time ago, I thought the idea of a two-thirds vote of both houses of the legislature for each specific issue of this type of special purpose bond was a wonderful thing; but upon more detailed consideration of what we're trying to do here, upon checking to see just how this procedure is working right now, I'm convinced that if we make the procedure, what we're trying to do here, too restrictive--that is, by requiring a two-thirds vote of each house on every specific issue, project by project--we may find the restrictions are so difficult to overcome that the purposes for which we are doing this work today on the convention floor will never be realized.

I think right now, with the legislature passing a general law in each specific category by majority vote, setting up the procedures, the standards to be followed, and letting the most responsible financial agency of the executive branch--namely, the Department of Budget and Finance--examine and review all the requests for these bond issues, and finally making a determination that such-and-such an issue should be authorized--I think this is the kind of expert, specific control that we need, and we have it right now. For these reasons, Mr. Chairman, I would oppose this amendment.

CHAIRMAN: Thank you, Delegate Taira. Delegate Sakima.

DELEGATE SAKIMA: Mr. Chairman, I just want to say I agree with the previous speaker, except I just want to add the third checkpoint that we have, and that is the bond buyers themselves. Thank you.

CHAIRMAN: I take it you were speaking against the amendment?

DELEGATE SAKIMA: Yes, I was speaking against.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I rise to speak in favor of the amendment. If in fact these types of bonds are going to be authorized by this State, after the lengthy debate we had this morning, in which it was insisted by the proponents of this type of bond that we are going to have a lot of checks and balances relative to the issuance of these types of bonds, it would seem to me not too much to ask that two-thirds of each house of the legislature authorize the issuance of these bonds, thereby guaranteeing to the people of the State that the issuance of the bonds will not be abused and that they will, in fact, be used for a public purpose. If the purpose of these bonds is public in nature, it shouldn't be too difficult to get two-thirds of the legislature to agree to that.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Sutton.

DELEGATE SUTTON: Mr. Chairman, I rise to speak against the amendment. As the senior fellow delegate from my district echoed the feelings I also have, and my partner on my left, I also feel, in consultation with other legislators, that this is more than another provision to check and balance. What this is is the final stop with all the stopgaps that we've already looked at in reference to bonds. So I support voting against this amendment.

CHAIRMAN: Thank you, Delegate Sutton. Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman, I rise to speak in favor of this amendment. Last night in the environment committee, we tried to limit having any kind of nuclear plant in Hawaii and we were defeated. If a nuclear plant were to be developed in Hawaii, I am sure that this would be one of the mechanisms they'd get their funding from. And for something as critical as that, we should have at least this two-thirds vote--dealing with something that critical. For that point alone, I speak for the amendment.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Hirata.

DELEGATE HIRATA: Mr. Chairman, I rise to speak in favor of the amendment. Although I have some reservations about the concept of special purpose revenue bonds, I feel that some of my apprehensions would be allayed by this amendment.

Although special purpose bonds do not add to the State's debt limit nor do they bear the "full faith and credit" of the State, should a default occur, it would be necessary for the creditors to sue the governmental body, at least by naming it in a suit. Consequently, the governmental unit would have to pay its own legal bills if there were such legal proceedings. Because these bonds are for use by private sector enterprises, I feel that they should be subject to more stringent checks; I believe that the burden of justifying public purpose or public need should be greater. Therefore, a two-thirds, project-by-project vote to authorize these special purpose projects is a good means of assuring public accountability. I feel that should this body choose to support this concept of special purpose revenue bonds, these safeguards would protect against some of the abuses that were discussed in the committee deliberations, and I urge your support of this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Hirata. Delegate Kono.

DELEGATE KONO: Mr. Chairman, I'd like to express the same feelings that Delegate Hirata has brought forth--that because of all the discussion this morning, I feel there are many problems with special purpose revenue bonds and I think a two-thirds vote would go a long way toward insuring the public interest, the preservation thereof.

I do have a question. I would like to ask if any of the delegates here who have served in the legislature would yield to a question as to just what types of specific problems occur in the legislature with a two-thirds vote, as opposed to a simple majority vote. Not being informed in the intricacies of politics, I'm not really certain as to what they're speaking of when they say that this is a problem.

CHAIRMAN: Thank you, Delegate Kono. Is there anyone who wishes to respond to the question? Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I'll be glad to yield. The simple explanation is that it's a question of numbers. When we try to pass something in the legislature by

a majority vote, in the senate, of which I'm a member, it's 13 votes. If a two-thirds vote is required, two thirds of 25 is 17. Anyway, it's a matter of obtaining that many more votes for the passage of a specific measure. And believe me, delegates, sometimes it's awfully hard to get that one final vote; that one senator or representative, knowing that his vote will make the two-thirds--he's going to exact his pound of flesh and more in order to get his commitment. That's the only difference.

CHAIRMAN: Thank you, Delegate Taira. Is there any further discussion? Delegate Peterson.

DELEGATE PETERSON: I wish to speak briefly on this subject. The issue addressed by this amendment is the subject of review and control. Voting in favor of this amendment shows a preference for having the legislature approve each authorization. As the proposal is written, the legislature provides enabling legislation, and this means they only consider the general rules and anybody meeting these conditions may have bonds issued without any further permission of the legislature. Even though it does require a two-thirds majority, which may lead to increased political tradeoffs, that is the practical reason for having this kind of a limitation because it will require that only those projects which are desirable and plainly meet a need will be approved by the legislature.

The second section of this proposed amendment relates to proper disclosure. Although the state credit is not at risk, it is only proper to require that the amount of special purpose revenue bonds be disclosed on a regular basis, as required by this amendment. Therefore, I urge you to vote in favor of it.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, the arguments against this amendment, which I hope to make, have in large part been made in connection with previous actions. However, if the finding of this body, in the recommendation to the public in terms of the amendment, is to consider the desirability of having these special purpose bonds because it would avail the citizens and businesses of this State the same benefits under the internal revenue code as are available in other states, then I think that it would be wrong for us to consider making as the basis for authorization that each issuance be subject to a two-thirds majority, rather than having the legislature determine the general policies under which public purpose would be found and having this done by a majority and then available to anyone who would meet that test. I think that that would be far more desirable and that the matter of finding in the public interest is something that could be done by category and by definition, and not by having to subject each authorization to a lobbying effort at the legislature. I think that would serve no purpose, and I think the effect of having such an amendment as this now proposed would be to create a situation which is far less desirable than that of the original proposal.

CHAIRMAN: Thank you, Delegate Kaapu. Is there any further discussion?

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I would speak against the amendment. There are some practical problems that I see arising, which I think we should consider. One is that requiring a separate bill for each special purpose bond poses extremely practical problems; one of those is that--for example, let's take the case of a hospital. If a hospital wants to borrow money for a capital improvement project using a special purpose revenue bond, it already had to go through numerous agencies to have that specifically approved. As a nonprofit agency, it had to go through the department of health and has already submitted to a regular scrutiny. It also has to go through the legislature. That adds another level of inquiry, a level which could be fraught with considerations that don't have anything to do with the merit of the particular improvement to be financed. The same would be true in the case of a utility. Let's suppose the gas or electric company wants to make a capital improvement and wants to use a special purpose revenue bond; under existing legislative requirements, that particular borrowing had to be approved by the Public Utilities Commission. The PUC staff examines the entire budget of the utility every year and the utility cannot make a borrowing without that specific scrutiny and without that prior authorization. If we make it mandatory in the Constitution that the legislature has to

specifically approve each borrowing by a utility, then we bring into the political arena all kinds of questions that don't belong there. For example, a particular substation in a particular district, or a particular line going through the district--the legislator in that district might say, Well, I want to have that substation moved over to another station or another line. You bring into that decision all kinds of political considerations which should not be there.

Now as to the other specific types of special purpose bonds, it may be that the legislature would require that an industrial or a manufacturing--that those, since they are new, should be specifically required. But let's not, in the Constitution, make it mandatory that the legislature have a separate bill for each bond of this type. Consistent with the idea that a constitution should not hackle a government in future functions, let's not put this in the Constitution. Let's leave it to the legislature to determine specifically what terms and requirements it feels are necessary in each case. And for that reason, I would urge you to leave that provision as it is in the committee proposal.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Hale.

DELEGATE HALE: I'd like to make an amendment. I'd like to amend this to delete from the words "by a two-thirds vote of the members to which each house" down to "general law may authorize," and just leave it like the original proposal had, "by general law may authorize."

DELEGATE DiBIANCO: I second the motion.

CHAIRMAN: It has been moved and seconded that we amend the amendment by deleting the phrase starting "by a two-thirds vote of the members to which each house" and ending "by general law may authorize."

DELEGATE HALE: May I speak to my amendment?

CHAIRMAN: Proceed.

DELEGATE HALE: The reason I want to amend this is I've heard arguments about the two-thirds vote, and it seems to me that this amendment has two good provisions in it and I'd like to see them voted upon separately; one is the two-thirds vote of each house and for each different type of project, and then the other is the report that the governor has to make, at the very end of the amendment. By voting for this amendment to delete, you are indicating that you are opposed to this particular section. If you vote against this motion to delete, then you're for that section. But on the other hand, with this amendment we would be left with an amendment that we could still vote upon on the governor's report, and I feel that then we wouldn't be mixing two issues in one vote. That's the reason I made the amendment.

DELEGATE DiBIANCO: Mr. Chairman, point of parliamentary inquiry.

CHAIRMAN: State your point, Delegate DiBianco.

DELEGATE DiBIANCO: Would the movant's purpose be better served by simply moving to divide the question?

DELEGATE HALE: Perhaps--I'm not that astute. If that's the proper motion, parliamentary--would that be--

CHAIRMAN: If the delegation would indulge for a moment, I would like to seek counsel from the parliamentarian.

At 2:10 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 2:16 p.m.

CHAIRMAN: The Committee of the Whole will please come to order. At this time the Chair would recognize Delegate Hale to withdraw her motion.

DELEGATE HALE: I withdraw my motion.

DELEGATE DiBIANCO: I withdraw my second.

DELEGATE HALE: Mr. Chairman, I've been advised that to accomplish what I want, it would be better to make a motion to divide the question and request that we vote upon the last sentence first; and that way, if that passes and if everybody is agreeable to that, and it seems there's no particular objection as far as I can see, then this would stay in the committee proposal--it's not there now--and then we'll discuss the first section separately and vote upon that.

CHAIRMAN: Thank you, Delegate Hale. If there are no objections, the Chair will so rule that the question shall be divided, and that we shall consider first the last underscored sentence, which has to do with a disclosure requirement.

DELEGATE HALE: May I speak to my amendment?

DELEGATE STERLING: Is then--on the question of parliamentary procedure, has the motion been made that we will consider the last sentence?

CHAIRMAN: Correct, so we're speaking to that subject first. Is there any discussion?

DELEGATE HALE: May I discuss--?

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Yes, I wanted to vote on this because it seems to me that saying the governor shall provide the legislature "with a report on the cumulative amount of all special purpose revenue bonds authorized and issued, and such other information as may be necessary" is a directive that would just make for better and more responsible government on the part of the legislature because they would not then be acting in the dark as to total figures, which sometimes are hard to get. But if this is in the Constitution and the administration knows they have to give this report, it will just be information as part of the budget, which would help in the whole budgeting process and in the process of getting bonds. And it seems to me this is a very, very good sentence and something that possibly there shouldn't be any disagreement about. The reason I wanted to divide it was I didn't want it to get lost in the shuffle, in the discussion on the first part of this amendment.

CHAIRMAN: Thank you, Delegate Hale. Any further discussion?

DELEGATE KAAPU: Mr. Chairman.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I rise to speak in favor of the sentence. At the present time, the statutes require that the executive branch prepare and submit to the legislature a certificate of indebtedness detailing all debt incurred, all debt authorized but unissued, and all debt excluded from the debt limit. Special purpose bonds, as an exclusion, would be required to be covered by existing statutory reporting standards, and for that it's inconsonant with the proposal for inclusion and the approval of this sentence, and I therefore support it.

CHAIRMAN: Thank you, Delegate Kaapu. Delegate Lewis.

DELEGATE LEWIS: Could I ask Delegate Hale if she would accept an amendment to this? Sorry to complicate the issue, but the amendment says in January; the Department of Budget and Finance, through the governor, submits its report in November, and this then would require two reports where you could combine them into one report. Your chairman would be in support of this motion--in fact he'd be in support of it whether it's January or November, but if Delegate Hale would accept the amendment to November, this would then provide for consistency and only one report.

DELEGATE HALE: Inasmuch as this is not my idea, I would like to bow to Delegate Marion Lee, and if that's agreeable with her it's agreeable with me.

CHAIRMAN: Delegate Lee.

DELEGATE MARION LEE: I would go along with the amendment if after consultation after this--that it is in concurrence that November would be the best date as far as the governor's office. In other words, I would like to check on it further, but I'm willing to go along with it now, assuming that it's all right.

DELEGATE HALE: On that assumption I'll accept the amendment, and then if it's not all right, we can offer it as a change.

CHAIRMAN: Delegate Hale, please.

DELEGATE HALE: Sorry.

CHAIRMAN: Is there any further discussion? Delegate Yoshimura.

DELEGATE YOSHIMURA: Mr. Chairman, as a member of the taxation and finance committee, it is my understanding that possibly public disclosure of this nature should be made by the council on revenues. On that basis, I believe this sentence is not necessary.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: If I can respond to the question raised by Delegate Yoshimura, the council on revenues could get into this question, but there is already a procedure that has been established whereby the governor's office reviews the total state indebtedness and any exclusion from the state indebtedness and submits a report. It's usually dated November 1 of each year, so this could be taken up under the current procedure and it would not be necessary to involve the council on revenues, although they could if they wished to get into it. So I think the amendment, as written, would accomplish the purpose for which it's designed.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Yes, Mr. Chairman. Before this amendment was divided as we have it now, I spoke against adoption of the amendment. But under this separation--this last sentence which we are talking about now--I just want to tell the delegates here that I have no objection to this amendment.

CHAIRMAN: Thank you, Delegate Taira. Is there further discussion? If not, the question on the floor is whether we should amend Committee Proposal No. 14, page 7, to add the sentence: "The governor shall provide the legislature in November of each year with a report on the cumulative amount of all special purpose revenue bonds authorized and issued, and such other information as may be necessary." All those in favor of this amendment, please signify by raising your hand. All those opposed, by the same sign. Thank you. The amendment is carried.

We shall now proceed to the other part of the amendment, which requires a two-thirds vote to authorize special purpose revenue bonds by general law, and on a project-by-project basis. Is there any discussion? Before I go on to that, may I just check my records. I've got Delegates Lee, DiBianco, Crozier, Hirata, Kono and Peterson who have already spoken for this amendment; Delegates Sterling, Taira, Sakima, Sutton, Kaapu and Burgess who have spoken against this amendment. I believe most of those statements were with regard to a majority two-thirds vote question.

DELEGATE KAAPU: Point of information.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: What is to become, under this division of the question, of the sentence, "provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the legislature"? Is that included in what we are now considering? Or is it--

CHAIRMAN: Yes, it is.

DELEGATE KAAPU: If that's the case, I have a further question, which perhaps the Chair can direct to an appropriate delegate. This language was found in the committee report but was not included in the committee proposal, and I understand that the language

in the committee report was put there advisably after discussion with bond counsel; and I further understood that something might be done with this sentence outside of adopting it as an amendment to the committee proposal. Is there any further information on that since we last talked about it informally?

CHAIRMAN: Fine, Delegate Kaapu. Delegate Lewis, would you like to respond to that?

DELEGATE LEWIS: I will respond to Delegate Kaapu's question. The question of a finder is a mandate in the existing language of the proposal, on page 6 down on lines 21 and 22; it mandates that the legislature find these to be in the public interest. In a conversation I had with Delegate Lee, the proposer of this amendment, she indicated her language might be clearer to follow. If this is the case, your chairman would have no objection in style to this amendment being moved up. In other words, I think it is important that it be cleared with bond counsel, but the fact is that if the question is raised as to whether it would be easier to understand by moving the public-purpose-finding requirement by the legislature to a different spot, your chairman would have no objections and would suggest that this could be taken care of by the style committee but should be cleared first with bond counsel.

DELEGATE KAAPU: Mr. Chairman, point of inquiry.

CHAIRMAN: State your point, Delegate Kaapu.

DELEGATE KAAPU: Am I then to understand that this sentence is not a point of contention between the chairman and the proposer of the amendment? So that a vote on this matter either way--the question of resolving this would still be handled. Is that correct?

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: That is correct, because the committee was unanimous in their conclusion that there had to be a finding by the legislature of public purpose.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: As a member of the style committee, I think the committee exercises considerable restraint; and I would prefer that if the sense of the Convention is that it be changed, that we do it by specific vote here. That would make our job easier.

DELEGATE SUTTON: Mr. Chairman, point of information.

CHAIRMAN: State your point, Delegate Sutton.

DELEGATE SUTTON: I was wondering if that wording can be changed in Second Reading.

CHAIRMAN: Yes, it may. Delegate Lee.

DELEGATE MARION LEE: Well, I just wanted to explain the reason for my putting in this provision, which was primarily as a language and grammatical clarification, because it is somewhat lost further down there in the committee proposal. So this would merely clarify it and make it more clear.

CHAIRMAN: Okay, the question on the floor is still with regard to whether the Constitution should require a two-thirds vote to authorize special purpose revenue bonds by general law and on a project-by-project basis. Delegate Uyebara.

DELEGATE UYEHARA: Yes, I'd like to amend this amendment by deleting from the second and third lines "and by a separate bill for each authorization and for each different type of project."

CHAIRMAN: Is there a second to the motion?

DELEGATE SUTTON: I second the motion.

CHAIRMAN: It has been moved and seconded that we amend the amendment to Committee Proposal No. 14 by deleting the reference to authorization on a project-by-project basis. Is there any discussion on the amendment to the amendment? Delegate Uyebara.

DELEGATE UYEHARA: I'd like to speak for the amendment to the amendment. For me, it was a very difficult concept to swallow and I have had a very difficult time--to state that this State will provide with the allowance of other industries to have these special purpose revenue bonds. However, because we have this thing going and there will be some form of checkpoint by the governor, by the Department of Budget and Finance, and also because they would have to comply with IRS and a feasibility study that may be carried on, I believe that the two-thirds vote by the legislature would alone be a sufficient checkpoint to help some of these industries get started or have their projects clear some of the pollution laws, or otherwise no new industries may be put into this State.

And for this cause, I would like the delegation to state that if we take out the project-by-project requirement, I'm sure that this amendment becomes much more feasible to all of us--that the two-thirds vote would require the State and other groups to come and lobby for--and to make this a state project.

CHAIRMAN: Thank you, Delegate Uyebara. Is there any further discussion on the amendment to the amendment?

DELEGATE HIRATA: Mr. Chairman.

CHAIRMAN: Delegate Hirata.

DELEGATE HIRATA: I speak against the motion to delete this section. I have had some difficulty understanding the problems in allowing the legislature to authorize project by project. I think that the State in this case has been--people have mentioned to me that the State has been used as a conduit in this case to allow private companies, private corporations, to float bonds at a lower interest rate. And if this is the case, I believe that the legislature should look at the projects individually. There was mention of Hawaiian Electric or the gas company coming in and wanting to put a substation in one district and the legislator in that district objecting to it and probably being able to raise enough votes to stop this project. This will not hamper or deter the electric company from coming in and building there. They can still come in, they can still float bonds at the regular bond rate. But if the State is going to allow itself to be used as a conduit, to allow private corporations to receive lower interest rates, I personally believe that the legislature should look at each project and the legislator from that district should find out from his residents--do you want a substation here, and if they really don't want a substation there, then why should we allow the State to be used as a conduit, in this case in building a substation? It's not going to deter the construction of a station there because the bond still can be floated.

I really feel that this is not too much to ask for the legislature to look at each individual project and make a determination at that time, by a two-thirds vote. There was reference made that it's difficult to gather that many votes, but if it is for a public purpose--I'm sure that the 51 representatives and 25 senators can see that if it's going to benefit the people of the State, that there will be 18 senators and however many representatives willing to approve this authorization. And with this, I urge my fellow colleagues to vote this amendment down.

CHAIRMAN: Thank you, Delegate Hirata. Delegate Souki.

DELEGATE SOUKI: Yes, Mr. Chairman, I wish to speak against the amendment to the amendment because I believe that the two-thirds vote would be extremely difficult to get in the legislative session--it will make it almost impossible--and that if you conceptionally believe in special purpose revenue bonds, then I would think that a majority vote would be more than sufficient; and if you're conceptionally opposed, then my recommendation to this body here is just simply to wait until Amendment No. B3 comes up and you'll have your chance then.

CHAIRMAN: Thank you, Delegate Souki.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I would just like to point out that you get into a nightmare when you go into separate bills. I speak in favor of the deletion, Mr. Chairman. The proper form for things that are likely to be dealt with in these special purpose bonds is not the legislature. I would like to ask you--what would we do if we had to--these 102 people who are not specialists in any one field--what if we had to go over and analyze and specifically approve every item on the budget of Hawaiian Telephone Company every time we want to borrow money, or Hawaiian Electric, or the gas company. You know, we would be totally out of our kuleana; we'd ask questions--we represent our constituents and feel we're obligated to make changes in one way or another. That's not the right form for that type of decision and I submit that the legislature is not either. And I believe this bill-by-bill authorization just creates a nightmare that we should not create.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman, I'd like for my last time to speak for this amendment because--just to kind of rebut what the previous speaker said--they're complaining that they're going to have to go back and do a lot of work to get this free ride; but it's a free ride already, so go ahead and do some work.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I'd like to speak against the deletion of this wording on the separate bills and I'm using the same arguments used a minute ago, because it seems to me that if you don't have some basis upon which to decide whether or not you're going to float bonds--I don't know whether it's looking at the corporate statements or what--but certainly the legislature should investigate every project they're going to use public credit for that comes into this State. And to say that it's a nightmare and you couldn't do it--I want to know on what basis would you do it? Under the political pressures that these industries would put upon legislators? Seems to me there has to be some rationale and economic basis to do this and it's going to have to be based upon each individual company's financial status and financial statements, and their record of past performances and all kinds of things. It's going to take a great deal of study before I as a taxpayer would want my legislator to vote for special purpose revenue bonds. I would urge everybody to vote against the amendment to delete this.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE MARION LEE: Mr. Chairman.

CHAIRMAN: Delegate Lee.

DELEGATE MARION LEE: I will have to speak against this amendment because of the fact that, the way my original amendment stands, it was my definite intent and purpose to make it strict--and this is just an additional safeguard; that if it is by separate bill, we will be assured that the legislature will scrutinize each item carefully, rather than merely passing a blanket, general type of bill which just authorizes all bonds in that particular category. We would never know what might happen a few years down the line when we would need to have new types of programs--say in the utilities case, you have nuclear programs that come up 3 years from now, and you would want the legislature to reanalyze the situation and go over it again to authorize that specifically.

CHAIRMAN: Thank you, Delegate Lee.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: I had not intended to speak on this bill, but I would rise to speak against the motion merely as a matter of information to the delegates--and I'm only speaking with respect to one part of the special purpose bonds, with which I'm more familiar than the others. Under the budget process, the budget of Hawaiian Electric is submitted to the Public Utilities Commission; the Public Utilities Commission goes through this budget line by line; the public utilities division representing the consumer advocate

is present at the hearings and there is considerable debate on every item of the budget; and when the budget is finally approved--and it's usually approved on an amended basis--this budget then has gone through the scrutiny of the body which the legislature has delegated this responsibility to. If there are other areas which may be of concern to the public--such as whether a transmission line should go through a residential district, or whether it should go through conservation areas--there are laws on the books which mandate a thorough review of this other process. In addition, if there's any major project, there's a requirement of an environmental impact statement, so that any projects which are undertaken by utilities have to undergo a considerable review. To add to this a legislative review, project by project, I submit, would be a duplication of effort, where the legislature has already set up other review processes, and I would speak against this amendment and also against the original amendment.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Kono.

DELEGATE KONO: Mr. Chairman, I have a question if the former speaker would yield. I just wondered how much his particular utility would be going to the market for, at any one particular time. I think that would make a difference--say, if they went to the market with a \$500,000 issue, and each legislative session would require the scrutiny of 10 of those issues, or if they would go to the market with a \$5-million or \$20-million issue, which I think would certainly require greater scrutiny.

CHAIRMAN: Thank you, Delegate Kono. Delegate Lewis, would you like to respond to that question?

DELEGATE LEWIS: A typical budget is in the area of \$30 million and this typical budget has probably 200 items in it--200 to 300 items. They run the gamut, from substation sites to whether there should be a new reef conducting of a line along a residential district on a residential street. There's a complete spread of types of projects that are included in that budget and so if--when they would go to the market, this would have been on the type of financing. This type of financing would only be available for debt financing, for the issuance of bonds. This does not in any way involve preferred stock financing or common stock financing; it's limited to debt financing. So this would depend upon the capital structure requirements of the utility company and would not necessarily mean--and most likely would not mean--issuing debt each year. One year you might be issuing debt and another year you might be issuing common stock, and so this only involves those years in which you would have debt financing.

DELEGATE HALE: Mr. Chairman, point of information.

CHAIRMAN: State your point, Delegate Hale.

DELEGATE HALE: The last speaker said that he was speaking against the amendment. Now the amendment, as I understand it, is to delete these words.

CHAIRMAN: State your question, please.

DELEGATE HALE: Is that what he is speaking against? Because what he said indicated to me he was speaking for the amendment. I'm a little confused.

CHAIRMAN: Thank you, Delegate Hale. Will you please clarify your--I had the same impression, Delegate Lewis.

DELEGATE LEWIS: I would be happy to break up my discussion into two segments, and Delegate Hale is correct; I spoke against both this amendment and the original one with respect to the amendment that is before the group. This is only limited to the two-thirds requirement, and I would then defer to the remarks made by Delegate Taira as to the difficulty in obtaining a two-thirds majority. This is not required under--

DELEGATE HALE: Point of information, Mr. Chairman. I think the delegate still doesn't understand what the amendment is.

CHAIRMAN: Delegate Hale, the Chair did not recognize you. Delegate Lewis, the question is as to whether or not you are opposed to both--really, just leave it to the opposition of the amendment to the amendment, to delete the authorization on a project-by-project basis. Were you speaking for or against the amendment to the amendment?

DELEGATE LEWIS: I speak against the amendment to the amendment. I did err in speaking on two different amendments at once. Delegate Hale is correct, I should have limited my discussion to one amendment at a time.

CHAIRMAN: Thank you. In the future you may perhaps address that as a point of order, and the Chair might have ruled on it then.

DELEGATE HALE: Point of order.

CHAIRMAN: State your point.

DELEGATE HALE: I still heard him say he was speaking against the amendment to the amendment, and as I understand it, the amendment to the amendment is to delete this from the sentence--having a separate bill for each authorization and for each type of project. The reason I'm asking is that I don't want to vote incorrectly myself.

CHAIRMAN: That's correct, Delegate Hale.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Go ahead, Delegate Lewis.

DELEGATE LEWIS: Without belaboring the question, this still deviates from the committee proposal, which requires a majority vote. If you were to propose an amendment that deleted the two-thirds instead of majority--

CHAIRMAN: Delegate Lewis, the Chair believes that the question does not relate to the majority versus two-thirds vote. Is there any further discussion on the amendment to the amendment? If not, are you ready for the question?

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Will you state the question clearly, so we know what we're voting on?

CHAIRMAN: The question before the Committee of the Whole is to amend the amendment to Committee Proposal No. 14, whereby reference to the authorization of special purpose revenue bonds on a project-by-project basis shall be deleted, such that the first few lines shall read: "The legislature, by a two-thirds vote of the members to which each house is entitled, by general law may authorize the State or political subdivisions," etc. All those in favor of the amendment to the amendment, please signify by raising your hand. Thank you. All those opposed, by the same sign. Thank you. The amendment to the amendment fails.

The question on the floor remains our original Amendment No. B2, requiring a two-thirds vote to authorize issuance of special purpose revenue bonds by general law as well as on a project-by-project basis. Is there any further discussion?

DELEGATE KAAPU: Point of information.

CHAIRMAN: State your point, Delegate Kaapu.

DELEGATE KAAPU: Having just voted on the previous amendment to the amendment, does the version on which we will now vote include the words "and by a separate bill for each authorization and for each different type of project"?

CHAIRMAN: Yes, it does.

DELEGATE KAAPU: Okay, thank you.

CHAIRMAN: Is there any further discussion? Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak in favor of this amendment. It's difficult to swallow that taxpayers have to use taxpayers' money to create these kinds

of things. The irony of it all is that you use the taxpayers' money to take care of your utilities or whatever, and then that cost is passed on to the taxpayer again, so it's kind of a double jeopardy. However, I speak in favor of the amendment in that I think whenever you're using taxpayers' money, there should be some kind of setup like this two-thirds vote and the review process of the entire package--whatever kind of package it is, even if it is the Hawaiian homes, or whatever--I think that we have an obligation to the taxpayers of Hawaii, and more especially, to the people.

CHAIRMAN: Thank you, Delegate De Soto. Is there further discussion? If not, are you ready for the question?

DELEGATE KAAPU: Mr. Chairman.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: I'm speaking for the second time against the amendment for the reason that, contrary to what was said previously, taxpayers' money is not being used in connection with these bonds except to the extent that the internal revenue will allow the bonds to be nontaxable, provided that the legislature has found them to be for a public purpose. But no money of the citizens of the State is involved, either as a guarantee or in connection with these bonds in any way.

CHAIRMAN: Thank you, Delegate Kaapu. Delegate Hirata.

DELEGATE HIRATA: I yield to Delegate Hayashida.

DELEGATE HAYASHIDA: Mr. Chairman, I would like to address the previous speaker's statement. I don't think there is such a thing as a free lunch anywhere.

CHAIRMAN: Let the record show that you're speaking for the amendment.

DELEGATE HIRATA: Mr. Chairman.

CHAIRMAN: Delegate Hirata.

DELEGATE HIRATA: I rise to speak for the amendment. I'd like to clarify something. Although taxpayers' money may not be used in these bonds, if there is any default the State is still liable, the State will still have to go to court because if the State is mentioned--the State's name will have to be mentioned in the suit. Let me go back to my earlier speech, in which I said that the governmental unit would have to pay its own legal bills if there are such legal proceedings. Although the State does not have to pay for any default, if the State is named in a suit, the State will have to go to court and state moneys will be used. I truly believe that the legislature should look at each project in determining if it's feasible, because the State, in the long run--somewhat indirectly, the State's credit may be at stake also.

CHAIRMAN: Thank you, Delegate Hirata. Delegate DiBianco..

DELEGATE DiBIANCO: I also rise to speak in favor of the amendment one more time, and in response to the remark made by the speaker, which generated these last few remarks, it's true that the State's money may not necessarily be directly on the line here; but as I indicated this morning, I find it hard to believe that if a special purpose bond issuance did go into default, that the State would not come in and back it up, because the State has to go back to these same groups of investors on the mainland for the funding of its general obligation bonds. And I think it would have a difficult time getting the general obligation bonds funded if special purpose revenue bonds that it had stood behind, so to speak, went into default and it did not make good on them. So that I could see in the future one or two companies going belly-up, these special purpose revenue bonds going into default, and the outcry being so great that public moneys would be used because the State would decide it was cheaper in the long run to pay off on these defaults so that it could preserve its own credit rating. And if in fact we have that potential, I don't think it's too much to ask that we have a project-by-project, two-thirds vote in the legislature in order to authorize these issuances.

DELEGATE SUTTON: Point of information.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Sutton.

DELEGATE SUTTON: Yes, I was wondering if the previous speaker's statement was only indigenous to this proposal and to this State.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Does someone understand that question and would be willing to respond to it? Delegate DiBianco.

DELEGATE DiBIANCO: If what I understand the question to be is whether or not the remark I made indicated that only the State of Hawaii would feel this moral obligation and if Delegate Sutton is asking whether or not, in fact, other states have felt this moral obligation and made payments on defaulted bonds, I think the answer is (a) I don't know; and (b) I think the matter of special purpose revenue bonds is still such a young idea that the returns aren't in yet, so it's hard to say what other states are going to do.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I'd like to speak for the amendment. It seems to me, basically what we're saying here is that if we are going to authorize public money--or public credit, I should say--to be used for private industry, then it is certainly of very great concern to everybody. And I think it should be our obligation to see that we leave as little room as possible for political maneuvering in this process. With the two-thirds vote of the legislature, I think then you're going to have support that will represent more than just a bare majority of the people. You're going to get some minority feeling in this, but if it's really in the public interest, then I think every elected representative would be for it. If it's not in the public interest, then the two-thirds vote would certainly help to keep unwise projects from being pushed through by a bare majority. We've seen how majority rule can operate here in areas where we're not very familiar, and I can assure you that in the legislature, where you have a political party system, majority rule is even more effective.

The other aspect of this is that there should be a separate bill for each authorization. We're not talking about a few hundred thousand dollars when we talk about bonds for the State of Hawaii, we're talking in the millions of dollars. And we're talking now about whether we're going to hide these projects within a general revenue, special purpose revenue appropriations bill where each project will not get full consideration; or are we mandating the legislature--that if you do this and if you can prove it's in the public interest, then it's up to you to scrutinize each individual bond issue so that we can make sure that the people who are affected will have a full chance to testify, and the public can come out. . . . If it's all mixed up in one big bill, you can be sure it's a good way of hiding special projects for special politicians, and I really think we ought to be honest about this and call a spade a spade. This is certainly a very good attempt to do something with what I thought had, in the first place, a very poor purpose; and at least with this protection, there is some means of taking care of the people's interests. I urge you to vote for the amendment.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE YOSHIMURA: Mr. Chairman.

CHAIRMAN: Delegate Yoshimura.

DELEGATE YOSHIMURA: Thank you, Mr. Chairman. I rise to speak against this amendment as I believe it will defeat the purpose of coming up with a rational means of arriving at a decision. If the intent of this amendment is tighter control, the very abuses that this amendment is seeking to eliminate may be nullified, as there will be a lot of horse-trading or political maneuvering with these special purpose projects. Rather than pleasing a majority, you are now trying to please two-thirds of the legislature.

I also would like to note to the delegation that we in the committee had eliminated the two-thirds majority of the legislature for general bond authorization simply because of the horse-trading problem.

CHAIRMAN: Thank you, Delegate Yoshimura.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: I'd like to speak again against the amendment. The purpose of the revenue bonds is to reduce the cost of capital; we're increasing the cost of compliance. I sat on the planning commission. When you require the petitioner to keep coming back and he hauls his lawyers up from Honolulu, and they come back for hearings and hearings and hearings, and the time of the engineers and the consultants--the cost of compliance, the government regulations on our Island--the cost of compliance, flood regulations, environmental regulations, tsunami regulations. The cost of compliance only adds to the cost of the product. And this can be sizable. By the time--we're supposed to be helping them out to encourage economic development for jobs so there are people who can stay home and not have to go to the mainland. But by the time you comply with all of the regulations and requirements, we've just taken away the 2-1/2-percent savings.

CHAIRMAN: The Chair wishes to remind the delegates again that we seem to be speaking to the concept and not to the question, as to the majority versus two-thirds requirement. Delegate Kono.

DELEGATE KONO: Mr. Chairman, I'd like to speak for the amendment. There were concerns raised about the two-thirds vote being difficult to attain. I don't think it's been too difficult for the legislature to achieve this two-thirds vote, as indicated by the billion dollars in authorized but unissued debts that we've managed to backlog. So I don't think that that argument has much strength.

Now, I've been trying to keep an open mind and really weigh the merits in the consideration of this majority and two-thirds vote. The side that I'm coming to is definitely in favor of the two-thirds vote, because the arguments against the two-thirds vote all seem to be concerning political abuses. If the people who propound those arguments feel so strongly about political abuses and the fact that apparently legislators are so political-minded that they cannot be reformed, then I would think the people who would be voting in the majority vote would also be politically inclined; and I would think it would be disastrous for this State to be making political divisions on a majority basis for projects that could be putting the State in risk. I wish I could be as brief and concise as Delegate Hayashida--I really feel that there is no such thing as a free lunch, that we'd really be putting the State in a situation of liability for litigation and possibly for making up the bond payment. And I would urge the delegates to vote for this. Many states require public referendum whenever bond issues are floated; this underlines the seriousness of this type of financing, and I think we shouldn't take the matter so lightly as to leave it up to a simple majority vote.

CHAIRMAN: Thank you, Delegate Kono. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I speak briefly against the amendment. I submit that it's inappropriate to require a two-thirds vote to issue a bond where the State is not liable, and to require only a majority vote to issue general obligation bonds where the entire credit of the State is on the line. I think the need for a two-thirds vote for all special purpose bonds would be unwise; it would give a small minority--basically one-third of the legislature plus one--the right to hold up projects which are clearly in the best interest of the public. The unproductiveness of a two-thirds requirement is demonstrated by the authorized but unissued bonds that we have right now; the requirement of the two-thirds has probably been a contributing factor to this pork barrel, which leaves us now with over a billion dollars of authorized but unissued bonds. I would urge the delegates to vote against the amendment.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Lee.

DELEGATE MARION LEE: Mr. Chairman, I just want to reiterate the importance of this matter. If all those delegates who expressed concern this morning about special purpose revenue bonds were very concerned, I feel that this would merely add that extra safeguard, which I think is very important. This is not a subject we should treat lightly, and allow the legislature to pass these bonds by a mere majority. I feel it does no harm

to place some restricted control--having the legislature pass by a two-thirds vote. Therefore, I urge all delegates to please vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Lee. Are you ready for the question? The question on the floor is to amend Committee Proposal No. 14 by requiring a two-thirds vote to authorize special purpose revenue bonds by general law and on a project-by-project basis. All those in favor of this amendment, please signify by raising your right hand. Thank you. All those opposed, with the same sign. Thank you. The ayes have it, and the amendment is carried. In this case, the total Amendment No. B2 has been accepted, in both parts. We now proceed to Amendment No. B3. Delegate Izu.

DELEGATE IZU: Mr. Chairman, I move that we amend Committee Proposal No. 14 as proposed in Amendment No. B3, which deletes special purpose revenue bonds in its entirety.

DELEGATE DiBIANCO: I second the motion.

CHAIRMAN: It has been moved and seconded that we amend Committee Proposal No. 14 by deleting all references to special purpose revenue bonds. Is there any discussion?

DELEGATE IZU: Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: Mr. Chairman, I rise to speak in favor of the amendment. In doing so, I have to admit that I'll be reiterating what many of the speakers have already said this morning because many of the delegates spoke on the concept of special purpose revenue bonds. But since I worked hard on this last night, I've decided to speak anyway.

In considering the desirability of including a provision on special purpose revenue bonds in our State Constitution, not only must we examine the financial ramifications such as the credit rating and the liability of the State, but we should also look at the purposes for which these bonds are floated and the beneficiaries therefor.

These bonds will not aid small businesses or marginal industries, I believe, because: (1) the amount of capital required by small businesses does not run into large enough figures to warrant bond issuances, which are generally in the millions of dollars; and (2) investors will not buy bonds that are backed by unstable, marginal businesses or industries, tax exemption or not. Therefore, it can be concluded that special purpose revenue bonds are meant to aid big businesses--big profitable businesses--in getting lower interest rates on their bonds.

Big businesses are generally able to conduct quite intensive lobbying at the legislature. I'm glad we just passed the two-thirds vote amendment. Although I do have faith in our legislators, it is conceivable that the pressures placed on them to approve various issuances of such bonds will be great enough to make them succumb. And once done, the next time becomes easier and easier to justify.

Also, by aiding some big businesses in this manner, could it not be construed that the legislature is giving unfair advantage to them over small businesses? Would the legislature not feel compelled to help smaller businesses in competition with these big businesses which are the recipients of special purpose revenue bonds, in some manner such as subsidies?

One argument I've heard in favor of special purpose revenue bonds is that it incurs no loss to the State. Rather it's the federal government that loses out on some tax revenues due to the tax-exempt status of these bonds. But I submit to you that the federal government really does not lose any revenues; it just has to get those revenues from some other sources--perhaps the middle-income individual taxpayer.

A concern that should apply to the businesses that would benefit from special purpose revenue bonds is the regulatory effect upon private industries with the issuances of such bonds. It is expected by some of us that the legislature will establish strict regulatory mechanisms in the bills which authorize the issuances of such bonds to insure that the proceeds of the bond sales will actually be used for the public purpose for which it was

authorized. But may I remind you of the vociferous complaints about government regulation. Very recently we learned that a private enterprise which performs a necessary service within our State will go out of business due to the regulatory climate of the State. This instigated a great hue and cry over the growth of government and its interference into the private sector of our economy. For those among us who may favor public control over necessary services such as utilities, special purpose revenue bonds may be a means of gaining substantial regulatory control over these industries. But I ask you to seriously consider such an outcome; and I also ask, should we point our legislature in this direction?

One final comment: Proponents of special purpose revenue bonds point out that the State only lends its name; no financial or credit risk is involved. But let me make an analogy on a personal level. If I were to give positive recommendations to a number of different people who are seeking jobs or applying for credit cards, and any one or several of them proved to be unworthy of my recommendation, wouldn't my credibility be at stake in the future?

There are positive aspects to allowing the State to float special purpose revenue bonds, as the proponents have stated earlier in the day. All I ask at this time is that all of you seriously consider the import of your actions on this matter.

CHAIRMAN: Thank you, Delegate Izu.

DELEGATE HALE: Point of information.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Could Delegate Izu run through this amendment with us? It's a little bit difficult to follow what wording would be left in the proposal.

CHAIRMAN: Delegate Hale, is your question as to explain--

DELEGATE HALE: Explain the amendment for me.

CHAIRMAN: Thank you. Delegate Izu, would you like to respond to that question?

DELEGATE IZU: What this does is that it takes out of Committee Proposal No. 14 all references to special purpose revenue bonds. On page 5, lines 5 through 8--

CHAIRMAN: Delegate Izu, perhaps the Chair might help you with this.

DELEGATE IZU: Thank you.

CHAIRMAN: As the Chair looked at this amendment prior to coming to the Convention, item 1 deletes the definition of special purpose revenue bonds. Item 2 would delete the authorization for special purpose revenue bonds. Same with item 3. And item 4 deletes the reference to excluding special purpose revenue bonds from the debt limit, and therefore Delegate Izu has deleted from the committee proposal all references to special purpose revenue bonds. Is that clear, Delegate Hale? And is that correct, Delegate Izu? Is there further discussion?

DELEGATE SAKIMA: Mr. Chairman.

CHAIRMAN: Delegate Sakima.

DELEGATE SAKIMA: I speak against the motion. It has been said that if they do sell general obligation bonds whether the impact would be felt all the way down. Let me read from the Honolulu Star-Bulletin, Thursday, August 31: "Special purpose bonds would be authorized so that lower interest rates would be possible on bonds floated for projects deemed in the public interest. If utilities, for example, could float tax-free bonds they might save as much as 2.5 percent in interest [rates] that would be passed on to customers." So I'm in favor of these kinds of bonds being floated because the State's credit and faith are not behind these bonds. And as I've said over and over again, the bond buyers are very astute; they're not going to buy bonds that are shaky or very unstable.

CHAIRMAN: Thank you, Delegate Sakima. Delegate Blean.

DELEGATE BLEAN: Mr. Chairman, yes, I know we discussed this at great length; I would like, however, to ask your indulgence to speak very briefly in favor of this amendment again. I think it's the wisest and most logical amendment that has come out of the Convention in many weeks. The problems in our economy have been delineated at length and we all share them--the need for diversity, the need for growth, the need for more jobs--but this is not the solution. The solution is to find benefits which will stimulate the economy for all businesses, for all people, for all taxpayers, and not just give special favors to a few special firms. And to do this, we need lower taxes, lower debt limits, not higher debts; we need less government spending, not greater, and we need less government interference in businesses and free enterprise, not more interference. So let's share the problem but let's find a real solution and come up with some answers in government financing which will benefit everybody and not just pass out a few favors to the big boys.

CHAIRMAN: Thank you, Delegate Blean.

DELEGATE LES IHARA: Mr. Chairman.

CHAIRMAN: Yes, Delegate Ihara.

DELEGATE LES IHARA: Could I call for a recess--a short one?

At 3:12 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:20 p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Prior to the recess, the question on the floor was Amendment No. B3. Is there further discussion?

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: I'm speaking against the amendment. I would invite the attention of my colleagues to the journal of the Committee on Taxation and Finance, particularly the testimony offered by the investment banking houses, which came from New York and San Francisco, on the controls they had, on the amounts of money they're willing to invest for these purposes. I've heard many arguments this morning and we're going into late afternoon now, but we seem to be reaching the realm of probability--a hypothesis as to what's going to happen if we do this. But the journal of the committee is quite specific. I have as yet heard no alternative as to who will put into the economy of the State of Hawaii hundreds of millions of dollars to alleviate the problems--as I stated this morning--of providing jobs. If you should go into the countryside, time and time again, I think, in all of the polls it shows up as at least number two or number three--this concern for jobs. And this is what we're addressing ourselves to. This is an investment by the private sector--the risks are taken by the private sector, the investment banking companies, who have very stringent controls, who will participate in economic development. I suggest very strongly that we give this consideration, serious consideration because of the specifics contained in the journal, as against probability and hypothesis.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Barr.

DELEGATE BARR: Yes, Mr. Chairman, your delegate from the mountain on the Valley Isle does not want to relive all the arguments of this morning. However, I would like to make a couple of observations. One is that I had introduced--I am, incidentally, speaking in favor of the amendment--I had introduced a proposal to allow special purpose revenue bonds for the specific purpose of housing, and my introduction of that proposal suggests that I do not see special purpose revenue bonds as the worst thing on earth that could happen. However, when we extend the purposes as broadly as this particular provision does, I must find myself against these revenue bonds.

I would like to point out that historically the purpose of special purpose revenue bonds in this country was to induce private industry to invest in marginally profitable endeavors. If it was not marginally profitable, if it could produce a good profit, they

wouldn't need special revenue bonds; they could get the funding, get the financing, and it was worth taking the risk to make the big profit. So this purpose was for marginally profitable endeavors. And that's why I've been so concerned with the possibility that government then would be giving out favors to some industries over others. Consider, for example, the matter of energy, that has been discussed for so long. Now we're getting proposals from various sides that we ought to push solar energy, that we ought to push water energy, and of course we already have our electric energy and our gas energy. If we give special purpose revenue bonds to one of those--let's say the electric utility--then the gas utility quite properly can say--hey, what about us? you gave special favors to our competition. Then along come the geothermal people saying--what about us? you gave special consideration to our competition. Then along come the solar energy people--what about us... the wind energy people--what about us, etc. And unless we intend to make this a phenomenal enterprise, we are going to end up with government giving favors to some over others, and I submit that's bad.

Now one comment that was made was that the interest savings would be passed on to the customers. But in fact their purpose is to make it more profitable so that businesses will undertake it, not to pass on the interest to the customers. I really wish that that would happen, but I fear that I am much too old to live long enough to see the day that the interest will be passed on to customers. So I speak in favor of this amendment.

CHAIRMAN: Thank you, Delegate Barr.

DELEGATE HALE: Mr. Chairman, point of information.

CHAIRMAN: Delegate Hale, please state your question.

DELEGATE HALE: Yes, I would like to ask Delegate Sterling, or any other delegate here who feels he can answer it--but I feel that Delegate Sterling may be able to answer this--what specific industries are we talking about? Has anybody gotten an indication of any industry that would come to this Island, or these Islands, anywhere, if we had special purpose revenue bonds?

CHAIRMAN: Thank you, Delegate Hale. Would someone like to respond to that question?

DELEGATE STERLING: I'll try.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: Well, first of all, another great concern of every delegate was the costs of hospitalization and medical care. If you'd gone to the taxation and finance committee meetings, you would have heard the hospital people stating how much they could save in the cost of capital that could be passed on to the patients, particularly the spokesman from Kuakini hospital who was very clear on this. We know the costs for hospitalization on our Island, the County of Hawaii. I've been asked about these bonds by fishermen in Kona, the ones who would like to go into quick-freeze plants, larger boats so that they could meet the demand of a food-shortage world.

We've been asked about going into larger drying plants for our avocado, for the guava, for the papaya, so that we would not have to ship the bulk to Japan, but they could be shipped dried, saving on the freight. I'd hate to be the mayor of the city of Tokyo with 15 million people when it was found they would not have to be shipped in every day--the food. But these are some of the questions that I'm addressing myself to--the need for economic expansion and the fact that again the record in the journal of the taxation and finance committee shows that we have investment bankers willing to invest in this kind of business venture. I hope I answered your question.

CHAIRMAN: Thank you, Delegate Sterling.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I'd like, then, having the question answered, to speak for this amendment.

CHAIRMAN: Proceed.

DELEGATE HALE: I'd like to say first of all that on our Island, the Island of Hawaii, the only major hospitals we have are county hospitals, and they already would be able to get funding from the general fund and wouldn't have to go through special purpose revenue bonds because they belong to the State. I think this is probably true on the other neighbor islands. This may be a problem in Honolulu that I'm not aware of, but I represent my people; so from my people's point of view, to help the hospitals in Honolulu would not necessarily be of benefit to them.

Number two, the Small Business Administration has money for the kind of enterprises that Delegate Sterling mentioned. There's lots of money available for small enterprises-- fishing boats, drying factories. I'd like to say that the small business local development corporation, of which I am a member and president, lent money a few years ago for a freeze-drying plant in Hilo, where we freeze-dry the guava pulp and it is shipped to the mainland. For this kind of enterprise there is money available, and I know there is a local development corporation in Kona. I also know that our local development corporation was approached by a group in Kona who wanted to freeze-dry fish, but it was not feasible for them to put the project together, even for SBA, and therefore, I'm sure it would not be feasible for this kind of financing, under bonds.

I don't believe that what we're talking about with special purpose revenue bonds is the small business type of enterprise, because if we are to put the credit of the State up for these purposes--we're talking about millions of dollars, not hundreds of thousands. And since the problem has gotten so confused that we're now allowing manufacturing and industrial and processing plants, it seems to me that this is probably the best solution right now. I would like to suggest that everyone vote for this solution, that they also vote for initiative when it comes up, and if the people really want this, they can put it on the ballot that way.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE LACY: Mr. Chairman.

CHAIRMAN: Delegate Lacy.

DELEGATE LACY: The previous delegate--I heard her a number of times today speak out on the credit of the State. The State is not putting any credit up on special purpose revenue bonds, and I wish they would keep that clear.

CHAIRMAN: May the record show that you're speaking--

DELEGATE LACY: I am against the remarks made.

CHAIRMAN: Duly noted.

DELEGATE STERLING: Mr. Chairman, may I, on a point of personal privilege--

CHAIRMAN: Please state your point.

DELEGATE STERLING: On the question of hospitals in Kona, we send most of our people to Honolulu--

CHAIRMAN: Delegate Sterling, is this a question or a personal privilege?

DELEGATE STERLING: Personal privilege, to correct an impression that has been made. Our hospitals are inadequate. We send most of our sick people to Honolulu, and this question is a valid--

CHAIRMAN: Delegate Sterling, the Chair would rule that you're debating.

DELEGATE STERLING: Okay, thank you, sir.

DELEGATE PULHAM: Mr. Chairman.

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: Yes. As the previous speaker attempted to state, we have on the Big Island inadequate medical facilities, grossly inadequate--anyone who has more than a stomach-ache had better come to Honolulu--and therefore we are very much interested in the hospital situation here.

As this morning, I will again address another serious area and talk about interisland transportation, which has previously been alluded to. I think at this point, as a State we are either going to have to go into the transportation business or we are going to have to persuade private enterprise to do it for us. If I had a choice, I would certainly prefer that private enterprise handle the interisland ferry system, which has to arrive if industry--if the economy of the Big Island, and many of the other islands--is to make it at all, because the market is here. I feel that what we're talking about, if nothing else, is an opportunity to provide capital at a cost that these people can afford, to start projects such as this. If that does not lead to economic development, if that is not a concern not only of my constituents but of this entire State, then I am terribly wrong. And if for no other reason, that alone is sufficient to have this as part of our Constitution.

CHAIRMAN: Thank you, Delegate Pulham. Is there further discussion?

DELEGATE YOSHIMURA: Mr. Chairman.

CHAIRMAN: Delegate Yoshimura.

DELEGATE YOSHIMURA: Thank you, Mr. Chairman. I rise to speak against the proposed amendment that would delete all reference to special purpose revenue bonds from the committee proposal.

First of all, to reiterate, let us keep in mind the constitutional issue concerning special purpose revenue bonds. The constitutional issue is not whether these bonds are good or bad, and the constitutional issue is not whether they should be authorized by the legislature or issued by the administration. Even with the deletion of this portion, the legislature still has the authority to authorize special purpose revenue bonds, as it has in the past, and the administration still has the authority to proceed or not to proceed with their issuance.

The only reason these bonds have come before this Convention as an issue is whether they need to be counted against the constitutional debt limit. That is the only issue before us.

I believe the arguments are persuasive that special purpose revenue bonds, if they are found to be in the public interest by the legislature, should be excluded from the debt limit; since the issuing jurisdiction can incur no liability, and all responsibility for payments on the bonds rests with the enterprise for which the bonds are issued, there is no rational basis for including such bonds in the debt limit. The committee proposal corrects this situation by clearly excluding such bonds from being counted against the debt limit. I therefore urge that the amendment be rejected on these bases.

CHAIRMAN: Thank you, Delegate Yoshimura. Delegate Peterson.

DELEGATE PETERSON: I wish to speak in behalf of this amendment. I would like to quote from the minority report one short paragraph. It says: "Those enterprises that are able to obtain such inexpensive financing would have an advantage over their competitors in the State who could not obtain similar financial arrangements. It is obvious that private enterprises unable to obtain similar financing would have more difficulty in competing with enterprises operating thereunder." What we are talking about is the giving by the State of a special advantage to certain groups, without giving adequate advantage to other groups. An example was given of Kuakini hospital; if we gave that advantage to one hospital, then we should consider giving an advantage to Queen's hospital, to Kapiolani hospital, to the Kaiser health plan, to HMSA and all the other health providers in the community. What we should do is be fair and equitable and let the financial market make the proper amount of funds available as they do with their capital-rationing process.

Secondly, I would like to respond to the comment which has been made throughout the discussion today, with respect to public utilities and how they pass on the savings of interest to the community at large. I had some research done to show the beneficiaries

of this kind of transfer of funds: Hawaiian Electric Company gives 29 percent of their power to residential consumers, while 51 percent is given to large power users and the remainder is taken by general small business--commercial cooking, heating, canning, general power, small industrial and street lighting. On the basis of dollars, this means that 33 percent of the income of Hawaiian Electric is provided by residential sales, while the remainder is provided by businesses of one type or another. Now this is only on Oahu; at Maui Electric, the percentage of kilowatt-hours to residences is 36 percent, while the percentage of income is 35 percent. The gas company, on the other hand--in Honolulu, residential consumers receive only 22 percent of the heating value and 27 percent of the income, while in Hilo, for example, only 9 percent of the heat is received by residences, who pay 23 percent of the total income received by Gasco in Hilo.

What I'm trying to point out is that, even though there is a savings that is passed on through public utilities, residential users only receive about 30 percent of the use. Now I realize that in rate-making there are different rates for each type of consumer and that the Public Utilities Commission takes these kinds of things into account, but the savings on interest which is received by the public utility has to be considered in the cost of the utility in doing business. So all the advantages of the savings in interest are not necessarily passed right back to the public proportionately; some parts of the public receive a greater advantage than other parts.

All I'm trying to say is that in each of these examples that we talked about, there are benefits that go to the public, but some members and some groups in the public receive more advantages than others do, and this is an area where I think business is not to be bound by the dictates of the political sphere. I prefer to let economic decisions be made in the business area and political decisions be made independently. Therefore, I would speak in favor of this amendment and against the allowance of the State to issue revenue bonds.

CHAIRMAN: Thank you, Delegate Peterson.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: One second, Delegate DiBianco. The Chair sees that the arguments are beginning to get back to where we were this morning. The Chair at this point is going to request a very short recess. During this break, perhaps some of the delegates with questions might start asking them so that we can minimize the amount of repetitious debate.

At 3:42 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:47 p.m.

CHAIRMAN: The Committee of the Whole will please come to order. Before the Chair recognizes Delegate DiBianco, may the Chair remind the delegates again that we have discussed this subject quite a bit and the discussion is becoming quite repetitive, so please confine your remarks to the particular issue with regard to deleting all references to special purpose revenue bonds. Delegate DiBianco.

DELEGATE DiBIANCO: Now that you left me with nothing to say--I just wanted to point out one thing that I don't think has been adequately stressed by the other delegates, and I don't want to repeat all of the arguments that have been made throughout the day on this and other amendments. I'm in favor of this amendment because I would hate to see our legislature spending half of each legislative session being lobbied by various business groups who have come to the legislature, hat in hand, begging for one type or another of special purpose revenue bond. I think the legislature has enough to do, and I think that if we open this particular Pandora's box, we're going to see an incredible amount of lobbying over there--we always do whenever there's money to be handed out. I don't think it would be in the best interest of the public to have its legislature constantly being harangued by special interest groups seeking special revenue bonds for this purpose or that purpose.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I can't understand personally the logic of

having just gone through an hour or two hours--making it extremely difficult for every person, every business seeking these special purpose revenue bonds to have to go before the legislature, project by project, for the two-thirds vote--and then using that as an argument to defeat any reference to special purpose revenue bonds at all. I think that the problem of complication was created by the action and it should not be used as an argument in terms of deleting the entire section--in other words, loading it down with requirements and then considering that that should be a good reason to throw the whole thing out. Much of the argument having to do with the deletion concerns the inequity of treating some businesses differently from others--other members of the public--and we do already in the State here give businesses special treatment. We have special tax rates for manufacturing, for agriculture and for others. The savings attributable to those industries from that source alone probably far exceeds the amount of savings and interest that would be generated from this proposal, now proposed for deletion.

We have in the counties improvement district bonds--100 percent bonds--which are now available to home developers, and they have been used; the Kahaluu cutoff road--Kahekili Highway--was built by 100 percent improvement district bonds paid for by the property owners, and it would help them to realize that some of the projects that they wanted to build--these things were done, and the government lent its name and its credit, in that case to a certain limited extent, to back those bonds. And now when we're talking about having a means by which the United States government will forego the collecting of taxes, where the State of Hawaii finds that the projects are in the public interest and are going to serve a public purpose--I think does not make sense. And although we've passed lunchtime, I'm just as much against, and aware that there's no such thing as a free dinner either. I think that it would be inequitable to have the citizens of Hawaii, in paying their federal taxes, to be paying for the 2-1/2-percent subsidy of bonds that are going to other states while foregoing it for ourselves. Therefore, I urge you to vote against this amendment.

CHAIRMAN: Thank you, Delegate Kaapu. Delegate Lacy.

DELEGATE LACY: Mr. Chairman, I rise to speak against this amendment and echo the words of my fellow delegate who just finished. And in addition to that, I wish to declare that there is a possible conflict of interest in the fact that I am an employee of Hawaiian Agronomics Company, which is a wholly owned subsidiary of C. Brewer, which is in diversified agriculture and sugar and might possibly want some of the bonds.

I first want to speak out on the fact that it is very important to support the need when it is in the public interest--if it's decided by a two-thirds vote, that really is in the public interest--and that business that's going to get the advantage will help us in getting jobs for our people. But that's really not the reason I'm talking; I tried to be silent because I did feel that it might be a conflict of interest if I were speaking on the business area. I want to stress the fact that there is no decrease or injury to the State's credit, nor any money, if we obey the rules--or the words that are written into this proposal that the committee has come up with--and the people vote this in as an amendment, because for two evenings I more or less fought on the floor of the committee for the benefit of housing and health care facilities. I did not want a moral obligation against the people of this State to pay off those bonds, even though on the bonds it would be written that the State is not legally obligated nor morally obligated. The person that buys the bonds buys them on his own chance.

Finally, it was decided that the words would be put in, and the lawyers came up with the words that were referenced to you earlier. There is no one in this State who is obligated to pay one penny, morally or legally, for the failure of any company that receives funds due to these special purpose revenue bonds. It's also written in--and if it's approved by the people it becomes a part of the Constitution--that no money can be paid under any circumstances by any person in the state government to overcome that loss for those people.

CHAIRMAN: Thank you, Delegate Lacy. Delegate Uyehara.

DELEGATE UYEHARA: Yes, I speak against this amendment. My greatest fear for the sole concept of special purpose revenue bonds has been relieved by the two-thirds vote requirement of each house, and also by a separate bill for each authorization for different projects, and with these I feel that there are safeguards. We also need stimulation within our economy, and because of these safeguards within our legislature, I feel that

there will be lots of negotiations, or even politicking, going on among the members within the legislature to bring about a sound and basic economy by this project. So I urge my fellow delegates to vote against this amendment.

CHAIRMAN: Thank you, Delegate Uyehara. Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I rise to speak against this amendment. In so doing, I'd like to bring in a new item that has not been discussed. I recall in our committee proceedings, Mr. Slipher of the governor's office in charge of housing saying that the moderate-income housing program could benefit greatly from this type of special purpose revenue bond program. What he meant was that in conversions of leasehold residential lots to fee ownership, many of our younger people would be forced to refinance their original mortgage loans, where maybe the rate of interest was 6-1/2 or 7-1/2 percent, and in order to get the additional thousands of dollars necessary to buy their land in fee, they would have to make a new loan and pay a higher interest rate, which as I understand it is about 9-1/2 percent, or thereabouts, today. And with this kind of program for the moderate-income housing beneficiaries, Mr. Slipher felt that the money needed to buy the land in fee could come out of this fund. In this way, all people who are faced with the prospect of converting leasehold lots into fee simple would be given a chance to hold on to the older mortgage loan rates and also obtain the money necessary to buy the land in fee. This is one item which hasn't been discussed, and I thought I'd bring it up; and again I emphasize that I am against the amendment on the floor.

CHAIRMAN: Thank you, Delegate Taira.

DELEGATE ALCON: Point of inquiry, Mr. Chairman. Do the words "public purpose" include private schools and churches?

CHAIRMAN: Is there anyone who wishes to address that question? Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, it is my understanding that it does not, inasmuch as Article I in the Constitution provides for separation of church and state. If legal counsel would care to amplify on that--but that is my understanding, that it does not.

CHAIRMAN: Thank you. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak against this amendment. Initially my concerns have been, throughout the Convention--looking at this kind of bond and not having any kind of education with respect to bonding and taxes and things like that, I was very, very hesitant about the possibilities of abuse. However, I think that passage of the previous amendment would alleviate, to a great degree, the kinds of abuses that I had anticipated or reflected on; consequently, I speak against this amendment.

CHAIRMAN: Thank you, Delegate De Soto. Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, I speak against the amendment. We have been speaking on this subject for hours--we've gone through the thing, we've really tossed it around, we've voted on a few, and I strongly recommend that we take up the question.

CHAIRMAN: I shall take that under advisement.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I would like to speak for the amendment, primarily because I was getting ready to ask a question when Delegate Taira answered it: could these bonds be used to refinance leaseholds and enable people to buy their lands in fee simple. I think this would apply mostly, right now at least, to the Waialae-Kahala area, which, from my Island, is not just middle income, it's pretty high middle income. And there are programs in the State that take care of the moderate--low-to-moderate-income people, but to say that we're going to exclude--however the delegate over there wants to put it--we are not using the state credit but we certainly are letting them take advantage of state credit to get lower interest rates, to benefit a few leasehold people so they can get fee simple property to me is really not in the public interest and really discriminates

against the large group of people who have to go into the private market and get lands now in fee and pay the market value. And to say that we're going to use some public money to subsidize these people so they can own their lands in fee just corroborated my feeling and made it even more imperative that this amendment be passed.

CHAIRMAN: Delegate Hale, the Chair's record indicates you've spoken twice on this amendment. Is there any further discussion? Are you ready for the question? The question on the floor is Amendment No. B3, to amend Committee Proposal No. 14 by deleting all references to special purpose revenue bonds.

DELEGATE HALE: I'd like to ask for a roll call.

CHAIRMAN: Are there 10 seconds to the request for a roll-call vote? The Chair sees 10 seconds. Will the clerk please call the roll.

Roll call having been ordered, the motion failed to carry by a vote of 28 ayes, 64 noes and 10 excused; with Delegates Anae, Barnes, Barr, Blean, Cabral, Campbell, Haunani Ching, DiBianco, Dyer, Fujimoto, Hale, Hanaike, Hayashida, Hino, Hirata, Hokama, Dennis Ihara, Izu, Kono, Marion Lee, Rachel Lee, Okamura, Peterson, Takitani, Tamayori, Weatherwax, Wurdeman and Yamashita voting aye; Delegates Alcon, Andrews, Barnard, Blake, Chang, Calvin Ching, Donald Ching, Laura Ching, Chong, Crozier, de Costa, De Soto, Fernandes Salling, Fukunaga, Fushikoshi, Goodenow, Hagino, Hamilton, Harris, Hashimoto, Hironaka, Hoe, Hornick, Les Ihara, Teruo Ihara, Ikeda, Iwamoto, Kaapu, Kaito, Kimball, Kojima, Lacy, Ledward, Lewis, Liu, McCall, Miller, Nakamura, Nishimoto, Nozaki, Odanaka, Ontai, O'Toole, Paty, Penebacker, Pulham, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Sterling, Stone, Sutton, Taira, Takahashi, Takehara, Tam, Uyehara, Waihee, Yoshimura and Chairman Ishikawa voting no; and Delegates Burgess, Chu, Chun, Chung, Eastvoid, Ellis, Funakoshi, Marumoto, Takemoto and Villaverde being excused.

CHAIRMAN: The amendment fails. We shall now proceed to a new subject area, having to do with the lapsing of bond appropriations. We have two amendments, numbered C1 and C2. We shall now proceed with Amendment No. C1. The Chair recognizes Delegate Sakima.

DELEGATE SAKIMA: Mr. Chairman, I move that Amendment No. C1 be adopted.

CHAIRMAN: Is there a second?

DELEGATE ALCON: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Amendment No. C1. Is there any discussion? Delegate Sakima.

DELEGATE SAKIMA: Mr. Chairman, the purpose of 3 years instead of 2--because personally I feel that 2 years is too short a time to have any project taken off--I'm sure many of us know the way government moves and it takes so long to get a project moving, so I thought that 3 years would be more appropriate than 2.

CHAIRMAN: Delegate Sakima, for the benefit of the other delegates, perhaps--it is a long amendment, and the Chair sees at least one and possibly two areas where it changes from the committee proposal: one being the change in lapsing period from 2 years to 3 years, and the Chair believes there might also be two provisos in there. Can someone advise the delegates as to where the changes are? Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, as I read the amendment, the first change has already been alluded to, which provides that the lapsing period on appropriations by the legislature shall be changed from 2 years to 3; and the second change permits the legislature to exempt federal aid financing. In other words, where I think the second addition appears is about seven or eight lines down, where it starts with the words, "provided that no appropriation for which..." and the addition, as your chairman of taxation and finance sees it, the additional language continues, "...for which the source is general obligation bond funds nor any portion of any such appropriation shall lapse if the legislature determines such appropriation or any portion of such appropriation is necessary to qualify for federal aid financing and reimbursement." That in substance--those are the two amendments your chairman sees in it.

CHAIRMAN: Thank you. Is there any further discussion?

DELEGATE NOZAKI: Mr. Chairman.

CHAIRMAN: Delegate Nozaki.

DELEGATE NOZAKI: I rise to speak against the amendment. First of all, I must express amazement that a proposal to lapse appropriations if they are not encumbered within 2 years--a proposal which was discussed at great length in committee and which was reported out after a solid majority vote of the committee--should now have to contend with this particular amendment.

Make no mistake about it--the effect of this amendment is to virtually preserve the status quo and to allow two totally irresponsible games to continue to be played by the executive branch and the legislature: (1) irresponsibility on the part of executive agencies when they request fund authorizations for capital improvements when there is no likelihood that the projects will be initiated within the time period for which the funds are requested; (2) irresponsibility on the part of the legislature for making a sham of the CIP appropriations process by authorizing capital projects for which the executive branch has no intention of implementing, but which are held out as empty promises to the citizens of our communities. Let's stop playing these silly games. Let's inject some rationality and real budgeting and planning into our capital improvements process.

Consider this for a moment. During the past decade, the legislature has had 2-year lapsing clauses and it has had 4-year lapsing clauses, which constitutes the present practice. These types of lapsing have allowed the accumulation of over \$1 billion of authorized but unissued bonds, which completely obscures what is really going on in capital improvements implementation. If we go to a 3-year lapsing provision, it won't be very much of an improvement.

The record of the committee will show--and I will ask the chairman of the committee to produce the minutes, if necessary--that responsible officials of the administration believe that a 2-year lapsing provision will not seriously disrupt the CIP process. I identify Mrs. Eileen Anderson, the State's director of finance, as being one of these responsible officials. In reply to a direct question, Mrs. Anderson responded that the administration could live with a lapsing period of 2 years, even though the preference might be for 3.

Let's not have the efforts to inject responsibility and accountability in capital improvements programming and budgeting overturned just to perpetuate inefficiencies in planning on the part of agencies and the politics of the pork barrel game.

I urge that the amendment be voted down; I urge my colleagues on the taxation and finance committee who saw through the political game to join me in voting it down; and I urge all the delegates to return to the committee's original proposal and adopt it.

CHAIRMAN: Thank you, Delegate Nozaki.

DELEGATE IZU: Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: May I move that we divide the question, with the 3-year lapsing as one provision and the other provision the federal financing.

CHAIRMAN: If there are no objections, the Chair will so permit, that we divide the question into two parts--that would be the first paragraph now--to consider first the question on the 2-year versus 3-year lapsing; and secondly, on the question of whether or not this provision should exempt those appropriations necessary to qualify for federal aid financing and reimbursement. If there are no objections, we shall proceed with debating the question of a 3-year lapsing provision.

DELEGATE BLAKE: Mr. Chairman.

CHAIRMAN: Delegate Blake.

DELEGATE BLAKE: I rise to speak against the proposed amendment. What this

amendment is trying to do is to water down what the committee had thoroughly discussed and by a large margin had supported--the 2-year lapsing provision in the original proposal before you. The State now has a 4-year legislative lapsing; a 3-year constitutional lapsing is not going to improve the situation very much. I hope some of the delegates, especially those on the taxation and finance committee, remember one remark which was made, perhaps inadvertently, by a representative of the department of transportation at a public hearing on lapsing. It was said that transportation projects can date back a number of years--yes, that the department is even still carrying on the books a Kauai project which was authorized in 1948. Can you imagine--1948? I think even the State's bond counsel, who is supposed to keep track of these authorizations, was startled to hear of a project authorized 30 years ago. From what I gathered from the hearing, the department probably would prefer that there be no lapsing at all--legislative or constitutional. Then the executive agencies can frontload their capital improvement projects and worry about implementation later.

Let's remember what got us into this fix of having over \$1 billion in authorized but unused bonds. The executive agencies have not programmed their CIP carefully; in fact, they have had no incentive to do so since there was such a lengthy period to obligate funds. The necessary result is that the executive CIP program is in shambles. The \$1-billion pool represents hundreds of projects--who knows, perhaps even thousands--and nobody can tell either the public or the legislature which project is still alive and which project is dead. For its part, the legislature has been dipping into this bottomless pork barrel and has made all kinds of appropriations, many of which are meaningless and will never see the light of day.

The 1968 constitutional convention tried to deal with this issue of lapsing. In 1968, the chairman of the taxation and finance committee strongly urged that the convention adopt a lapsing provision--and all this at a time when the State's authorized debt was less than \$300 million. Where lapsing was scuttled by the politicians in 1968, the capital improvements pool is now over \$1 billion.

Mr. Chairman, I urge that one of the most important provisions developed by the taxation and finance committee not be watered down. I urge that lapsing not be scuttled for the same political reasons it was scuttled in 1968. A vote against this amendment will return the matter to the original committee proposal in the cause of good capital improvements project planning and programming, in the cause of restoring public confidence in the capital improvements project appropriation, in the cause of removing politics and implementing the public works program of the State. I urge that the amendment be voted down.

CHAIRMAN: Thank you, Delegate Blake. Delegate Hokama.

DELEGATE HOKAMA: Thank you, Mr. Chairman, just a short statement. I'm speaking in favor of this amendment. For myself, I'm astounded that I haven't received such profound revelation from the same electorate who didn't give this revelation to the legislature also. I for one cannot see handling government like a business entity. I for one cannot see wiping out on the books--within 2 years--feasible, needed projects that are not even being fully funded, within 2 years to be lapsed, and to go through such repetitious financial hearings and reestablishment in the budget documents. I think if anyone is in an administrative role, he will agree you might want automatic lapsing effective. However, government is not a business entity; government deals with lots of specific factions and factors that do not permit government to give 100-percent funding for any CIP or operational budget at one crack.

I think that taking away politics is going against exactly what your intent is. I think you're increasing politics, you're putting our chief executive and our chairmen of the ways and means and finance committees in ungodlike positions. I think you're going to deal with more problems, you're not going to accomplish what I think you folks are trying to do, and the legislature will have its hands tied.

CHAIRMAN: Thank you, Delegate Hokama. Delegate McCall.

DELEGATE McCALL: Mr. Chairman, I rise to speak also in favor of the amendment. When we first heard the testimony, I too realized that no one testified too strongly against anything over 2 years, but I realize that we had not heard from the counties, and trying to recollect back to my county experiences--when there is a capital project authorized

for a county, there is considerable delay first before the governor tells you you can proceed with your planning, which may be anywhere from a few weeks to many months. Then after you do that you've got to either start to work on your specifications or select a consultant. All of these take another couple of months. The county staffs are generally not that big, that they can do many things at one time; and anyhow--to cut this off kind of short--2 years begins to look like an awfully short time when I remember the problems we used to go through in getting these projects on the road.

CHAIRMAN: Thank you, Delegate McCall. Delegate Hamilton.

DELEGATE HAMILTON: Mr. Chairman, I rise to speak in favor of the amendment. As has been suggested, you could hardly visit all the offices necessary for clearings in 2 years, let alone get the whole thing done. There's a tremendous time-lag involved in this thing; and I haven't dealt with the state government for some time, but I doubt that it's become very much more virtuous than when I knew it quite well.

Secondly, in a 2-year period, when you have a change of administration where the whole thing gets thrown into considerable chaos, the new administration could force or, by accident, cause a great number of appropriations to lapse in a 2-year period. Therefore, 3 years seems somewhat more reasonable.

CHAIRMAN: Thank you, Delegate Hamilton.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, I pledged to myself and to some of my friends at the beginning of the Convention that I would not rise to talk about my legislative experience; but this matter before us right now compels me to--by the way, I rise to speak in favor of the amendment. I have to give you some of the experiences that we in the rural Oahu and neighbor-island areas have had as problems in trying to legislate for our CIP. Because of the needs of these areas--they're not being urbanized, we have needs for roads, new schools, recreational areas--we're always scrambling, as far as our CIP dollars are concerned. When I read the proposal of the taxation and finance committee, I immediately turned to my two former colleagues in the legislature and asked them whether they could live with this 2-year provision. Then suddenly I realized they come from urban Honolulu and they do not have the problems of rural Oahu and the neighbor islands to contend with; I realized that they don't know how we scramble when we try to put our CIP together.

I can only point to some of the projects that we have funded in the past few years--Kaiaika Park, which some of you from the North Shore are familiar with. It took us 4 years to fund that project because most of it came out of pork barrel money. Some of the gymnasiums that are now under construction in our district--at Nanakuli High, Pearl City High, Campbell High School--are also funded on a 3-year basis. I did not realize, after all the years I've been around in government, that even though the administration takes a part of our initial appropriation and commits that, allocates that, to planning (which is the first step in any CIP project) that the balance of the sums which we try to put into what we consider savings accounts will lapse under the provision of the present Constitution and the Constitution as now proposed. Under the language in the provision right now, in 2 years' time you get the planning money and the rest of the money will lapse--you have to come back and scramble for what you appropriated 2 years ago plus what you need for the next increment, which is usually the land acquisition and/or construction money. And it's a real tough battle, especially if it's a big project. And nowadays, with inflation and all, there are very few projects of any great moment that run less than \$1 million. Three years will cause legislators to scramble, but I think that this is good for them and it's good for the administration.

I have no problems with bonded limitations or any kind of limitation that this Convention will come up with. The limitation that you gave us, which is mechanical in nature, is the one that I fret with; as a practical matter, those who are elected in this coming election, especially from areas of great need, are going to find it very difficult to live with a 2-year lapsing clause. I ask the indulgence of the people in this Convention to extend it to at least 3 years; it's livable--it makes it tough, but it's livable.

CHAIRMAN: Thank you, Delegate Ching. Delegate Hale.

DELEGATE HALE: I speak against the amendment. I'm not a member of the tax committee--although I did try to listen to a great deal of their testimony--but I am concerned, like all of us are, with all of the provisions in this proposal, and I think one of the better provisions that came out was the lapsing after 2 years. Our house of representatives is elected every 2 years, and I think it's incumbent upon them to review, at least once during their administration, all appropriations that have been made. And that's what the 2-year lapsing period would do.

I do realize that it takes time to get funds from the State, if it's a neighbor island project, it takes time to get it underway; but I don't think that the fact that we don't have the planning staff or the engineering staff to do all the preliminary planning work is a real argument, because most of our major CIP programs are put out to contract, and I think if private enterprise is going to do this planning, they can be held to a reasonable planning period. And I think it would enable us to hold them to planning periods, which we don't presently do. I feel that this is really the meat of the whole proposal; which is to say that we want the legislature to be responsible in their pork barrel appropriation--that if a project is good, there's no reason that in the next 2 years the appropriation will not be made again and an additional appropriation be made if the project has proceeded far enough along to need that appropriation within 2 years. I see no reason that 3 years is really going to be any better; it just means that much more delay, more government red tape, more frustration on the part of the people who have been promised projects. These promised projects are good, government can do it in 2 years, and I would urge that we vote this amendment down.

CHAIRMAN: Thank you, Delegate Hale. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak in favor of the amendment. During the committee deliberations, I was an advocate of the 2-year lapsing period. I think that one of the problems in our deliberations was that we concentrated too much on the theoretical and not enough on the practical. And since that time, I've come to learn that there are time-lags involved, which I did not consider in making my decision. One of these time-lags is the time that it takes for the budget and finance department to do their work and then transfer it to other state departments. I was not really cognizant of that.

Another time-lag is the difference in time for the CIP to finally get out to the neighbor islands or even down to the counties, and I think were we really aware of this knowledge, we would probably have not--I would not have proposed 2 years. I think the 3-year limit is a stringent one, given the times involved in implementing these projects, and I think that for all practical purposes we would be keeping the toughness of this provision while at the same time being realistic. For these reasons, I would speak in favor of the amendment.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Izu.

DELEGATE IZU: Mr. Chairman, I speak in favor of this amendment, and in doing so I'd like to address myself to one of the items that was brought up by a previous speaker. During the committee meeting, I also favored a 2-year lapsing provision; however, among other things that the previous speaker mentioned, I went and looked into the question of authorized but unissued projects, which another speaker has alluded to. And I found out that at least over the past 10 years, the legislature has had lapsing provisions within the CIP budget every year, which have ranged from 4 to 5 years. Therefore, I looked into what actually constituted this billion-dollar authorized but unissued bond amount and I believe it's not because of a matter of lapsing that we have this large amount of authorized but unissued projects, but rather because of our very high debt ceiling. And that was one of the arguments that swayed me away from the 2-year limitation, and therefore I speak for the amendment.

CHAIRMAN: Thank you, Delegate Izu. Delegate Nozaki.

DELEGATE NOZAKI: I again speak against the amendment. Before voting on the amendment, I would urge the delegates to please consider carefully why the taxation and finance committee found it necessary to deal with the issue of lapsing appropriations and why it has recommended lapsing periods not to exceed 2 years. I believe the evidence

is quite clear that the absence of a binding and effective lapsing provision--either in the Constitution or imposed by the legislature--has contributed to the sad state of affairs in the programming and budgeting of capital improvements.

In the decade since the 1968 convention met, the State has accumulated a backlog of over \$1 billion in authorized but unissued bonds, from the \$275 million which existed at the time the last convention met. The \$1 billion in authorized but unissued debt is more than just a harmless figure; it represents hundreds of projects for which the executive branch has requested authorization of a bond fund but which have not been implemented. It also represents hundreds of promises made by the legislature to the various district constituencies, many of which will remain unfulfilled. Collectively, what the executive branch has done in obtaining funding authorizations when they were not yet needed, and what the legislature has done in promising CIP projects to the pork barrel, is to destroy public confidence in the CIP appropriation process and consequently further erode confidence in government generally.

The real capital improvements program of the State cannot be deciphered. There is a machine records listing of the authorized CIP projects sitting in the committee chairman's office which stands half a foot high, which few delegates have looked at because they don't know what it all means. That's the substance of the current CIP condition. Nobody in the state administration, nobody in the legislature, nobody in the news media--let alone the public--can tell us which projects constitute the capital improvements program which we can reasonably expect to see implemented over the next few years. Under certain conditions, nobody can hold government responsible for the public works program: not the governor or agencies of the executive branch, because they claim the legislature has authorized projects far beyond the capacity of the State to implement; not the legislature, because it claims it has provided the funding authorization and that it is the executive branch which has delayed implementation. This type of buck-passing has been going on since statehood, and more so in the past decade under the more generous debt limit provided by the last convention. We have a choice in the vote on the amendment before you--to inject rationality and good judgment in the capital improvements planning, programming and budgeting process; or we can leave things pretty much as they are.

The committee's proposal makes good sense because it ties lapsing to the biennial budgeting cycle, and it is reasonable because it doesn't say that all of the funds must be expended within 2 years or they will lapse. It only says that the funds must be encumbered, such as through the execution of a contract, or through issuance of a purchase order. And it is reasonable also because it doesn't prohibit appropriations about to lapse from being reauthorized by the legislature. I hope that the rest of the delegates feel as I do and are suspicious, as I am, about last-minute efforts to change a committee proposal which has been so thoroughly discussed and so carefully thought through in committee.

I urge you to support two reform measures which will bring back accountability and honest realism to the State's capital improvements program. That is why I urge you to vote against the proposed amendment.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Thank you, Delegate Nozaki. Delegate Sterling.

DELEGATE STERLING: I rise to speak for the amendment. I think a good point was made by a previous speaker regarding the time-lags, but from my experience in the county--County of Hawaii--when you're under the gun and with the new regulations that continue to arise, to qualify you have to go outside the departments and hire consultants. And this is one of the costliest things we have in our government today, especially at the county level--of going beyond the staff and hiring consultants.

The various county departments that are affected by CIP spend an enormous amount of money in handling consultants to get these jobs done under the wire--the environmental impact statements and all the other statements that have to be complied with on any project. This idea of spending so much money--and if we were to examine some of the expenditures that we make, particularly on consultant fees, it is quite astronomical. I urge the passage of this amendment.

CHAIRMAN: Thank you, Delegate Sterling. The Chair wishes to announce that

we have disposed of 7 of 22 amendments. For the benefit of the delegates--at this point the Chair plans to continue till 5:30, and then break for dinner and resume at 7 p.m., to see how far we might proceed in completing our work here. Delegate Kono.

DELEGATE KONO: Mr. Chairman, I rise to reluctantly speak in favor of this amendment, and I really feel rather disgusted at the entire proceedings, because I feel that the testimony given to us at the time we were making our decision in the taxation and finance committee was totally contrary to the concerns that are being expressed at this time. If it was an oversight on the part of those delegates who are now expressing strong arguments for a 3-year lapse, then I would not feel too disgusted; but I'm not so sure whether this is the case or not.

To me, I interpret the actions that are now going on on the floor as being not in good faith. I agree with Delegate Nozaki that we had established that 2-year lapsing period to do away with the tremendous backlog of authorized but unissued debt that the legislature has managed to build up, and which totally obfuscated the political process of authorizing capital improvements projects to the public. I think it's a tremendous disservice to the public to continue this practice that removes the implementation of public projects so far from the public's purview and from the public interest, and I think it's one of the most important things we can do to bring government back closer to the people, for people to see that what the legislature enacts, in terms of bond authorizations, has a meaningful chance of actually being implemented in terms of the issuance of bonds.

I say I reluctantly speak for this because the arguments--I have no way of countering the arguments brought forth by the legislators, and apparently if what they say is true, there is good reason to have this 3-year lapsing provision. However, I will certainly bring forth a separate amendment and deal with this issue of trying to limit the authorization of debt in a different manner.

CHAIRMAN: Thank you, Delegate Kono. Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, I rise to speak again on this matter. I just want to clarify a few points.

CHAIRMAN: This will be counted as your second time speaking in favor.

DELEGATE DONALD CHING: I understand that, Mr. Chairman. I just want to point out one thing--that whether we have a 2-year lapsing or 3-year lapsing, if my figuring holds out, it will not add to the appropriated liability of the State. What it means is that the first time around, you delay the lapsing for an additional year; but from the third year on, you're going to have an annual lapsing. So whatever is unexpended will lapse, so you're going to have a regular lapsing period every 3 years. So it will not add, say, one third to the total appropriated indebtedness of the State.

The other point I'd like to bring out is, a previous speaker used the term "reappropriated." Now unfortunately, most of the money that we're talking about as lapsing is usually in the pork barrel area; and I think the members of the taxation and finance committee were given a lesson in how the CIP is put together. Usually about two thirds of the CIP is what is known as the governor's budget; then the legislators come in with their local, smaller projects, more commonly referred to as pork barrel, and that usually makes up about one third of the final CIP budget. Now, the items that will probably be delayed because the administration is not as ready as they are on their administrative projects will be the pork barrel items, and for some of us from growing areas, we have put in moneys that are already on the projected CIP, because the governor's CIP is on a 6-year basis. We pick up projects that are in the third, fourth, fifth, sixth years that are not yet funded, and we try to give the planning money for that.

When we talk about reappropriation, each of us as a legislator is given a certain amount of money to play with. Now I realize under the new proposed debt limitation, we're going to have less pork barrel money to play with. More we have to be careful about where we put the money and how it will be allocated; that becomes twice as important as it is at the present time. Now, reappropriation is not that simple a thing, because the present practice of the legislature is that if any of your projects--and that's why they never vote to lapse a project, you know, sooner than they should prudently, because once that project is lapsed and you want to reappropriate it, it has to come out of your

pork barrel allocation. So if you're unlucky enough not to have enough influence with the governor in getting your projects well on their way before the funds lapse, you cannot automatically go back the following year--good as the project may be--and automatically get it reappropriated. One of the rules that the legislators live by is that each district is left to its own district projects. In other words, I do not go in and tell Hawaii how to spend their money and I don't expect the Hawaii, Kauai or Maui legislators to come and tell me how to appropriate money for the senatorial district which I represent. So reappropriation is not that automatic, unless the rules of the games are all changed by the amendments that we make to the Constitution in this Convention. So I just want to point out that there are some real practical problems, and 3 years would make it a little more practical.

CHAIRMAN: Thank you, Delegate Ching.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale, the Chair would like to recognize Delegate Kaapu who has not spoken on this matter yet.

DELEGATE KAAPU: Yes, Mr. Chairman, I speak on this without any reluctance, although I did vote in the committee and I was voted down at that time. I recall that the vote taken was about 12 to 8 or so; I didn't feel it was that bad because I thought it was a matter of compromise and that perhaps at least there would be a lapsing--it would be a shorter lapsing than we now have, but I do realize that the purpose of the lapsing period is to make it easier to conduct business. Without being unreasonably long, it's like the job jar that Hi and Lois in the comics always refer to--you might have a full job jar but it doesn't mean the work is going to be done, because the discretion is left to the legislature. However, there's only so much room in that jar and it's nice to have it cleared out so that new projects can be put in, which are current. And I think that this 3-year amendment does achieve it a lot better; and if it does do it any better, I think there is no reason why we need be worried to make the change on the floor. I have seen proposals that were voted down almost unanimously reemerge and take up the Convention's attention for hours on end, and this one here does contribute something better to the operation of day-to-day government. And for that reason, I have no apology in advocating its passage.

CHAIRMAN: Thank you, Delegate Kaapu.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I'm speaking for the second and last time. I'd just like to say that if it takes changing the rules, then let's change the rules. Maybe that's the best thing that could happen to this State.

CHAIRMAN: Thank you. Is there any further discussion? Delegate Ontai.

DELEGATE ONTAI: Yes, I'm for the amendment to 3 years and against the 2-year stipulation as proposed. I'll give you a good example: in Nanakuli--I was at the time working in the project area--the legislature appropriated money for schools. It was one of the top priorities of the State, a school in Nanakuli that was so overcrowded--one of the most overcrowded elementary schools. So that was fine, a Democrat at that time got the appropriation. That year or the following year, a Republican got into office and the governor wouldn't fund it because a Republican was in office; and that had been the top priority of the State, the elementary school, and it took 4 years, until finally a Democrat got back in office, and the governor released the funds. That's the game, but it took 4 years to get the funds out; so 3 years isn't bad, and in some cases it would do well, as was said about rural areas where they have big projects and quite a few on the books and many more to come, and I think the outside islands may have the same problem.

CHAIRMAN: Thank you, Delegate Ontai. Delegate Marumoto.

DELEGATE MARUMOTO: Mr. Chairman, thank you. I urge my fellow delegates to vote no on this amendment. In the committee proposal, we have voted in a new debt service formula and in that section we have also moved the formula to apply to a new point and time, from point of authorization to the time of issuance. I know we've discussed

this but it's a difficult point to get across. The effect is to leave legislative authorization of bonds open-ended; legislators can still appropriate an unlimited amount of projects and also the governor can authorize an unlimited number of projects.

To move the lapsing to 3 years from 2 years increases the number of projects that will remain on the books and consequently lower our bond rating a little bit. It won't be as bad as it is today but, nevertheless, it's more projects on the books. I feel that if the administration truly desires to keep a project on the books and to start its planning and construction money--projects such as Kaiaka Park--I believe it really is a simple matter to reauthorize the money for the project, and you have a chance to do this on an annual basis from the executive branch and from the legislative branch. I feel that if federal funds are small in coming, it's a simple matter to reappropriate the moneys because the administration has a real intense desire to start a project.

I originally introduced a proposal calling for a 3-year lapsing. I am now repudiating my own proposal because the time of debt service formula has been changed. I realize Delegate Kono will have an amendment to this effect, but I think it's a rather complicated point and I am doubtful of its passage. So I am urging you now to return to the 2-year lapsing. It's much cleaner and, from the testimony we received in committee, this would be an excellent way to help our budget out. Thank you very much.

CHAIRMAN: Thank you, Delegate Marumoto.

DELEGATE BLAKE: Mr. Chairman.

CHAIRMAN: Delegate Blake.

DELEGATE BLAKE: I feel that a 2-year lapsing period makes for much more efficient government, and if a project has lapsed and you can't get it funded, then it couldn't have been a good project. But if you want a project funded and if the right people go to work on it, you can certainly get the project moving. Like everything else, if you have to do something today, even if you don't have time, you'll do it; but if you can do it in the next 2 days, you're going to wait to the last day. And this is how many things take place--if it's not so important that we can wait. But I believe in efficiency in government; it's high time that we make our government efficient. We're speaking about the tax dollar--we keep talking about limiting expenditures, and this is one way of doing the thing. It reminds me of an artillery officer--if he wants to get on the target, there are two ways to do it. Either you can bracket or you can creep--creep means you take 100 yards at a time to the objective. In '68 they took 100 yards and in '78 we're going to take another 100, and we're going to wait until 1988 to take the last 100 beyond the target, at which time we'll come under 2 years. Thank you.

CHAIRMAN: Thank you, Delegate Blake. Further discussion? Delegate Peterson.

DELEGATE PETERSON: I wish to speak against the extension of the period from 2 to 3 years. There's some feeling that projects come out of the sky or that they need to be looked at anew every year or every 2 or 3 years. The executive has a 6-year capital improvements program budget, so 6 years in advance at the time when they debate these things, he has some idea of what they're going to spend 6 years from now. In other words, projects don't jump on the scene without any advance warning. That kind of planning would be appropriate for the legislature and all the administrative areas that come to the legislature asking for money.

One point that was raised which has not been discussed so far to a great extent is that partial appropriations may be given--a small amount of money for planning, a small amount for purchase of land, a small amount for incremental levels of each project--so we don't need to pass one appropriation for a whole complete project. We can pass it in specific small portions--pass the amount we need for the first year, to be spent in the first year, pass the amount that we need in the next year for the next year--instead of passing an appropriation for the full amount in the first year.

Another issue which was touched upon was that all of the department people who spoke said they could live with the 2-year lapsing period. In fact, one who came to speak before, who said that they now have a 6-year lapsing period and they'd like to have plenty of leeway to determine which project to use, said that even now they have to come to the

legislature on a yearly basis to ask for supplemental appropriations to take care of revenues that they didn't anticipate when they first sent in their appropriation. In other words, these people come to the legislature on a year-to-year basis anyway, and so the use of this 2-year period would not seem to create a new problem or a new opportunity for these people to come to the legislature, especially if the legislature had something like the executive has in the 6-year spending program, so that they can anticipate the kind of spending needs to look forward to.

A short lapsing period is an essential element of the debt limit, as has been mentioned several times. Authorizations are not limited by our debt limit; our debt limit as recommended by the committee only applies to bonds sold. The issue that we need to consider here is that we are transferring--or that the purpose of our trying to limit authorizations is to prevent the executive from having a whole smorgasbord of bonds which he can choose from. We allowed no limit to the amount of bonds which could be authorized. Now under this committee proposal, the legislature has no limit whatsoever; before it was limited to three and a half times the general fund revenue, I think, and now we have no limit whatsoever to the amount which can be authorized. But we were going to take care of that problem by having a short lapsing period, so that appropriations would lapse in 2 years if they weren't extended. So by extending the debt limit, we will allow the legislature to authorize as much debt as it wants; the executive may choose whatever projects he desires, and this will defeat the purpose of the spending limit that was proposed.

The legislature, as I said before, should also have its own long-term budget. To encourage regular review of capital projects; to encourage budgeting of amounts which can reasonably be spent during the year rather than the full amount of projects to be approved; to make the legislature responsible in not appropriating more than the executive may properly spend, I urge you to vote against this amendment.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Barr.

DELEGATE BARR: Yes, Mr. Chairman, I will try to be brief. I'd like to refer the delegates to the committee report. After mentioning in the committee report that the 2-year period corresponds with the biennial budgetary system--a point that was mentioned earlier--it goes on to say: "Further, this"--the 2-year lapsing period--"will cause an ongoing, thoughtful review of the implementation and supervision of all stages of such projects by the executive branch and will increase the oversight capabilities of the legislative branch." Nothing that has been said by the proponents of this amendment makes that not true for the 2-year period; much of what has been said by the proponents suggests that that will be less true for the 3-year period. Yet those both seem to me--thoughtful review by the executive, increased oversight by the legislative branch--both seem to me very good purposes and I would like to see them retained. So I speak in favor of the 2 years and against this amendment.

CHAIRMAN: Thank you, Delegate Barr. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I speak against the amendment. I would like to emphasize, as some of the others have, that the lapse period ties in directly with the debt limit, and I'd like to refer the delegates specifically to page 7 of the committee proposal, which changes the debt limit. Under the existing constitutional provision, the debt limit is tied to the amount of bonds which may be issued and limits it to the time of authorization and to the amount of bonds which may be authorized. Now that is changed, at line 9, to the limit applying at the time of issuance. This means that the executive, at the time the bonds are issued, is bound by the debt limit. Under this change the legislature is not in any way bound by its bond authorizations.

Now the reasoning of the committee, as a result of the testimony presented by all the witnesses, was that the change from authorization to issuance was justified because we had only a 2-year lapse period. What we were trying to accomplish was to cure the imbalance that presently exists, under which the legislature has abdicated all responsibility for capital improvements; the legislature right now in effect has passed the buck completely to the executive on state borrowing. This was the testimony of the legislators themselves. Those very words were used by the chairman of either the house finance or the senate ways and means committee; both said quite frankly that the legislature has completely passed the buck in this area to the executive, and they leave it entirely to the executive to determine how much and for what projects moneys will be borrowed. And in order

to help cure that imbalance and put the responsibility back where it belongs--in the hands of the legislature--we have this 2-year lapse period combined with a somewhat tighter debt limit. And if we increase the lapsing period to 3 years, then we have just in effect, to a large extent, undone the benefits of having this tighter debt limit. If we go back to 3 years, in effect the legislature will have very little need to exercise real planning at the time of authorization. And the real decisions, as far as debt incurring by the State, will again be made by the executive. I would urge you to leave the proposal as it is and vote down this amendment.

CHAIRMAN: Thank you, Delegate Burgess. Is there any delegate who wishes to speak further on this question of striking out 2 and inserting 3 years? If not, are you ready for the question? The question on the floor is to amend Committee Proposal No. 14, by striking out the word "two" and inserting "three." All those in favor please raise your hand. Thank you. All those opposed? Thank you. The ayes have it and the first part of Amendment No. C1 is carried.

Now we have the other part of this amendment. The question now is to amend Committee Proposal No. 14 by inserting a proviso that excludes from the lapsing provision those capital improvement project appropriations necessary to qualify for federal aid financing and reimbursement. Is there any discussion? As a point of information, the Chair would request an explanation of the second paragraph in this amendment. The question before us occurs in both paragraphs, and the Chair would remind all delegates to confine their discussion to the question of this proviso. Delegate Lewis.

DELEGATE LEWIS: In response to the Chair's question in explaining the second paragraph--the reference there to lapsing--delegates will note that there is a reference to June 30, 1980, the time limit in which time the existing authorized but unissued bond determinations must be made, either by the legislature to reappropriate them or let them lapse or by the executive branch to be encumbered. This was in the original committee proposal; it represents that \$1-billion figure that was talked about earlier.

Under the proposed amendment, this would exclude from that those funds--this appears at about the sixth line in the second paragraph--"provided that no appropriation for which the source is general obligation bond funds nor any portion of any such appropriation shall lapse if the legislature"--this is left up to the legislature--"determines such appropriation or any portion of such appropriation is necessary to qualify for federal aid financing and reimbursement." So this is a tie-in to the same issue of federal aid financing that appears in the first paragraph, but the first paragraph relates to an ongoing problem. In other words, from this point on, the legislature is allowed this determination. The second paragraph relates only to those existing bonds that are authorized--that \$1 billion of bonds--and this sets up that same review process for those with respect to federal aid financing. This is as a matter of clarification. And, Mr. Chairman, at this point I will proceed to speak in favor of this amendment.

CHAIRMAN: Please proceed.

DELEGATE LEWIS: Your chairman signed the committee report which did not have this language included; at the public hearing there was testimony from the department of transportation on federal aid financing, but it was not clear from that testimony what the implications were that could have arisen. The main discussion that appeared at the public hearing was that it would be difficult, perhaps inconvenient, to come back and get reappropriations. As a result of that testimony, your chairman as well as other members of the committee felt that the department of transportation, as well as others, should stand the same test and meet the requirement of the 2-year lapsing provision--or, as just amended, the 3-year lapsing provision.

Subsequent to the decision-making session, I had a discussion with the director of transportation and he indicated that half of the employees in the department of transportation are dependent on federal aid funding. This funding is dependent on a commitment from the State. In the event that at the end of what is now a 3-year lapsing period (originally 2), the legislature fails for some reason to reappropriate funds--and this could happen, as it did about 5 years ago when the legislature adjourned without taking any action on the budget because they had reached a stalemate--then those employees who were covered by federal aid financing could be out of jobs. In other words, you might have a situation where half the employees in the department of transportation would have to be terminated on July 1st. Having heard this comment subsequent to decision-making, your chairman

on that basis would recommend that this be left up to the legislature. As the amendment is proposed, it does not mandate in the Constitution that this be done, but it does allow legislative discretion to provide for this eventuality.

CHAIRMAN: Thank you, Delegate Lewis. Further discussion? Delegate Barr.

DELEGATE BARR: Point of information. Is it proper to conclude from what we just heard from the delegate that 5 years ago half the staff of the department of transportation were relieved of their jobs?

CHAIRMAN: Someone care to answer that? Delegate Lewis.

DELEGATE LEWIS: In response to Delegate Barr, that is not the conclusion that your chairman was making. Five years ago we were operating under the existing language of the Constitution, which contained no lapsing provisions but allowed for encumbrances--you can have partial encumbrances which would carry a project indefinitely. So under this amendment being made in light of the new ground rules proposed to this body, which would require lapsing at the end of 3 years--a 3-year period--this would not have been the case 5 years ago.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I rise to speak against this amendment. I'm not a member of the taxation and finance committee, but I can't imagine, with all the testimony day after day after day that we heard the chairman of the committee talk about--public hearings and informational meetings and so forth--that this problem, if it were a major problem, had to be brought up after the decision-making is done. I see no reason that, if federal aid financing is dependent upon appropriations and certain employees are going to lose their jobs, the legislature wouldn't take this into consideration and reappropriate the money necessary to match federal aid funds. To just leave this automatic could mean that some federally aided projects that possibly we have decided, or the legislature has decided or the people have decided--I'll just give an example, like mass transit--it might be better to drop the whole thing than to continue with it and say that we're just going to keep that appropriation to match federal aid financing. I think it's very incumbent upon the legislature to review all these projects every year; and to eliminate projects just because they have strings tied to them for federal aid financing just means that there is going to be an awful lot of money that the legislature never is really going to look at again. I would warrant that--not knowing the figures, but I would warrant that a great deal of our bond appropriations from the State are dependent upon matching federal funds, and I would just like to know how much of the bond authorizations this would affect. I just can't see that this last minute, after the fact, after the deliberations, after the hearings-- If this was such an important thing for the State, then I think that the taxation and finance committee should have had another meeting, another decision-making meeting, where this was brought to the attention of the delegates and they would have voted on it. But to tell us that this was done afterwards really turns me off, and I would like to vote against this.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE BARR: Mr. Chairman.

CHAIRMAN: Delegate Barr.

DELEGATE BARR: Yes, I would also like to rise to speak against this part of the amendment. I am glad we established that there's no relationship between what happened 5 years ago and what this amendment addresses. There's a phrase in the amendment that says "if the legislature determines"; it doesn't say, of course, at what point the legislature determines that. One might presume they would do that in the first instance when they make the appropriation, but may I suggest that we can leave this out and the legislature then might determine this at the time they reconsider the appropriation just before lapsing. Now that there are 3 years, the legislature has extra time to take a look at outstanding appropriations and to decide whether to continue them; and there's nothing

I understand in the Constitution--and if it's in the rules of the legislature it could be changed--that would prevent them from putting in a provision to continue appropriations rather than having it be a new appropriation out of a legislator's pork barrel. So I would suggest that leaving this out--so that one of the things the legislature would look at when they looked at appropriations that are lapsing is this question, but it would be only one and they would naturally have the opportunity then to look at all the others. If we leave it in, they don't get that opportunity because it will not come before them since it will not automatically lapse.

I suggest that that process of bringing it before the legislature is why we need the lapsing provision, and therefore I speak against the amendment.

CHAIRMAN: Thank you, Delegate Barr.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: This is a point of inquiry. The way that it's worded--I would direct it to the chairman of the committee if he wishes to yield--the way this particular provision is worded, it would seem to mean that if any portion of the bond authorization is needed to qualify for federal aid financing, that none of the authorization would ever lapse. In other words, it could be a bond for \$100 million, and if only \$5,000 is needed to qualify for federal aid financing, am I correct that that would mean that entire \$100 million would never lapse? And if so, I would like to ask if maybe some change in wording would cover that.

CHAIRMAN: Thank you, Delegate Burgess. Would the chairman of the taxation committee wish to address that question?

DELEGATE LEWIS: Yes, in response to Delegate Burgess, Delegate Burgess is correct that this covers portions of proportional lapsing as well. In other words, the problem would be that if there was no reapportionment, then you could have this problem which your chairman talked about a few minutes ago. In other words, there is no appropriation on the books; therefore there's no valid project that is being continued, and you could have a situation where the federal funding aspect, which covers half the employees in the department of transportation, could dry up. It's to take care of this eventuality--and I might add that it is left up to the legislature. In other words, we are reemphasizing we're not constitutionally setting it in here; we're allowing the legislature discretion in this important area.

CHAIRMAN: Thank you, Delegate Lewis. Is there any further discussion?

DELEGATE BURGESS: Mr. Chairman, if I could continue that--does that mean then that the constitutional lapsing provision would in effect never apply to any projects for which appropriations are necessary to qualify for federal aid financing?

CHAIRMAN: Delegate Lewis, would you like to respond to that?

DELEGATE LEWIS: If the legislature so determines, that would be correct. It would be up to the legislature to make a determination on this matter.

CHAIRMAN: Thank you. Is there further discussion? If not, are you ready for the question? There being no further discussion, the question on the floor is to amend Committee Proposal No. 14 by inserting the proviso which excludes from the lapsing provision those capital improvement project appropriations necessary to qualify for federal aid financing and reimbursement. All those in favor--

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: Excuse me. Just to correct your statement of the motion, you did not add that if the legislature determines. As you stated the motion, this would be mandated by the Constitution.

CHAIRMAN: The Chair stands corrected. The exclusion shall only take effect if the legislature so determines. All those in favor of the amendment, please raise your hand. Thank you. All those opposed? Thank you. The ayes have it and the amendment passes.

DELEGATE PETERSON: Mr. Chairman, I call for a division of the house.

DELEGATE HALE: Second.

CHAIRMAN: If there are no objections, we shall have a division of the house. All those in favor of the amendment, please rise. Thank you. All those opposed, please rise. Thank you. The vote count is 45 ayes, 24 noes. The ayes have it and the amendment passes.

DELEGATE IZU: Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: I'd like to withdraw my Amendment No. C2.

CHAIRMAN: There being no objections, Amendment No. C2 is withdrawn. Thank you very much, Delegate Izu. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, in light of the hour, your chairman on taxation and finance would like to move that we rise and report to the Convention we have not completed our consideration of Committee Proposal No. 14 and we would need more time to complete our work. It is not 5:30 but it is very close to it, and we have completed deliberations on the lapsing section, and this is the reason for making this motion.

DELEGATE TAKAHASHI: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that we rise and report to the Convention that we have not completed our consideration of Committee Proposal No. 14 and that we would need more time to complete our work. All those in favor of rising to report, say aye. All those opposed, no. The ayes have it and the motion is carried.

At 5:16 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Wednesday, September 6, 1978 • Evening Session

The Committee of the Whole was called to order at 7:25 p.m.

Delegate Ishikawa presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. Prior to our recess, we completed consideration of the amendments relating to lapsing, group C. We are now ready to proceed to the group D amendments, on county debt limit. We have one amendment, No. D1, offered by Delegate Pulham. At this time the Chair recognizes Delegate Pulham.

DELEGATE PULHAM: Mr. Chairman, I move for the adoption of Amendment No. D1, amending page 8, line 16 of Committee Proposal No. 14.

DELEGATE ANDREWS: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Amendment No. D1. Is there any discussion? Delegate Pulham.

DELEGATE PULHAM: Yes, Mr. Chairman, I'll speak briefly and if necessary speak again. I hope that everyone had a good dinner and we can proceed accordingly. This

amendment simply seeks to lower the constitutional debt limit with regard to counties, from the present 15 percent to 10 percent of the total of the assessed values for tax rate purposes of real property.

This particular item I think is in line with the committee's move to tighten the limits on state spending; certainly, contact with my constituents indicates that they feel the same way in the county area, and study of the materials that we have available from LRB, from the tax foundation and from other areas indicates that 10 percent is a prudent limit. It is actually an outer limit. As we all know, the actual county debt is much more than that; we are simply seeking after a number of years to bring the outer limits more in line with what it should be and even this is probably much higher than necessary. However, the county, by charter amendment, can take care of it within its outer limit. Therefore, I feel that as the studies indicate that 10 percent is a prudent limit, I would recommend that this body adopt this amendment.

CHAIRMAN: Thank you, Delegate Pulham. Delegate McCall.

DELEGATE MCCALL: Even though I agree with the--I'm speaking against the motion. Even though I agree with the movant that 10 percent is more than generous and that it's probable the public does want it to restrict borrowing limits, etc., I still believe that there is no reason for this Convention to fool around with county business, and I believe they have been just as responsible, if not more so, than the State. The County of Hawaii, I think, is now at 3.5 percent even though they're authorized 15 percent, and I see no reason to do this. Let them take care of themselves in their own charter.

DELEGATE IZU: Mr. Chairman.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: Mr. Chairman, I rise to speak against the amendment. Because the county debt limit in our Constitution is tied to assessed values for tax rate purposes, I think moving the percentage down from 15 to 10 won't make any difference, especially since we have recently given over the assessing powers to the counties, even though by consensus. Right now we're taxed at a 60-percent ratio and if we were to move this down to 10 percent, and the counties felt that they needed a little more leeway than the 10 percent, they could very easily assess at 100-percent value, in which case a change in our Constitution really wouldn't make that much of a difference. Thank you.

CHAIRMAN: Thank you, Delegate Izu.

DELEGATE BARR: Mr. Chairman.

CHAIRMAN: Delegate Barr.

DELEGATE BARR: Since we did not examine in great depth this particular proposal in the taxation and finance committee, I'm wondering if there is available to us at this moment the kind of information that we might need to make a good judgment in this matter--namely, how much this would give as a debt limit to each of the respective counties, how much they already have outstanding and what sort of debt plans the respective counties have. I wonder if either the movant or someone else would have that information available to us?

CHAIRMAN: Thank you, Delegate Barr. Is there any delegate who may wish to respond to this? Delegate Lewis.

DELEGATE LEWIS: Delegate Barr, I can respond in part, not in entirety. Responding in part, the current debt limit of the counties--it is my understanding that one of the counties, and I believe it's the City and County of Honolulu, has approximately 1 percent of this assessed valuation and the maximum is, I believe, just under 4 percent--around 4 percent. But in all cases, all the counties are under 5 percent at the present time. I've been handed a copy of the amount of debt outstanding for each of the counties: for the City and County of Honolulu, \$209 million; for the County of Maui, \$18 million; for the County of Hawaii, \$34 million; for the County of Kauai, \$11 million. This is as of December 31, 1977.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Barr.

DELEGATE BARR: Yes, may I, as a point of privilege, thank the delegate very much.

CHAIRMAN: Thank you. Delegate McCall.

DELEGATE McCALL: As far as the limit is concerned, I think I can mention--with the County of Hawaii, it would be about \$150 million, the limit we have now.

CHAIRMAN: A hundred and fifty million?

DELEGATE McCALL: That's correct.

DELEGATE PULHAM: Mr. Chairman.

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: I have a question for the Chair. Do you know to what extent this problem was discussed in the Committee on Taxation and Finance? Or if someone else would answer that question?

CHAIRMAN: Thank you, Delegate Pulham. Delegate Lewis, do you wish to respond to that question?

DELEGATE LEWIS: In response to Delegate Pulham, there was very little discussion on this matter, as indicated I believe by Delegate Barr, and there was no vote taken on this particular matter.

CHAIRMAN: Does that answer your question? Is there any further discussion? If not, Delegate Pulham, would you like to speak for your second and last time?

DELEGATE PULHAM: Yes, and I'll be very brief. I would hope that my fellow delegates who are here did do their homework in this particular area, that they are cognizant of the facts as they were read a while ago, that most of all we have an obligation to approach this particular problem. It is a constitutional matter--the 15 percent is in the Constitution. The fact is that this 15 percent is way too high. It is incumbent upon us to do something in this area. Now there has been a lot of talk about a do-nothing constitutional convention, which I do not agree with, incidentally; but here, in another instance, we need to stand fairly and squarely and meet this problem, and if we are not willing to go ahead and change that language which is in the Constitution to a prudent limit--we did this for the State, it is there for the counties, it is our responsibility and we're going to have to face this responsibility. Research tells you that 10 percent is a prudent limit, the committee does not object, and therefore I would ask you all to please vote for this amendment.

DELEGATE TAM: Point of order.

CHAIRMAN: State your point, Delegate Tam.

DELEGATE TAM: Mr. Chairman, I don't know if this is a point of order or a point of inquiry, but this last comment by the speaker, that the committee does not object--from what I heard, and also having been on the taxation and finance committee--we just never really discussed this matter.

CHAIRMAN: Delegate Pulham, would you--that reference that Delegate Tam has made--

DELEGATE PULHAM: Yes, I would apologize to the delegate if I offended him or any member of the committee. I was simply referring to the fact that I heard no floor opposition although there was a strong opportunity for everyone to speak on this, and I should hope that that indicated the members didn't have strong feelings against it. Thank you.

CHAIRMAN: Delegate Tam.

DELEGATE TAM: Point of personal privilege, if I may. I don't believe the speaker can speak for those of us who have not spoken.

CHAIRMAN: Is there any further discussion? Delegate Burgess.

DELEGATE BURGESS: Although I know the movant has the right to speak last, I'd like to just comment on the discussion in the committee as I recall it, if I have the Chair's permission.

CHAIRMAN: In this case, I don't recall whether or not the delegate specifically requested to speak first and last, but in view of the brief discussion we've had, proceed.

DELEGATE BURGESS: Thank you. I remember that we did specifically discuss that point and the explanation I had was that it really didn't matter although the present county debt limit is so high that in effect it is no debt limit at all. It didn't make much practical difference because the market effectively limits the amount of bonds that the county can issue, because their revenues, with which they could pay back bonds, are so limited because the only source of income is the real property taxes. So that was the reason that it wasn't changed--because, as I understood it at least, it didn't have any practical significance.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Alcon.

DELEGATE ALCON: Point of inquiry, Mr. Chairman. I was just wondering--Delegate Izu had alluded a while ago--we have given the counties the right to property tax assessment and the whole shebang. I wonder whether it is still within the purview of the State to put a funded limit to the counties.

CHAIRMAN: Is there anyone who wishes to respond to Delegate Alcon's question? Delegate Lewis.

DELEGATE LEWIS: In response to Delegate Alcon's question, it is my understanding that this is a proper matter to be included in Article VI under taxation and finance because this deals with debt limits. Your measurement tool is real property tax assessment, but the constitutional provision deals with debt limit, so without checking--unless the attorneys to the Convention would rule to the contrary--it would be my interpretation that in Article VI you could cover debt limits even though the reference is to real property tax assessment, which has been turned over to the counties.

DELEGATE ALCON: May I make another point of inquiry, Mr. Chairman?

CHAIRMAN: Proceed.

DELEGATE ALCON: Each county has a charter, and I was just wondering whether we should let them set their own limits.

CHAIRMAN: Is there anyone who wishes to respond to that question, as to whether or not the counties should be allowed to set their own limits by their charters?

DELEGATE PULHAM: Mr. Chairman.

CHAIRMAN: Delegate Pulham.

DELEGATE PULHAM: While I might agree with the delegate in principle on that, the fact is that it is in the Constitution. Therefore, it is imposed upon them, and I see no amendment to remove it from the Constitution. That's why we have to make it a prudent limit.

CHAIRMAN: Thank you, Delegate Pulham. Is there any further discussion? The question on the floor is whether we should amend Committee Proposal No. 14 to strike out the 15-percent debt limit and insert 10. Delegate Hale.

DELEGATE HALE: Is there a quorum present?

CHAIRMAN: Yes, there is. The Chair will proceed with calling for the vote. All those in favor of the amendment, please raise your hand. Thank you. All those opposed? Thank you. The noes have it and the amendment fails.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: How many delegates do we have present?

CHAIRMAN: Mr. Clerk?

CLERK: There are 60 members, Mr. Chairman.

CHAIRMAN: There are 60 members. At this time we shall proceed to subject group E on the expenditure ceiling. When we started our Committee of the Whole deliberations, it was my understanding that the author of the committee's Minority Report No. 11 did not wish to summarize the report at that time, and would be speaking to the amendment. At this time her amendment is on the floor. We're now ready to consider Amendment No. E1 offered by Delegate Marumoto.

DELEGATE MARUMOTO: Thank you, Mr. Chairman. I'm just wondering if we can conduct business in the absence of a quorum. The last vote--I don't think we had a quorum present.

CHAIRMAN: The clerk informs me that prior to the last vote we had 60 members, which is a quorum.

DELEGATE MARUMOTO: I counted only 56 and several left the room.

DELEGATE TAIRA: Mr. Chairman.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Yes, Mr. Chairman, I think 52 is a quorum for this Convention.

CHAIRMAN: Being that that subject has already passed, at this point we can check to make sure we have a quorum now. The main point, however, is that the quorum has to be present at the time of voting, and it was the Chair's understanding that a quorum was present at that time. If you feel that this might be a disadvantage later on when we come to another vote, perhaps you should check to make sure there's a quorum prior to the vote then.

DELEGATE MARUMOTO: I don't believe there was a quorum at the time of the vote. May I request a short recess, Mr. Chairman?

CHAIRMAN: If there are no objections, there will be a short recess.

At 7:42 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 7:50 p.m.

CHAIRMAN: The Committee of the Whole will please come to order.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I move we rise and report to the Convention that we don't have enough delegates here to discuss this issue of primary importance and that we request that we be given leave to sit again at another time.

DELEGATE DiBIANCO: Second.

CHAIRMAN: Delegate Hale, your motion to rise and report will be out of order. In effect, that adjourns the Committee of the Whole.

DELEGATE HALE: Mr. Chairman, point of order.

CHAIRMAN: State your point, please.

DELEGATE HALE: Why is that out of order? A motion to rise and report is always in order, is it not?

CHAIRMAN: A motion to rise and report is when we're finished with our deliberations. At that time we adjourn the Committee of the Whole.

DELEGATE HALE: We have been rising and reporting before we finished our deliberations in the past.

CHAIRMAN: We have been rising and advising.

DELEGATE HALE: May I--

CHAIRMAN: Delegate Hale, I believe some of your concerns should be left to the movant of this next amendment, and you may still rise later on.

DELEGATE DiBIANCO: Point of parliamentary inquiry. I'd like to know whether or not in fact a quorum is present.

CHAIRMAN: Yes, there is--Mr. Clerk?

CLERK: Mr. Chairman, there were 64 delegates present when we started.

DELEGATE DiBIANCO: Well, no, I appreciate there may have been 64 when we started; I want to know whether or not there is a quorum present right now.

CHAIRMAN: Mr. Clerk?

CLERK: Yes, Mr. Chairman, there is a quorum present.

DELEGATE DiBIANCO: I'd like to know how many delegates are present.

CHAIRMAN: Mr. Clerk?

CLERK: Sixty-six, Mr. Chairman.

DELEGATE DiBIANCO: I'd like a roll call.

CHAIRMAN: If there are no objections, can we move for a call of the house?

DELEGATE STERLING: I object because we've got people deliberately walking out of here.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I would like to move for a roll call.

DELEGATE SUTTON: Second.

CHAIRMAN: If there are no objections, we shall have a roll call.

DELEGATE TAIRA: Point of order.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: I believe Delegate Hale made a motion for a roll call and I believe somebody seconded that motion, so there's a motion before this body.

DELEGATE HALE: May I speak for my motion?

CHAIRMAN: It has been moved and seconded that we have a roll call. Delegate Hale.

DELEGATE HALE: The reason I made the motion is I really think that those of us

here are doing our duty and we should be noted as being present, and I would like the record to reflect right now those delegates who don't think this matter of taxation is important enough to be here and discuss this in the Committee of the Whole. That's why I'm making the motion, so that we can make sure it's really done properly.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco, I'm sorry, Delegate Silva has been standing.

DELEGATE SILVA: Excuse me, in light of what the delegate from the Big Island said, I do not concur with her ideas because I think all the delegates who are here should be also given the privilege to state their points, because if they were kind enough to stay here, I think these people were concerned and we should not wait for people who are not concerned.

CHAIRMAN: Thank you, Delegate Silva. Delegate DiBianco.

DELEGATE DiBIANCO: Yes, Mr. Chairman, my concern is simply this--and I don't think any of us here are trying to play games--but the point is this: We've got very, very important matters before us, namely questions of taxation and finance, that are going to be affecting the economy of the State and the expenditures of government for at least the next 10 years. It would seem to me that the best thing to do is to have the vast majority of the delegates here give us their input and also place their votes on these issues. I'm sure that if the delegates who are absent knew that so many of their fellow delegates were also absent, they all would have made more of an attempt to be here. Be that as it may, we have two thirds--or less than two thirds of the total delegation present, and it just seems to me that the matters here are too momentous to be dealt with in this kind of fashion. It's obvious that the reason most of the delegates have gone home is probably because they're tired; the rest of us who are here probably are also tired, and it would be best if we could just have the roll call, determine whether there is a quorum, and I think we should recess until tomorrow.

DELEGATE SUTTON: Mr. Chairman.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: Is the motion for a roll call debatable?

CHAIRMAN: Yes, it is.

DELEGATE KAAPU: Mr. Chairman.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: Since it is debatable, I say there is no good purpose in having a roll call unless it's to determine a quorum. To have a roll call for the purpose of embarrassing those who may not be here, for whatever reason, is no concern of ours at this point. If we have a quorum, that's all the rules require and I think we should go about our business and report afterwards if we still have enough delegates left here. Whatever personal points delegates may wish to be established based upon the roll call, I think, has no basis in merit.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Thank you, Delegate Kaapu. Delegate Hale.

DELEGATE HALE: I will withdraw my motion.

CHAIRMAN: Will the seconder also withdraw?

DELEGATE SUTTON: No.

CHAIRMAN: The motion and second have been withdrawn--

DELEGATE SUTTON: No, they have not. My second has not been withdrawn.

DELEGATE VILLAVERDE: Mr. Chairman, point of order.

CHAIRMAN: Delegate Villaverde.

DELEGATE VILLAVERDE: I believe we are all concerned regarding being absent or present, and we want to make the point clear. I believe that those who are of the consensus that we should have a roll call and so forth should be counted when they are absent themselves.

DELEGATE SUTTON: Mr. Chairman, I withdraw my second.

CHAIRMAN: It has been advised that a second need not be withdrawn. The motion has been withdrawn. The floor is now open again for discussion.

DELEGATE MARUMOTO: Mr. Chairman.

CHAIRMAN: Delegate Marumoto.

DELEGATE MARUMOTO: Thank you very much. Since this is such an important issue--I would say the number one issue coming out of the taxation and finance committee and of interest to all people in Hawaii--I would like to request that the Chair defer this matter to tomorrow morning when we have more delegates present and there would be more observers and interested parties.

CHAIRMAN: The Chair would have one comment on that. Rather than deferring it to tomorrow morning, perhaps it might be better to defer it to the end of the calendar. There is no guarantee that we shall meet tomorrow.

DELEGATE MARUMOTO: The end of the calendar is fine.

DELEGATE STERLING: Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: Point of parliamentary inquiry. According to Rule 14, as I understand it, this committee is operable. It says that a quorum shall be 52 and we can operate because we've got 52 delegates here.

CHAIRMAN: Your point is well taken, but the request from the delegate was to defer this matter to the end of the calendar. If there are objections, we shall discuss them; if not, the Chair will make a ruling on it.

DELEGATE WAIHEE: Mr. Chairman.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: I object because I think this is about as much delegates as we're going to get here. If we defer it to the end of the calendar, there'll probably be more people absent than if we take it up now.

CHAIRMAN: In this case the Chair would entertain a motion by Delegate Marumoto to the effect of deferring, and we shall let the Committee of the Whole decide by vote.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: Is it in order to speak against this motion? As a follow-up--Delegate Waihee spoke on this--is there any further discussion allowed on this matter?

CHAIRMAN: The Chair's point at this time is that there has been no motion. This was a request. Since there was an objection to having some discussion, we would require a motion.

DELEGATE LES IHARA: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Ihara.

DELEGATE LES IHARA: According to our rules and Robert's Rules, that motion is out of order. The only motions allowed are the motions to adopt, to rise and report and so forth, and that motion is out of order, I believe.

CHAIRMAN: That's--the motion to defer is out of order.

DELEGATE LIU: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Liu.

DELEGATE LIU: I think you did state that there was no motion, there was merely a request to defer.

CHAIRMAN: At this point, the Chair would still want to confer with the parliamentarian because we had discussed this previously.

DELEGATE SUTTON: Point of inquiry.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: Would it be simpler to renumber this amendment so that it would appear later in the calendar?

CHAIRMAN: The Chair believes that would be to the same purpose as deferring it to the end of the calendar.

DELEGATE SUTTON: Mr. Chairman, you have moved on other motions--other amendments today, so the precedent has been set.

CHAIRMAN: That's the exact kind of thing we're going to do here, but at that time, previously, there were no objections.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: I would--only as a matter of information--point out that if we defer Amendment No. E1, then you should also defer E2, 3, 4, 5 and 6 because they all relate to the same subject matter.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE CROZIER: Mr. Chairman, you just mentioned that the delegate wanted to defer, and you mentioned there was an objection. I don't recall you asking for objections when others wanted to defer their matters.

CHAIRMAN: The Chair did.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I'd like to point out that the Chair set this order to begin with and therefore the Chair should have the prerogative to change the order.

CHAIRMAN: When the Chair originally announced the order this morning, however, the Chair did allow delegates to move their amendments to a different order. For example, Delegate Izu's amendment, B1, was changed to B3. At this time, there will be a short recess.

At 8:00 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 8:05 p.m.

CHAIRMAN: The Committee of the Whole will please come to order. At this point, the Chair would again turn to Delegate Marumoto and see what she wishes to do in this matter.

DELEGATE MARUMOTO: Mr. Chairman, I move for the adoption of Amendment No. E1 to Committee Proposal No. 14.

DELEGATE LIU: Second.

CHAIRMAN: It has been moved and seconded that we amend Committee Proposal No. 14 as set forth in Amendment No. E1. Is there any discussion? Delegate Marumoto.

DELEGATE MARUMOTO: Mr. Chairman, I'm disappointed that there are not more delegates present for this key issue, but I will proceed anyway. My amendment calls for the deletion of the last paragraph on page 18 of the committee proposal and insertion of the amendment as you see it before you, Amendment No. E1. I want to delete the rate of growth of the State's economy and insert instead "State's total personal income" as the basis on which the spending limit should be affixed. The intent of this amendment is to strengthen the spending limit presently contained in Committee Proposal No. 14 and to provide greater direction to the legislature.

As you see in the committee proposal, the spending limit is based on the "estimated rate of growth of the State's economy." This is a very nebulous phrase that can be interpreted in too many ways. There are many ways to measure economic growth, such as by using gross state product--and we've heard testimony that no one can seem to agree upon this figure--or we could use the consumer price index, the percentage of occupied hotel rooms, and so on.

But despite this variety--despite the conceivable alternatives of imaginative minds--all testimony received by the Committee on Taxation and Finance pointed to total personal income as the best available economic indicator upon which to peg a spending ceiling. This is a long-established, accurate figure and has been used for 40 years, put out by the U.S. Department of Commerce, Bureau of Economic Analysis, for all 50 states. It reflects all wages and salaries, and takes into account population shifts, inflation and increases in the real wealth of the State. It is considered by many economists as the best measure of the taxpayers' ability to support government.

Opponents of this amendment will tell you that we delegates should leave it up to the legislature to determine which index to use. Or else we hear--the legislature will probably pick total personal income (TPI) anyway. I answer by asking--what if the legislature does not select an accurate index, what if they do not choose TPI, what if they spend years making up their minds? Will newly enacted taxes and an increasing budget drive expenditures to a higher proportion before a lid can be put on the budget?

Next spring the legislature will meet and the money committees will have to go through the same arduous hearings that the Con Con taxation committee went through. If they are not all totally committed to holding down state expenditures, it is possible that they will not agree upon an index that session. It is easy enough to put off a decision for the interim or for the following session. It is easy to put off a decision for further study, or for the design of econometric models or whatever.

Therefore, it is up to us delegates to provide in the Constitution the necessary direction for the legislators, who are constantly surrounded by political pressures. By not mandating the use of TPI, I fear that the legislature will be tempted to use different economic indicators in different years depending on the demands of special interests. Should legislators find the spending ceiling not suited to their tastes, they can simply discard the index for another.

The "estimated rate of growth of the State's economy" can also mean estimated tax revenues. If estimated tax revenues becomes the indicator, my fellow delegates, then we shall see no change at all, for that is now the procedure used which has brought us to a \$1 billion budget.

The spending ceiling in Committee Proposal No. 14 received a bare minimum to

move it out of committee--16 votes, or one more than half; 12 delegates voted to insert TPI into the proposal (2 were absent). On an earlier "straw vote" in committee, TPI was voted into the working draft by a vote of 14 to 9. It was only on the final vote that it was removed. So a minority of the committee feels quite strongly that we are not giving the legislature sufficient direction and that this spending limit lacks teeth.

We are not asking for an unreasonable hard, fast ceiling. What we are proposing is a flexible measure of what taxpayers can afford to pay for government services. The spending limit with TPI added actually constitutes a cost-of-living increase for the State. And government expenditures will probably continue to rise at 9 or 10 percent a year. What this amendment will do is keep the expenditures proportionate to what we are used to today. Government and the private sector can ride this cost-of-living escalator together without fear of falling off. I thank you for your attention and ask that you vote aye on this amendment.

CHAIRMAN: Thank you, Delegate Marumoto. Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I rise to speak in favor of the amendment. The feeling in the committee was fairly closely divided on this matter, and I personally favor the use of TPI because it is a very clear index on which there can be little debate over the numbers. There can still be some debate, but for the most part if we use an index that's well regarded and well received and accepted, then the voters, I think, and the taxpayers can be more assured that whatever standards the legislature adopts, whatever relationship to that index they choose, is something that they can measure on a year-to-year basis--whereas the growth of economy is not quite so precise. I think we'd be doing the legislature a favor by narrowing down their choice. I wish that we at this Convention could have set the ceiling in relation to the TPI ourselves, but I don't think that's going to be possible because of the time we have. And while I trust to their judgment, in terms of finding the proper proportion, I think that we should give them this degree of precision in terms of guidance. Therefore, I urge the adoption of this amendment.

CHAIRMAN: Thank you, Delegate Kaapu. Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to speak in favor of this amendment. I am informed that amongst the various experts and specialists in this field, there is a widespread conviction that the spending limit should specifically be incorporated in the Constitution. Rather than being specific and strong, the language of the committee proposal in this respect is extremely vague and weak, as was stated by Fred Bennion in his commentary in last Sunday's Star-Bulletin. All the proposal provides is that the "rate of growth of general fund appropriations, excluding federal funds received by the general fund," be limited to the "estimated rate of growth of the State's economy as provided by law." With this stroke of the pen, the matter is left entirely up to the legislature. So the legislature presumably would have to go through the same kind of hearings we did, with virtually the same specialists and experts who testified for us. Unfortunately the language is so unclear it is conceivable, as mentioned by the prior delegate, that when the legislature acts, it will come up with a limitation which is dissonant with what we as delegates would want for our State. And what is worse, it may permit a protracted period of time to go by without taking any action whatsoever, thereby thwarting solution of the problem.

It is my belief that it would be in the best interests of the people of this State to limit the rate of growth to spending to no more than the rate of growth of the State's personal income, because it is the best way to admeasure ability [to] support government, and what is more, I believe that this is the method which would be least subject to political maneuvering. Based upon these considerations, I urge the delegates to support this amendment.

CHAIRMAN: Thank you, Delegate Campbell. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak against the amendment. Your Committee on Taxation and Finance did in fact deliberate on this question at some length. Delegate Marumoto is correct in that there were several straw votes taken, including an abortive straw vote; but ultimately the committee, when it made its final decision, voted against incorporating personal income into the Constitution.

There is considerable sentiment, even among those who voted against including

it in the Constitution, that this is a proper method today. However, the concern by many delegates, including myself, was a concern over putting into the Constitution a standard--and in this case a standard that is tied to the federal government. In effect, you're incorporating by reference a federal government standard over which the State of Hawaii--neither the delegates to the Convention nor the legislature has any control over. And on that basis, it seems to me we're putting our faith in the hands of the federal government--and that's a decision that we would want to consider very carefully before doing.

There's another problem in tying it to the federal indicators, in that the data that are available--I have from the Tax Foundation of Hawaii, the 1978 edition--when you go to Table 2 on sources of personal income, the last available data--this is prepared by the Department of Commerce--is 1976 data; so in fact we're dealing with data that are outmoded and there is a considerable lag period before the data that are being proposed in this amendment. There would be applied to a spending limit--you have at least, as best I can guess--at least a 1-1/2- to 2-year lag period involved. So, as much as I personally may support those who favor personal income as a proper measure, the majority of the committee felt that this should be left up to the legislature, to give them the latitude to either adopt personal income or, if that is no longer applicable, they can then use some alternative source to measure the growth in the State's economy. This in fact is what the state of Tennessee did, as indicated in my opening remarks that this provision--the proposal by the committee--is patterned after Tennessee's spending limitation; and I might add parenthetically that the state of Tennessee then did--the legislature--did adopt personal income as its measurement tool, but the state of Tennessee has the option at the legislative level to make adjustments, and that's what the committee proposal would do. And I would recommend voting against this amendment on that basis.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Lee.

DELEGATE MARION LEE: Yes, Mr. Chairman, I rise to speak in favor of this amendment. I feel that this is definitely one of the most important areas that the entire Convention is addressing, and I feel that by taking the conservative approach to this problem, that we will definitely achieve the desire of this Convention, which is to limit the growth in spending. Personal income, as shown by all the testimonies given in our finance committee by all the experts, is the best measure of limiting spending. I definitely feel that we should not leave it up to the legislature--they could possibly do it next year, or 5 years from now--there is no guarantee as to when they will do it. If we do not use personal income as a measure, I feel that it would be defeating the entire purpose of our spending limit, and I would not want to see the spending limit circumvented in any way. Therefore, I urge all of you to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Lee.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: The Chair saw Delegate Waihee before--

DELEGATE HALE: I have a question.

CHAIRMAN: Will you yield? Will you state your question, please, Delegate Hale.

DELEGATE HALE: Yes. I have a question and I hope the chairman of the taxation and finance committee can answer it. I heard him say that the reason he was opposing this amendment was that statistics were not available and that the last available statistics were from 1976; and yet on the other hand, he said that Tennessee uses this and they did it by way of the legislature. What statistics did Tennessee use?

CHAIRMAN: Would the chairman of the taxation and finance committee wish to respond to that?

DELEGATE LEWIS: Yes, I would like to respond to Delegate Hale. The state of Tennessee used an econometric model that had been developed by the state itself, and the indices they used were not tied to the federal--whatever the language is here--a federal personal income measurement as prepared by the Department of Commerce. So the state of Tennessee used their own econometric model.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment. I think that what we have here is a plan that would allow the legislature to develop the best type of index for our State. While it may be now that total personal income is a good index today, it does have its problems, as pointed out by the chairman of the committee. There is a time-lag problem, there's a problem that is being established by the federal government as opposed to the State, and I think we ought to leave with the legislature the option of establishing an index that would be closely tied to either personal income in the State or growth, or some other measure of growth in the State of Hawaii.

I might mention that while Tennessee did adopt some form of total personal income as their index, under the language proposed in the original committee proposal, they are now also working and pursuing at the University of Tennessee--developing some index that would be better, and related to their actual growth and to the income of the state. And I think that were Tennessee to develop a plan within the next 2 or 3 years, or the University of Hawaii or the state legislature to develop a better index, that should not have in our Constitution a prohibition from using a better index for limiting--as a guide for our expenditure limits. For those reasons, I would speak against the amendment.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Goodenow.

DELEGATE GOODENOW: Mr. Chairman, I would like to speak for the motion; when I came into this Convention, I was very conscientious about my new responsibilities; and I did put in my brochure the following statement: "...responsible appropriating on the part of the legislature to avoid deficit spending." When it came time for getting on committees, I went on other committees that better covered the majority of what I had said I would do--and I knew there were very capable people on this one, as on all committees. However, may I ask a question of the movant?

CHAIRMAN: Proceed.

DELEGATE GOODENOW: Delegate Marumoto, may I address this question, in regard to what I had in my brochure--I will read it once more--I wondered if this would in any way do something about it. I had: "...responsible appropriating on the part of the legislature to avoid deficit spending." Would your amendment help this out?

CHAIRMAN: Thank you, Delegate Goodenow. Would Delegate Marumoto or anyone else wish to respond to that question? Delegate Marumoto.

DELEGATE MARUMOTO: Mr. Chairman, I believe that with the spending limit we will have a balanced budget, and in fact perhaps even some surplus from time to time.

CHAIRMAN: Thank you, Delegate Marumoto.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I rise to speak in favor of the amendment. I view the committee's proposal to be the Con Con's revenge on the legislature for the legislature setting us up and making us have the Convention so late in the summer. All we're doing in the committee's proposal is saying there shall be a spending limit and then dumping the entire question in the lap of the legislature and saying to them--here, you spend 2 or 3 months trying to figure out what the ceiling will be, what the standard will be, go through all the informational meetings, get in contact with all the resource personnel that we've had contact with all summer long, and you beat your brains out on this problem for 2 or 3 months.

The point is, however, that we were elected to do this very thing and we've had the information presented to us, and there's no reason why we can't make this decision. It seems to me ill-advised that we tell the legislature there will be a spending ceiling but then not tell them what the ceiling will be or what it will be tied to. As it is, we are not going to be giving them any definite limit; but if we do not adopt this particular amendment, we're not even giving them a standard to go by. So all we're doing is putting in a proposed constitutional amendment saying there shall be an expenditure ceiling--

period. And that's just meaningless language; it doesn't really establish an expenditure ceiling, it doesn't even give any indication as to what the expenditure ceiling should be. And I don't think we've fulfilled our responsibility by presenting a viable alternative to the general public for their consideration in November, if all we do is say there shall be an expenditure ceiling and we're going to leave it all up to the legislature.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Kaapu.

DELEGATE KAAPU: Yes, Mr. Chairman, I would like to offer an amendment. On the fifth line, after the words "personal income," where it now reads, "utilizing the federal state personal income series," place a period after the first "income" and strike the words "utilizing the federal state personal income series."

DELEGATE DiBIANCO: Second.

CHAIRMAN: It has been moved and seconded that we amend the amendment by striking the words "utilizing the federal state personal income series." Is there any discussion? Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I think the arguments that were offered against the amendment, concerning the delay and the use of--the availability of the federal index, as well as the experience with the state of Tennessee developing their own econometric model, which is then, I guess, verified by the federal series, when it does come out--by striking this language, it would be possible for the legislature to use personal income as the basis, and then use whatever model, including the federal, if they so desire. So in recognition of the merits of the arguments against the amendment as it is, I offer this amendment to the amendment and suggest that it would correct that deficiency.

CHAIRMAN: Thank you, Delegate Kaapu. Delegate Peterson.

DELEGATE PETERSON: I find myself in a curious position in speaking against this amendment, because I realize that it does overcome some of the objections that some people have. However, what some people see as objectionable I see as a benefit to the system, the way it is in the amendment. It says that total personal income will be calculated by the federal government. What this does is put the calculation of the single most important factor in our debt limit beyond the control of state employees; if we were to allow the State to calculate the growth in personal income, then we would let the State, by its calculation of the figures, set its own debt limit. I see that as a real threat. There's been some suggestion that the federal government may capriciously change the calculation of the indicator and I think that's kind of a specious argument because this indicator, as Delegate Marumoto has indicated, has been used for 40 years. I have information for the last 30 years; there's been no indication of any change in the way this indicator has been calculated during that period.

Another problem that was raised concerning this is, what if there were some major change? We still have the protection of the legislature, which by a two-thirds vote, could override a spending limit which was unrealistic because the federal government had changed the limit. If some better index arises in the next 10 years, the next constitutional convention would then have adequate time to consider it. I don't think the lag caused by using federal government figures is an argument against this. Until the end of the year, a business doesn't even close its books, and taxes aren't payable until April. I don't think the State or any other group can calculate personal income until the better part of the following year has elapsed. The federal government has an estimate--I think in February--of what personal income is and they have the final figures out in August or September, a lag of only 8 months. So although I would vote in favor of this amendment to the amendment if I thought it would strengthen the amendment, I really think it weakens some of the strongest parts of the amendment, in that it preserves from state control and state calculations the indicator on which our state spending would be limited; and for this purpose I speak against the amendment to the amendment.

CHAIRMAN: Thank you, Delegate Peterson.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I rise to speak in favor of this amendment. I am not as troubled as some of the delegates have appeared to be about tying our expenditure ceiling to the federal state personal income series. However, there has been some concern expressed by some of the delegates that we shouldn't be tying our ceiling expenditure to a series that we have no control over. I suppose it would be unusual if it were to occur, but presumably the federal government could cease to issue these series or could begin to calculate it in a way unbeknownst to us at the present time; and that would cause considerable difficulty here if in fact we were unable to have some flexibility in that regard. That objection is well taken; however, the point remains that we still have to provide some kind of standard, I think, for the legislature to operate by and the consensus of the experts was that personal income--total personal income--was the appropriate standard. It seems to me that Delegate Kaapu's amendment is right on point in that it should alleviate the fears of those who are against tying our debt ceiling to a source over which we have no control, while on the other hand it does retain the best aspects of the total personal income standard. So I would urge my fellow delegates to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Marumoto.

DELEGATE MARUMOTO: Mr. Chairman, I speak in favor of this amendment with a little reluctance. I fully understand the points raised by my fellow delegate who spoke on the other side. If it would allay the fear of many of the delegates, we can cut out this language. I feel that the State still will not really collect the total income figures; they will still have to rely on the federal figures from the Department of Commerce. Preliminary figures on total personal income arrive in the State around April, that's my understanding; the final figures are supposed to arrive in August. So I urge you to vote yes on this amendment.

CHAIRMAN: Thank you, Delegate Marumoto. Delegate Hale.

DELEGATE HALE: Mr. Chairman, may I ask a question of the mover of this amendment?

CHAIRMAN: We shall see if she wishes to yield.

DELEGATE HALE: When it says "utilizing the federal state personal income series," does that relate to something specific; and if it does, why is it not capitalized? It appears to me that it's not a specific series--or is it?

CHAIRMAN: Thank you, Delegate Hale. Would someone like to respond to that question? Delegate Marumoto.

DELEGATE MARUMOTO: Mr. Chairman, I can't really answer her question. I don't know why it's not capitalized, but I do know the figures come from the U.S. Department of Commerce, the Bureau of Economic Analysis. I talked to a Mr. Dawson and Mr. Bennett at the local office of the Department of Commerce on these figures, and that is what they called it. I don't know whether it should be capitalized or not because I talked to them over the telephone.

CHAIRMAN: Thank you very much, Delegate Marumoto. Do you have a follow-up question, Delegate Hale?

DELEGATE BARR: May I answer the question?

CHAIRMAN: Delegate Barr.

DELEGATE BARR: It is frequently--where it is published--capitalized; it is not capitalized here because as a matter of style we minimize capitalization in the Hawaii State Constitution.

CHAIRMAN: Thank you, Delegate Barr.

DELEGATE HALE: Mr. Chairman, I'm wondering--

CHAIRMAN: Delegate Hale. Do you have another question?

DELEGATE HALE: Yes, I'm wondering--to follow up on that--whether this is the same thing as what was put on my desk today from Wes Hillendahl, where he is proposing--he has a proposal recommending that commencing with fiscal year '79-'80, the rate of change and the total state and local direct general expenditures shall not exceed the average rate of change in personal income, as defined and officially recorded by the United States Department of Commerce. Is this the same thing?

CHAIRMAN: Delegate Hale has another question. However, the Chair would recognize that no member here submitted that; that was submitted by a nondelegate, but if someone is willing to answer--Delegate Kaapu:

DELEGATE KAAPU: Mr. Chairman, if the delegate is asking a question about the amendment to the amendment which is before this body, it was my intention in striking the language--the specific language describing the series--to leave that matter up to the legislature.

DELEGATE HALE: But, may I, Mr. Chairman--

CHAIRMAN: Proceed, Delegate Hale.

DELEGATE HALE: But that was not my question. My question is--I'm wondering what it is we're striking; we're striking the words "federal state personal income series," and what I want to know--is that the same thing as the reporting by the United States Department of Commerce on the changes in personal income? Is this the same thing we're talking about?

CHAIRMAN: Thank you, Delegate Hale. Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, the best I can say is that I think so, but it doesn't matter since it's being struck.

CHAIRMAN: Thank you, Delegate Kaapu.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Then I would like to speak against the striking. I had on my desk this evening a memorandum from Wes Hillendahl, a vice-president at Bank of Hawaii, in which he is recommending very highly that we put in to the Constitution this total personal income; he has recommended this as a change of wording, which I thought maybe was the same thing. And if it is, then I think it should stay in. He is saying that we should, commencing with fiscal year '79-'80--the rate of change of total state and local direct general expenditures shall not exceed the average rate of change in personal income, as defined and officially reported by the United States Department of Commerce or its successor over the preceding 3 years or during the most recent year, whichever rate is lower. And this recommendation is backed up by a memorandum--which I don't know whether the rest of you have had a chance to look at--but I think there are some very important things in here that I'd like to point out to you in making your decision, things that are put in a better way than I could. He says that the resulting growth of government in the last 65 years has induced a destructive inflationary environment. In turn, progressive taxes feed on inflation, and it is becoming generally apparent that together taxes and inflation threaten the survival--

CHAIRMAN: Delegate Hale, the Chair is going to have to insist that you speak to the amendment. What you're reading from has been distributed to all the delegates--it was the subject of one of the proposals in the committee, and it could be used for purposes of debating when we get back to the main question. So will you please defer your comments till then?

DELEGATE HALE: Thank you. I would like to say that in reading this, it is my impression that this economist is recommending that we tie our expenditure ceiling to an index outside--developed outside the State. And as a third and impartial party to this whole process of developing taxes, it seems to me that's a very good idea. So it seems to me that this wording should stay in, and I would recommend that the amendment to the amendment not pass.

CHAIRMAN: Thank you, Delegate Hale. Delegate Kono.

DELEGATE KONO: Mr. Chairman, I'd like to speak on behalf of the amendment by Delegate Kaapu. The main purpose for putting the TPI indicator in is so that the legislature will have a starting point from which to create their spending limit. The thing that most delegates are concerned about is that the legislature will not take this as being a mandate to immediately institute the spending limit. And by having the starting point--so they won't have to waste time arguing, as we have in committee, as to what would be the best indicator, and listening to all the testimony we've heard--they will be able to begin and they will be able to use the personal income index in their deliberations.

Furthermore, I don't really think that the state estimates would vary that much from the federal series, and personal income, from all we've heard, is about the only way to really determine what the rate of growth in the economy is. So I would speak on behalf of that amendment.

CHAIRMAN: Thank you, Delegate Kono. Is there any further discussion? Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I would like to add only one thing--two things; one is that if the State were to develop their own model, it would probably be based very much on similar principles to that which the federal government uses, but they would be concerned with time. However, after a couple of years the federal estimates would be available to check the State's estimates if they were to use a different model, and that would be the subject of debate and correction, or whatever. However, when I proposed this, I did so with the full knowledge of Mr. Hillendahl's position and I personally had the feeling that if he woke up tomorrow morning and read this in the morning Advertiser, he'd be delighted.

CHAIRMAN: Thank you, Delegate Kaapu. Is there any further discussion on the amendment to the amendment? If not, the question on the floor is to amend the amendment to Committee Proposal No. 14 by striking the phrase "utilizing the federal state personal income series." All those in favor of the amendment to the amendment, please raise your hand. Thank you. All those opposed? The ayes have it, and the amendment to the amendment passes.

DELEGATE OKAMURA: Mr. Chairman.

CHAIRMAN: Delegate Okamura.

DELEGATE OKAMURA: May I call for a division of the house, please?

CHAIRMAN: A division of the house has been called. You're a little late, but if there are no strong objections-- All those in favor of the amendment to the amendment, please rise. Thank you. All those opposed, please rise. Thank you. The vote is 35 ayes and 40 noes. The amendment fails.

The question on the floor is to amend Committee Proposal No. 14 by deleting "estimated rate of growth of the State's economy as provided by law" and inserting "rate of growth of the State's total personal income, utilizing the federal state personal income series." Is there any further discussion? Delegate Peterson.

DELEGATE PETERSON: I just wish to summarize some of the arguments made for the use of total personal income. There have been some comments as to the potential problems and that we should let the legislature choose which indicator to use. There may be another--oh, I'm speaking in favor of this amendment--there may be a better indicator, someone suggested, which may be discovered between now and the next constitutional convention. I have nine reasons why I'm in favor of total personal income.

The first is--most economic indicators are very durable. In order for an indicator to be useful, it must have a long history. Total personal income has been reported at least since 1948; any replacement indicator would require a long period of use in order to demonstrate that it was also reliable.

Number two--the legislature shall be required to choose some indicator of growth in the State's economy, and we might help them by choosing total personal income.

The third reason has been covered adequately. With regard to the calculation of total personal income as prepared by the U.S. Department of Commerce, by being independent of any state offices, there is no chance that errors may be introduced into this figure for the benefit of the administration in office. In the unlikely event that the statistics may change, our past statistics would be restated, and there is no evidence that there has been any change in this indicator for the past 30 years.

The fourth reason is--total state personal income includes wages and salaries; other labor income; proprietors' farm and nonfarm income; dividends; interests; rent and transfer payments less personal contributions for social insurance.

This is reason five: because it includes all sources of income received by persons in Hawaii, it is the appropriate base to use in calculating the percent of our income which is being used to pay for governmental services. Although there may be some differences of opinion as to the proper percent of our personal income which should be received by government, few disagree that state spending as a percent of personal income is the proper measure.

Reason number six--most authorities testifying before the committee spoke in favor of using this specific index. As has been stated before, the state of Tennessee, which recently passed a similar measure tied to the rate of growth in their economy, chose total state personal income as the best measure of growth in their economy.

Number seven--the best indicator of total personal income is an average to reduce year-to-year fluctuation. This is in answer to the question about the lag period. An average of total state personal incomes for the prior 3 years, which was recommended by Fred Bension of the tax foundation, would give an exact figure, which is preferable to any estimate for establishing a ceiling. This average of rates in growth would allow spending to continue at the same rate even though revenues were temporarily reduced, thus providing funds when they would be most useful. There's been an argument that total personal income would be restrictive if it happened to fall in the same year--or if total personal income fell, then in that same year you'd have a limit in spending, when in that year you'd probably need to increase spending to take care of problems during that period. So this is another argument for the use of an average.

The eighth reason is that total personal income as a measure is not too strict, as some have mentioned. A calculation for the past 5 fiscal years, beginning in 1972-73, indicates that if general fund expenditures had been limited to grow at the same rate as personal income, there would have been \$3,677,000,000, rather than \$3,716,000,000, for the whole 5-year period. The difference of \$40 million, after 5 years, is only 1.06 percent more than would have been allowed with the ceiling. In other words, the spending ceiling is not really a ceiling. It allows us to spend at the same historical rate, the same generously historical rate, that we have been spending at for the last few years. In fact, calculating from a different base year from the last 4 years would have allowed the ceiling to have exceeded actual expenditures for the past 4 years by \$77 million. In other words, if we chose 4 years ago for the base year, we would have been able to spend \$77 million more than we did, and still have been within the ceiling. So this calculation suggests that the spending limit may indeed be too loose, and it's not a limit in fact.

My last reason, number nine--since the spending limit would allow considerable year-to-year increase in spending of about 11 percent, the rate of increases in personal income, and that amount for 1977-78 would amount to about \$86-million increase over the \$785 million spent last year--that's over 10 percent, nearly \$100 million--I believe that the term "spending limit" is not appropriate. This is more a definition of the rate of spending increases.

Therefore, because I do not think total personal income is too restrictive--in fact, it may be too generous--since the legislature must pick some limit, and since total personal income has been shown to be an effective limit which shows the burden of taxes on the people and which has been recommended by a number of authorities, I encourage you to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Peterson.

DELEGATE BARR: Mr. Chairman.

CHAIRMAN: Delegate Barr.

DELEGATE BARR: Your delegate from the Valley Isle will find it very difficult to follow "H & R" Peterson; however, I would like to offer reason number ten, and that is that next to initiative, there has been more public sentiment expressed on the matter--and I am speaking in favor of the amendment--on the matter of some kind of control on the growth of government. Government spending has been growing exponentially; it is growing at a rate that frightens because if you project the line, it will pass personal income in the not-too-distant future. Now obviously something's going to happen and we have accepted the principle of a spending limit in hopes that that will bring it somewhat into line; but what it will do is change the rate of growth from exponential to arithmetic, but it's still going to grow. And I would suggest that the voters on my Island have spoken up strongly for much tighter control than even the personal income will give us, and that, it seems to me, is an absolute minimum that we can meaningfully offer the voters. So I speak very strongly in favor of the amendment and urge you to remember who we are responsible to.

CHAIRMAN: Thank you, Delegate Barr. Delegate Crozier.

DELEGATE CROZIER: Yes, Mr. Chairman, I speak in favor of the amendment, and my reason is reason number eleven. I've been keeping score on who the speakers have been; there have been four males speaking against this motion and six ladies speaking for this amendment. Ladies and gentlemen, we are now dealing with a motherhood issue--and we'd better not fool around with mother.

CHAIRMAN: Thank you, Delegate Crozier, for waking everyone up. Delegate Yoshimura.

DELEGATE YOSHIMURA: I'm the fifth male speaking against this amendment. To restrict the rate of growth index to personal income may not be the best answer, for the following reasons. Number one--let us use the Constitution to give broad avenues of direction, not to restrict to a one-way street. Number two--let us also provide flexibility and rely on the good and wise decisions of the legislature and the executive branch to come up with the best index. I do not have the hang-up other delegates have, that possibly the legislature may exert its powers to deviate from the intent. Point number three is an example--I already see a problem in restricting the index to personal income--for example, personal income also includes the income of government employees, which is inversely proportional to the rate of government spending; that is, the same rate of growth and spending can be achieved even if a large amount of government employees are added to it. I do not believe it is the intent of the taxation and finance committee to have the state government keep spending by adding more employees.

The point I'm trying to make is, probably the rate of economic growth does not include salaries of the state employees as part of the personal income. Because of this problem and other unforeseen problems in sticking to the federal state personal income, I am against this amendment.

CHAIRMAN: Thank you, Delegate Yoshimura. Delegate Lacy.

DELEGATE LACY: Mr. Chairman, I would like to propose an amendment to the amendment.

CHAIRMAN: Proceed.

DELEGATE LACY: I would like, on the fifth line, following "the rate of growth of the State's," to delete "total personal income" and substitute the words "economy, utilizing the federal state personal income series," and add the following, "until the legislature shall specify another index."

CHAIRMAN: Is there a second to the amendment?

DELEGATE GOODENOW: Second.

CHAIRMAN: It has been moved and seconded that we amend Amendment No. E1 to Committee Proposal No. 14--and correct me if I'm wrong, Delegate Lacy--to read,

starting on line 5, "the rate of growth of the State's economy, utilizing the federal state personal income series until the legislature shall specify another index."

DELEGATE LACY: That's satisfactory, sir. May I speak to my amendment?

CHAIRMAN: Please proceed.

DELEGATE LACY: I know we've spent a long time on this, and it's not any longer than we've spent in committee. I would like to find the compromise that meets what many of our delegates feel is the right of the legislature to set the index. At the same time, there are a number of delegates who feel that today we have as the best-accepted index--and I believe, the consensus of opinion within the committee, a large majority, that this is the best right at the moment but may not be the best tomorrow or next year--that we could use the personal income index as prepared in the federal series. Now if we accept this amendment, we can close off the general argument--we have the legislature take over and specify the index they want, and it's fully proper and it follows what the Constitutional Convention asked them to do; but until they do, they follow what has been studied and agreed to by all the people--or a vast majority--who have spoken before the committee, and the committee members, as they expressed themselves in our meetings in decision-making.

CHAIRMAN: Thank you, Delegate Lacy.

DELEGATE DENNIS IHARA: Mr. Chairman, point of information.

CHAIRMAN: Delegate Ihara, state your point.

DELEGATE DENNIS IHARA: I believe the terminology "State's economy" is rather broad, and I would like to ask what exact economic indicator is to be used.

CHAIRMAN: Thank you, Delegate Ihara. Would Delegate Lacy respond to that?

DELEGATE LACY: It says: "...utilizing the federal state personal income series until the legislature shall specify another index." That's how we measure the "State's economy": its growth is on the basis of the personal income. This is exactly like the other only I've added that to get a compromise, until the legislature decides what they want to do.

CHAIRMAN: Thank you, Delegate Lacy. Is there further discussion on the amendment to the amendment?

DELEGATE MARUMOTO: Mr. Chairman.

CHAIRMAN: Delegate Marumoto.

DELEGATE MARUMOTO: Half a loaf is better than none, and I speak in favor of the amendment.

CHAIRMAN: Thank you. Is there any further discussion? If not, the Chair--

DELEGATE OKAMURA: Mr. Chairman, can we have a short recess?

CHAIRMAN: If there's no objection, there will be a short recess subject to the call of the Chair.

At 8:58 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:12 p.m.

CHAIRMAN: The Committee of the Whole will please come to order. The question before the Committee of the Whole is Delegate Lacy's amendment to the amendment of Committee Proposal No. 14, and the Chair will read the amendment to the amendment, starting on line 5, "the rate of growth of the State's economy, utilizing the federal state

personal income series until the legislature shall specify another index." Is there further discussion? There being no further discussion, are you ready for the question?

DELEGATE MARUMOTO: Mr. Chairman.

CHAIRMAN: Delegate Marumoto.

DELEGATE MARUMOTO: May I request a roll-call vote on this?

CHAIRMAN: Are there 10 seconds? Thank you, there are 10 seconds. The Chair does not believe the question need be repeated. Will the clerk please call the roll.

Roll call having been ordered, the motion failed to carry by a vote of 35 ayes, 43 noes and 24 excused; with Delegates Alcon, Andrews, Barnes, Barr, Blake, Burgess, Crozier, DiBianco, Dyer, Fernandes Salling, Goodenow, Hale, Hanaike, Harris, Hoe, Hornick, Kaapu, Kimball, Kono, Lacy, Liu, Marumoto, McCall, Miller, Odanaka, O'Toole, Paty, Peterson, Shinno, Shon, Souki, Stegmaier, Sterling, Stone and Chairman Ishikawa voting aye; Delegates Barnard, Chang, Calvin Ching, Laura Ching, Haunani Ching, de Costa, Fukunaga, Fushikoshi, Hagino, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hokama, Les Ihara, Teruo Ihara, Ikeda, Iwamoto, Izu, Kaito, Kojima, Ledward, Marion Lee, Lewis, Nakamura, Nishimoto, Nozaki, Okamura, Sakima, Sasaki, Silva, Sutton, Taira, Takahashi, Takehara, Tam, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax and Yoshimura voting no; and Delegates Anae, Blean, Cabral, Campbell, Donald Ching, Chong, Chu, Chun, Chung, De Soto, Eastvold, Ellis, Fujimoto, Funakoshi, Hamilton, Dennis Ihara, Rachel Lee, Ontai, Penebacker, Pulham, Takemoto, Takitani, Wurdeman and Yamashita being excused.

CHAIRMAN: The noes have it and the amendment to the amendment fails.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I move that the Committee of the Whole rise and report that we need more time to consider this proposal and all other amendments.

DELEGATE DiBIANCO: Second.

CHAIRMAN: It has been moved and seconded that we rise and report to the Convention that we need more time to consider the amendments on Committee Proposal No. 14. There being no debate on this matter, all those in favor of rising and reporting, please raise your hand. Thank you. All those opposed? Thank you. The noes have it, and we shall remain in the Committee of the Whole.

The question on the floor is that we amend Committee Proposal No. 14 as originally offered by Delegate Marumoto. Is there further discussion?

DELEGATE BLAKE: Mr. Chairman.

CHAIRMAN: Delegate Blake.

DELEGATE BLAKE: I am somewhat--I don't know if I should say surprised--but over the years I worked with many, many groups, and many times people who are knowledgeable on the subject have been brought in from distant areas to speak to us, and after all the pros and cons were given, we usually abided by the expertise that was given us. In our deliberations in the finance committee, we had many of these people speaking to us, speaking from the heart, speaking for the welfare of the State of Hawaii. These were many, many sessions over long, long hours, and I felt like a student in class, that when a subject is given to me with the facts, I look at the facts and I pick the answer that's right. And they gave us the right answers, and the best answer that was given us was on the total personal income index. They referred to a standard given by the Department of Commerce; there are two indexes that are given us throughout the year--one in the late spring and one in the early fall--and they advised us to use these indexes for the best use possible for the good of Hawaii.

As I said, I'm surprised after listening to all these people and the hours we spent on it that we come up with something else. Last night when we deliberated on this question here till about 2:30 in the morning--the question that was used was on the state economy, as provided by law. I asked for a definition of just what was meant by the state economy, and for the delegates who are present here, I didn't get an answer at all. It was not a solid answer; it was an answer flying all over the clouds that nobody could bring down to the ground. And yet that night, in the final vote that's the answer we put down--the answer that was floating all over the sky. I ask you, the people--you delegates here tonight--is this the way we're going to do state business? Do you feel confident in yourself--if you can explain to the public that we did our very best with the knowledge that was given us by the experts? I ask you to ask yourself these questions. This question will be asked of me, I know--

DELEGATE LES IHARA: Point of order.

CHAIRMAN: State your point, Delegate Ihara.

DELEGATE LES IHARA: Mr. Chairman, I believe points of personal privileges are out of order, and unless the delegate wishes to speak on the motion, I think his--although he said he is speaking on the motion, I think what it really is is a point of personal privilege--and I think points of personal privilege are out of order in the Committee of the Whole.

CHAIRMAN: Your point is well taken to the extent that the delegate did not fully state his position when he started. The Chair, however, did realize what his position was. At this time, however, Delegate Blake, could you please state your position and speak to the--

DELEGATE BLAKE: I'm speaking for the amendment, and I challenge the challenge that was made to me--with the parliamentarian. I think the gentleman is out of line.

DELEGATE HARRIS: Mr. Chairman, I agree.

CHAIRMAN: Delegate Harris, the Chair would appreciate it if you would refrain from such remarks.

DELEGATE BLAKE: And I would like to ask--

CHAIRMAN: Delegate Blake, excuse me, the Chair believes that Delegate Ihara has a follow-up.

DELEGATE LES IHARA: Well, I'll let the delegate continue, as long as he's on the subject.

CHAIRMAN: Thank you, Delegate Ihara.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Point of order.

CHAIRMAN: Please state your point.

DELEGATE HALE: My point is that I think that the delegate sitting in the back there is completely out of order and I think he should be called to the parliamentarian, that he's always calling everybody out of order but I think he's out of order.

CHAIRMAN: Delegate Hale, Delegate Ihara did explain his feelings on the matter and the Chair believes he should proceed. Delegate Blake.

DELEGATE BLAKE: And as we deliberated--we talked about this long and hard, and I still, as of this evening, I have not heard a good definition of what the state economy is all about. And I would like to ask someone on this floor here, Mr. Chairman, to give me, and maybe the rest, a sound definition of what we mean by state economy. Thank you.

CHAIRMAN: Thank you, Delegate Blake. The question has been asked as to a definition of the state economy. Is there any delegate who wishes to respond to the question? If not, is there any further discussion?

DELEGATE SOUKI: Mr. Chairman.

CHAIRMAN: Delegate Souki.

DELEGATE SOUKI: I wish to speak against the amendment. In reviewing the Convention in the months back, there was a report some time ago that was presented by the Commission on the Organization of Government, and this commission spent approximately a year reviewing all of the nuances of government--how it can reorganize, how it can improve, make it more efficient--and if I recall, none of the recommendations included a ceiling on personal income. The only recommendation to provide for a more efficient government, a government that would be responsive in its expenses, in its appropriation, was to organize a council on revenues and expenditures. And this, they believe, would provide for the necessary safeguard in that the legislature and the executive would not overexpand, and keep it within the limits of the revenues of the State. And this is, of course, digressing a little bit because tax and finance has provided a recommendation and it's acceptable to me in that it is broad, and I think the State does think it can further expand on it. But what I wish to impress upon is that there is no great urgency, there is no great need to provide a limit on spending and taxation.

CHAIRMAN: Thank you, Delegate Souki.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Mr. Chairman, I would like to speak for the amendment. I'd like to say--number one, in rebuttal to the last speaker--that there is no council on revenues and expenditures; there's a council on revenues, and that council only advises the governor and the legislature. The economists, all the major economists of this State have agreed that you have to tie this to something specific, that if the legislature is left free to do it in any manner they see fit, they may not see fit to agree upon any manner--and then where are we? We have mandated something that--like the last 1968 constitutional convention mandated a state auditor and I think it took them almost 6 or 8 years to get around to getting a state auditor even though it was mandated.

CHAIRMAN: Excuse me, Delegate Hale, we're having trouble with the sound. The Chair will call a very brief recess.

At 9:30 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:33 p.m.

CHAIRMAN: The Committee of the Whole will please come to order. The Chair wishes to apologize to Delegate Hale.

DELEGATE HALE: I hope that any opinions, as Delegate Blake said, are based upon rational thinking. I have listened, I have studied, I have read the papers, and I have read this memo from Mr. Hillendahl. I attended the meetings of the taxation committee whenever I could find time and every expert agrees that we should give direction to the legislature. To leave it up to the legislature to decide on a direction of their own--we might as well not put it in the Constitution. We are giving the voters another shell. Now maybe they can swallow some of the shells.

I would like to say that the one thing everybody understands is what affects his pocketbook, and taxes is an issue. I would like to warn all of you who seem to have the philosophy to keep things as they are in power, and not disrupt-- I would like to say that any delegate who votes against giving direction to the legislature--to tie our spending ceiling to something that people can understand and to tie it to something that can have some direct relationship to fighting the inflation that has caused tremendous dissatisfaction with government, because government expenditures have gotten so far out of line. And

I would like to urge you to please pass this amendment so that we can give the people something to vote on that they have asked for.

CHAIRMAN: Thank you, Delegate Hale. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I would rise to speak against the amendment. When we came to this Constitutional Convention, at the time of the election, we were told about how the Tennessee plan was one of the greatest, or one of the best, most modern spending limits in the nation within recent times. We were told that this spending limit was as good as it was because of its ability to adjust to changing conditions. So it seems to me that if we are to be in the forefront of things, I don't think we should pass what has been staged in Tennessee.

CHAIRMAN: Thank you, Delegate Waihee. Is there further discussion? Delegate Marumoto.

DELEGATE MARUMOTO: I would like to answer the comments of our unofficial majority floor leader in that he had praised the Tennessee plan, praised and praised the constitutional amendment in March of this year. I too share his feelings toward this great step forward; however, I remind the delegates that Tennessee has selected total personal income as the figure that their spending limit should be based upon, as has New Jersey, which passed theirs in 1976.

Presently there are 17 states across the nation which are looking toward a spending limit based on total personal income. Hawaii is generally in the forefront in these times of changes in state governments. I hope we won't get left behind this time. Earlier the same delegate stated that perhaps an econometric model could be designed at the UH or by some economist. And this is my greatest fear--that the legislature will take their time and go into further study and, in fact, drag their feet on this. I am certain, from what I have heard in this building, that there are strong interests opposed to a spending limit based on a solid economic indicator.

In conclusion, I would like to answer my colleague from Maui who was expounding on a council on revenues. I said there was no immediate need, and I feel that there is a great need to deal with this problem immediately. I don't have to remind you that Hawaii is one of the highest-taxed states in the country and tax revolts have started across the nation and all over the country. We don't want anything disruptive here, so I think we should adopt a rational basis for spending the taxpayers' money.

I thank you for the long evening and please vote for this amendment--and Mr. Chairman, I will request a roll-call vote.

CHAIRMAN: Thank you, Delegate Marumoto. If there is no further discussion, we will move on to the vote. There being no further discussion, a roll-call vote has been requested. Are there 10 seconds? Yes, there are 10 seconds. Mr. Clerk, please call the roll.

Roll call having been ordered, the motion failed to carry by a vote of 35 ayes, 44 noes and 23 excused; with Delegates Alcon, Barnes, Barr, Blake, Burgess, Laura Ching, Crozier, DiBianco, Dyer, Fernandes Salling, Goodenow, Hale, Hanaike, Harris, Hoe, Hornick, Dennis Ihara, Kaapu, Kimball, Kono, Lacy, Marion Lee, Liu, Marumoto, McCall, Miller, Odanaka, O'Toole, Peterson, Shon, Stegmaier, Sterling, Stone, Sutton and Chairman Ishikawa voting aye; Delegates Andrews, Barnard, Chang, Calvin Ching, Haunani Ching, de Costa, Fukunaga, Fushikoshi, Hagino, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hokama, Les Ihara, Teruo Ihara, Ikeda, Iwamoto, Izu, Kaito, Kojima, Ledward, Lewis, Nakamura, Nishimoto, Nozaki, Okamura, Paty, Sakima, Sasaki, Shinno, Silva, Souki, Taira, Takahashi, Takehara, Tam, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax and Yoshimura voting no; and Delegates Anae, Blean, Cabral, Campbell, Donald Ching, Chong, Chu, Chun, Chung, De Soto, Eastvold, Ellis, Fujimoto, Funakoshi, Hamilton, Rachel Lee, Ontai, Penebacker, Pulham, Takemoto, Takitani, Wurdeman and Yamashita being excused.

CHAIRMAN: The vote was 35 ayes, 44 noes and 23 excused and the amendment fails.

DELEGATE SUTTON: Mr. Chairman.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: I move that we rise and report.

DELEGATE HALE: I second the motion.

CHAIRMAN: It has been moved and seconded that we rise and report. All those in favor please raise your hand. Thank you. All those opposed, same sign. Thank you. The noes have it and the motion fails.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I call for a division of the house.

CHAIRMAN: A division of the house has been called for. All those in favor please stand. Thank you. All those opposed please stand. Thank you. The noes have it, 31 ayes and 41 noes. We shall remain in session. We now come to Amendment No. E2 on disposition of excess revenues. Delegate Andrews.

DELEGATE ANDREWS: Mr. Chairman, I move that we adopt Amendment No. E2 entitled "Disposition of Excess Revenues."

DELEGATE HALE: I second it.

CHAIRMAN: It has been moved and seconded that we adopt Amendment No. E2. Discussion? Delegate Andrews.

DELEGATE ANDREWS: This amendment is being made in conjunction with the spending limit that we have proposed, to take care of positive or anticipated excess revenues. The idea is that if the spending limit does curtail expenditures and revenues continue to grow as they have been--that there won't be an anticipated excess on the line. The question as to what to do with those revenues is basically--give it back to the taxpayers. It also assures that these revenues will be along those lines. This is rather conservative in that it calls for 5 percent of the general funds before the action will be taken and I think that will insure that there will be a lot of time to do that. I realize that this basic proposal was voted down in committee, but nevertheless I do support the amendment and urge everyone to do so.

CHAIRMAN: Thank you, Delegate Andrews. Delegate Sakima.

DELEGATE SAKIMA: I speak in favor of this amendment and I just wanted to make a correction by the previous speaker there. We didn't have 16 votes; it was 13 maybe on the proposal, but I voice my support for this amendment. It is simple, direct and it is in the public interest and that of taxpayers. And just by way of illustration, if this amendment passes, these are the years that had over 5 percent: 1967-68 and 1969-70, and 1974-75, we were 15.5 percent, and 1975-76 we were 6.1 percent. So then the taxpayers would have gotten a break, and I speak in favor of this amendment.

CHAIRMAN: Thank you, Delegate Sakima. Delegate Sutton.

DELEGATE SUTTON: Mr. Chairman, I speak in favor of the amendment. In California a tax revolt occurred with drastic consequences, partly because of high real property taxes and partly because even as taxpayers were caught in the squeeze of high taxes and uncontrollable inflation, the state of California was building up a surplus of some \$5 billion or \$6 billion--the exact amount is still in dispute. True, in the case of the State of Hawaii we may never reach that type of condition, but surpluses do occur under our current revenue system and they have occurred even when there were no restrictions on spending other than the restrictions implied by our actual general fund receipts.

Therefore, an amendment such as this now before us is clearly in order. It is a needed complement to the spending limitation provisions recommended by the committee.

But more than that, it complements the spending limitation in a way which is likely to gain the confidence of the taxpayers of this State. I urge a resounding vote of support for the amendment.

CHAIRMAN: Thank you, Delegate Sutton. Delegate Kaapu.

DELEGATE KAAPU: My feelings are the same as those of the local government committee. I think it is straightforward and it is good and it is the one I would like to end on.

CHAIRMAN: Thank you, Delegate Kaapu. Delegate Hale.

DELEGATE HALE: I would like to substitute Amendment No. E4 for this.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: I don't think you can substitute one for the other.

CHAIRMAN: The amendment is in order. Is there a second to the amendment?

DELEGATE DiBIANCO: I second it.

CHAIRMAN: It has been moved and seconded that we substitute Amendment No. E4 in place of Amendment No. E2. We shall first consider the case of income tax refunds and then refer to E2. It has been advised that the Chair should first ask for any amendments to E2 before we consider E4. Are there any amendments to the amendment?

DELEGATE VILLAVERDE: Mr. Chairman.

CHAIRMAN: Delegate Villaverde.

DELEGATE VILLAVERDE: If we change over, if the amendment is voted down, would it be able to be brought back?

CHAIRMAN: We would not reconsider the amendments in the former order. If we have no other questions, the question on the floor is Amendment No. E4. Delegate Hale.

DELEGATE HALE: I would like to tell you how I got it. Not being a member of the taxation committee and being involved with matters in which I had more expertise, I did not put many proposals in the area of taxation because it appeared from the very beginning that there were going to be enough proposals for us to discuss. However, after the report of the taxation committee came out, it had nothing to address the problem of a state surplus. Therefore, I went through all the proposals presented to the taxation committee and I found out there were two--one by Delegate Ikeda and another by Delegate Waihee. I wasn't sure that anyone was going to put it in so I suggested that I would withdraw E3, since it has about the same wording as E2. And I would like to say that today, when that report came from Mr. Hillendahl--

DELEGATE WAIHEE: Mr. Chairman, point of personal privilege.

CHAIRMAN: State your point, Delegate Waihee.

DELEGATE WAIHEE: I would just like to point out that the language that I put down was closer to E2, but nonetheless I would discredit any association with E4.

DELEGATE HALE: I would like to point out that today when we got the memo from Mr. Hillendahl, that we had not taken care of the problem of surplus and he did recommend that we do something about it. Give it back to the taxpayers or mandate surplus, and it appeared to me that giving it back to the taxpayers was the very best thing we could suggest to the legislature. I would like to see Proposal No. 755, which was introduced by Delegate Waihee--it appears to me that it is the better, and I would like to support Delegate

Waihee's proposal which was filed by the taxation committee and not given consideration. In any case, I urge you to vote for Delegate Waihee's proposal under my name.

CHAIRMAN: Thank you, Delegate Hale. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment. I have come to this Convention with an open mind, willing to change it based on new information. I would like to speak in support of E2 because I think, as I said earlier, that we should give the legislature the flexibility to decide, first of all, what and how much of the excess should be used for taxpayers. I would like to speak against E4 because it does not specify as a substitute amendment that any refund go directly back to the people, the term of tax refund or tax credit.

CHAIRMAN: Thank you, Delegate Waihee. Further discussion? Delegate Lewis.

DELEGATE LEWIS: I would speak in opposition to E4, and like Delegate Waihee I think that this is less clear than E2, which I will be prepared to support shortly.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I have to apologize to Delegate Waihee. His proposal was closer to E2, and Delegate Ikeda's proposal to E4.

CHAIRMAN: Is there any further discussion on Amendment No. E4? If not, the question on the floor is to amend Committee Proposal No. 14 by adding a section as stated in Amendment No. E4. All those in favor, please raise your hand. Thank you. All those opposed, same sign. Thank you. The noes have it and Amendment No. E4 fails.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I move for a call of the house.

DELEGATE HALE: I second it.

CHAIRMAN: That is a roll-call vote to determine who is present. Mr. Clerk, please call the roll.

Roll call having been ordered, the roll was taken, with 66 delegates being present and 36 excused; with Delegates Andrews, Barnard, Barr, Blake, Burgess, Chang, Calvin Ching, Haunani Ching, Crozier, de Costa, DiBianco, Fernandes Salling, Fukunaga, Fushikoshi, Hagino, Hale, Hayashida, Hino, Hirata, Hironaka, Hoe, Hokama, Hornick, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Iwamoto, Izu, Kaapu, Kimball, Kojima, Kono, Lacy, Ledward, Marion Lee, Lewis, McCall, Miller, Nakamura, Nishimoto, Nozaki, Odanaka, Okamura, Paty, Peterson, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Stegmaier, Sterling, Stone, Sutton, Taira, Takahashi, Tam, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax, Yoshimura and Chairman Ishikawa being present; and Delegates Alcon, Anae, Barnes, Blean, Cabral, Campbell, Donald Ching, Laura Ching, Chong, Chu, Chun, Chung, De Soto, Dyer, Eastvold, Ellis, Fujimoto, Funakoshi, Goodenow, Hamilton, Hanaike, Harris, Hashimoto, Kaito, Rachel Lee, Liu, Marumoto, Ontai, O'Toole, Penebacker, Pulham, Takehara, Takemoto, Takitani, Wurdeman and Yamashita being excused.

CHAIRMAN: The roll call shows 66 present and 36 excused.

DELEGATE KAAPU: Mr. Chairman.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: Point of parliamentary inquiry. Do I understand your findings to be that the Chair does not necessarily have to call for a roll call upon the request of

any delegate, but you would do so if you felt it was not dilatory in its intent, and in that case you did not. However, the interpretation of Rule 30 is the compulsion of those absent to attend, I believe, and I would like to know your opinion--if your ruling on this is only if there is not a quorum, then those present, I understand, have the power to compel the attendance of the others. However, if there is a quorum present at any time, there is no business, as I understand it, in the rules--there's no requirement in the rules that anything be done about anybody who's not here. Is that true?

CHAIRMAN: The Chair can recognize your concern in this matter. Hereafter we shall look at it a little more carefully and let us all look at this particular example as a situation to try to avoid in the future.

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: I rise to a point of personal privilege.

CHAIRMAN: I would like to remind the delegates that the Chair has allowed one or two points of personal privilege in very recent times that were not really personal privileges. So please remember what a personal privilege is.

DELEGATE DiBIANCO: It's probably a strange personal privilege, but I simply want to explain that the reason for my calling for the house and for the roll was because on the vote on E4, by my quick calculation, looking at the hands that were raised, there were only about--a total of ayes and nays, maybe 35 hands raised. And so it seemed to me that there weren't very many delegates present or those present weren't voting, and I doubted at that time whether or not in fact we had a quorum.

CHAIRMAN: If that had been the case, Delegate DiBianco, I would have ruled you out of order because it was after the vote. And your point there was to determine whether there was a quorum after the vote and that would have been too late.

DELEGATE DiBIANCO: Well, it's my understanding that we can determine at any time whether or not there's a quorum, and the point I'm trying to make is--I was not trying to delay, I'm trying to find out whether or not we actually had 52 warm bodies here who are actually available for a vote.

CHAIRMAN: Fine, the next time we come up to a vote, if anyone feels that there may be lacking a quorum, at that time the Chair would prefer having your concerns raised then--but not after the vote.

We are now on Amendment No. E2. Is there further discussion? My record shows that we have had Delegates Andrews, Sakima, Sutton and Kaapu speak in favor of this amendment. Delegate Nozaki.

DELEGATE NOZAKI: Mr. Chairman, I rise to speak in favor of the amendment. I speak in favor of this amendment which comes down on the side of the hard-pressed taxpayers of our State. The intent of the amendment is clear-cut and simple; it says, in effect, whenever government collects too much from the taxpayers, at least a portion of the excess collection would be returned to the taxpayers. In 1976 the house of representatives made an effort to implement this principle at a time when the State was running a surplus of over \$80 million. Unfortunately, politics intervened and the special tax rebate bill could not clear the senate. I don't think that excess tax collections should be left to chance, to the whim of legislative politics. We need a constitutional mechanism to implement the principle of giving taxpayers the fair shake they deserve.

The proposal incorporated in this amendment has been largely reported in the press. It is easily understood by the public. I hope that this 1978 Convention will not be a convention remembered as the one that turned down a simple and just proposal on behalf of taxpayers. Let's support this amendment which seeks to give relief to the taxpayers under the most reasonable of circumstances and conditions. I urge you all to vote for it.

CHAIRMAN: Thank you, Delegate Nozaki. Is there further discussion? Delegate Barr.

DELEGATE BARR: Yes, Mr. Chairman, I wish to speak against this amendment. I was also one of those who spoke against the amendment in committee. As a matter of personal preference, I would like to see debt retired rather than tax refunds, but it depends, of course, on the circumstances of the particular time--what is the most prudent course in dealing with a surplus of revenue; and I would suggest that this, more than most matters that we have considered, is quite properly something that we should leave in the hands of the legislature.

I am aware of the California situation; I have never been especially impressed with the California legislature--and I'm sorry for that personal reference--but I do have a great respect for ours and think they would deal with the matter in a better way.

CHAIRMAN: Thank you, Delegate Barr.

DELEGATE IKEDA: Mr. Chairman.

CHAIRMAN: Delegate Ikeda.

DELEGATE IKEDA: I rise to speak in favor of the proposed Amendment No. E2. I have to confess to originally submitting the wording for E4 as a proposal. However, I have to concede that the wording of E2 is superior in several respects, which is the reason I support it.

For one thing, E2 provides that the benefits can be returned to the taxpayer either as a tax refund or tax credit, instead of as a tax refund as in E4, and it also gives leeway to the legislature to provide the amount of benefits without specifying the amount; it also provides a trigger point, in that the general fund balance has to be, for at least 2 successive fiscal years, 5 percent of the general fund revenues. So this is not a situation where the refund will come automatically. There is a very specific requirement that has to be met before the legislature could even act in this area.

I think that overall, in general it's essential to have a provision like this to restore the people's confidence in the financial responsibility of the government. One thing that has been done already is the matter of establishing a spending limit; and the other thing that has to be done is the matter of seeing to it that if any surplus funds arise because of the excess of revenues over expenditures, in some form or another, that it should be returned to the taxpayer.

CHAIRMAN: Thank you, Delegate Ikeda.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I would also like to speak in favor of the amendment. It compels the legislature to take some action in the event that our spending limitations succeed the way we hope they will, and we do indeed end up with a surplus. It does require the legislature to provide for a tax refund or a tax credit, but it's not so inflexible and rigid as to specify the amount of that tax refund or tax credit. It leaves a wide range of flexibility to the State to make whatever disposition of that surplus is most appropriate in view of the circumstances as they may exist at that time. It, I think, properly does what a constitutional provision should do--that is, to direct but not to be so rigid that it takes away flexibility. So I would support it.

CHAIRMAN: Thank you, Delegate Burgess. Delegate McCall.

DELEGATE McCALL: Just a very short comment. The time is getting awfully late, but I just felt that I needed to comment--that I think the main purpose of this amendment is to get the spending power back into the hands of the people, and retiring the debt would not do that.

CHAIRMAN: Thank you, Delegate McCall. Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I wish to speak against the motion and, with all due respect to my colleague from Maui, the maker of this motion, I feel that I must

speak against the motion because in my experiences with the state legislature--and knowing the economic condition of the State and knowing the needs of the community, they are not quite commensurate. What I'm trying to say is that if there is a purpose--there are a lot of needs in the community that are not being fulfilled. There are the needs of the disadvantaged, for increased training programs, Headstart programs, health services; there are needs in the school system where you need to lower the pupil-teacher ratio, expansion of classrooms, special types of services, special ed services. I don't think that the State is in such a utopian condition, where it has met all the needs of the community, and I think until we reach that utopian state, I think the taxpayers and the public will be wise to wait until we reach that particular position.

CHAIRMAN: Thank you, Delegate Souki. Delegate Sterling.

DELEGATE STERLING: I would like to speak in favor of the amendment. I feel that it is very compatible with the legislation we've had and the discussions we've had on the ceiling. And I think one of the most critical problems we have is that we must recognize the heavy tax burden of the State, which ranks very, very high amongst other states.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Lee.

DELEGATE MARION LEE: I rise to speak against this amendment. The reasons for that are (1) that in addition to a tax refund or tax credit, I would prefer to see a third alternative--of reducing debt obligation. And (2) I would prefer the wording in E5, rather than E2.

CHAIRMAN: Thank you, Delegate Lee. Delegate Peterson.

DELEGATE PETERSON: I reluctantly rise to speak in favor of this amendment. With all due respect to those who have considered Amendment No. E5, which I think has some beneficial aspects which are not included in this amendment, I think this one has a greater likelihood of being considered on its merits. With the acceptance of a spending limit, it is possible that revenues may exceed expenditures, allowing a surplus of funds to build up. This amendment E2 does not address the extent to which surpluses may accumulate; it merely says that if they are more than 5 percent of general fund revenues for 2 years, that something has to happen. It doesn't limit the surplus to 5 percent. However, I believe that the legislature has never allowed a large surplus to remain before, so it is unlikely that they will do so in the future. And so I think that the necessity for limiting the surpluses is probably not that great. I think the issue of other purposes for which the surplus may be used is a good issue.

There are several other things which are indicated in the other amendment which are not mentioned in E2, such as for a tax-rate reduction or to reduce debt obligations. However, the legislature has that option presently. They may, if they are responsible, reduce the outstanding debt or reduce taxes for a coming year. So if we credit the legislature with being responsible, there is the chance that they will dispose of the surplus in that manner without being mandated to do so in the Constitution. I feel that this is a reasonable approach to something that is a necessary addition to the Constitution with the spending limit which we are including; and therefore, even though there are some potentials for abuse, I would speak and urge the delegates to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Peterson.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Yes, I would like to speak in favor of this also. As I pointed out earlier, I had two that I had picked out that I thought either one would be all right; and since E4 has been voted down, and since I realize I did make a mistake, and this really is Delegate Waihee's exact wording-- I have been looking for something since the beginning of this Convention that I could follow the signals of the majority leader and jump up and be for, so I certainly hope he'll give the right signal and be for it and I could go with him. Thank you.

CHAIRMAN: Delegate Andrews.

DELEGATE ANDREWS: Mr. Chairman, I rise to speak in favor of the motion in deference to my worthy but misguided colleague from Maui. There is some concern that we're limiting what can be done with excess revenues. That's not so. We're only specifying what should happen if they reach a certain point. Up to that time, if the legislature finds worthy cause and good use for the funds, they can do so by superseding the expenditure limit by a two-thirds vote; and I think if the programs or things of expenditures that a lot of people think are worthy of these funds come about, they could be taken care of in due course with the procedures we have set forth.

CHAIRMAN: Thank you, Delegate Andrews. Is there any further discussion? If not, are you ready for the question?

DELEGATE NOZAKI: Mr. Chairman.

CHAIRMAN: Delegate Nozaki.

DELEGATE NOZAKI: I ask for a roll-call vote.

CHAIRMAN: Are there 10 seconds to the request for a roll-call vote? There are not 10 seconds. The question on the floor is that we amend Committee Proposal No. 14 by adding a section on disposition of excess revenues as stated in Amendment No. E2. All those in favor of the amendment, please raise your hand. Thank you. All those opposed? Thank you. The ayes have it and the amendment carries.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I speak on a matter of personal privilege. It gives me great pleasure to have voted with the delegate. I think it's time to go home.

DELEGATE PETERSON: Mr. Chairman, may I withdraw my amendment E5.

DELEGATE LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I assume that we've taken care of the housekeeping of E1 thru E5. Is that correct, Mr. Chairman?

CHAIRMAN: Yes, that's correct.

DELEGATE LEWIS: Mr. Chairman, I move that we rise and report to the Convention that we have not completed our consideration of Committee Proposal No. 14, and that we would need more time to be ordered by the Convention to complete our work.

DELEGATE SILVA: Second the motion.

CHAIRMAN: It has been moved and seconded that we rise and report to the Convention that we have not completed our consideration of Committee Proposal No. 14, and that we need more time to complete our work. All those in favor say aye. All those opposed say no. The ayes have it and we will rise and report.

At 10:40 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Thursday, September 7, 1978 • Afternoon Session

The Committee of the Whole was called to order at 2:51 p.m.

Delegate Ishikawa presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. Before we start this afternoon, the Chair wishes to briefly review with you the work we have remaining before us. We initially had 25 amendments to consider; 4 amendments have been withdrawn thus far. Yesterday we disposed of 11, of which 4 amendments were adopted, leaving us with 10 amendments to cover this afternoon, although the Chair has received some preliminary word that 1 or 2 may be withdrawn. While some of the delegates may feel that many of the more important amendments were addressed yesterday, the Chair does wish to inform all delegates that there are further amendments of importance that may have a significant impact on the committee proposal package. Therefore, the Chair asks that all delegates give serious consideration to the remaining amendments even though we went through a long session yesterday and a very hard session this morning.

So at this time we shall proceed with the last amendment in subject area E, the spending ceiling. We have Amendment No. E6, offered by Delegate Peterson. Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, I move that we adopt Amendment No. E6 to Committee Proposal No. 14.

DELEGATE BURGESS: Second.

CHAIRMAN: It has been moved and seconded that we adopt Amendment No. E6 to Committee Proposal No. 14. Is there any discussion? Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, the objective of this amendment is to prevent the State from escaping the debt limit merely by passing laws and requiring the counties to pay for them. Several other proposals have required that the State share in the continuing funding or provide the first year of funding for transferred programs. The problem with this language is that it doesn't say how much of a share the State must pay. It could pay only 5 or 10 percent. First year's funding is not much more reassuring. If the legislature by law requires the counties to perform any service, the State should continue to pay the full cost of that service which they have mandated. We cannot have confidence in any spending limits as long as this transfer of mandated programs is not restricted.

In Hawaii, 80 percent of all spending is by the State, which could easily increase the amounts the counties are expected to pay for state-mandated programs. Therefore, I urge you to close this loophole to the spending limit by voting in favor of this amendment.

CHAIRMAN: Thank you, Delegate Peterson. Is there further discussion? Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak against this amendment. Your Committee--on the second-to-the-last page of the proposal--dealt with the problem of plugging this loophole that Delegate Peterson has referred to. This appears starting at line 21, page 20 of the committee proposal and goes over to page 21. And in this area, the language indicates that if any new program or increase in the level of service under an existing program is mandated to any political subdivision, then the legislature shall provide that the State share in the cost.

I would further direct members of the delegation to look at the explanatory information contained on page 13 of Standing Committee Report No. 66, the item numbered 4. The pertinent information starts approximately 7 lines from the bottom, in the middle of the line where it states: "It is the intent of your Committee that the State provide funding for the full cost of the new program or an increase in scope, represented by increased costs, in an existing program in the first year of the program and for a reasonable share of such cost in future years for as long a period as the new program or increase in scope shall be prescribed by law." Your Committee feels that this adequately

covers the question raised by Delegate Peterson and therefore would recommend that this amendment be defeated.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE SOUKI: Mr. Chairman, may I ask a question?

CHAIRMAN: State your question.

DELEGATE SOUKI: This is to the maker of the amendment. Is the "proportion of state expenditures paid to all units of local government" in fact the revenues that the State has appropriated for the respective local governments, and that should be grandfathered as of '77-'78? That's the question, sir.

CHAIRMAN: Thank you, Delegate Souki. Is there anyone who wishes to respond to that question?

DELEGATE PETERSON: I would be happy to respond to the question, if Delegate Souki will repeat it, please.

CHAIRMAN: Delegate Souki, would you repeat the question.

DELEGATE SOUKI: The question is, in the first sentence--"For any fiscal year, that proportion of state expenditures paid to all units of local government shall not be reduced below that proportion in effect in fiscal 1977-78"--if in effect what he is saying is that proportion that is appropriated for the local governments. It's just a question of semantics, but I just wanted to be sure.

CHAIRMAN: Thank you, Delegate Souki. Are you ready now, Delegate Peterson?

DELEGATE PETERSON: I think the wording which states the amount of expenditures paid is more of an accurate reflection of what the State actually is spending and what the counties are depending on. I guess if the difference is between the words "expenditure" and "appropriations," I think "expenditure" is probably a more accurate reflection of what the counties are now expecting from the State.

CHAIRMAN: Thank you, Delegate Peterson. Is there any further discussion? Delegate Lee.

DELEGATE MARION LEE: Mr. Chairman, I rise to speak in favor of this amendment. I think that the wording Delegate Peterson has offered is actually, in essence, similar to the committee proposal--the intent is similar. However, it is a much more expanded wording and that is--it does clarify the fact that if, as Delegate Souki has asked, if expenditures that are paid to all local governments in proportion to the total expenditures is a certain amount a previous year, then the following year it should be in that same proportion. In that way it guarantees that the counties shall not receive lower--or less expenditures from the previous year in proportion. It's more of a ratio type of an effect. It also clarifies the fact that if the legislature should decide to take back that new program or that new service, that the funds will also be taken back at the same time; it's a reciprocal effect. It is a much more clarified version of the committee proposal. Therefore, I urge you to vote for the amendment.

CHAIRMAN: Thank you, Delegate Lee. Delegate Blake.

DELEGATE BLAKE: I'd like to ask the chairman of the finance committee--what page was he referring to, first of all, Mr. Chairman?

CHAIRMAN: Delegate Blake, the Chair believes it's page 16 of the standing committee report.

DELEGATE LEWIS: Correction, page 13.

DELEGATE BLAKE: What paragraph?

DELEGATE LEWIS: Approximately 7 lines from the bottom.

CHAIRMAN: Starting with, "It is the intent...."

DELEGATE BLAKE: As I understood what was stated, if the county has to take over a program--

CHAIRMAN: Delegate Blake, are you still asking a question, or are you speaking to the amendment now?

DELEGATE BLAKE: Asking a question.

CHAIRMAN: Go ahead.

DELEGATE BLAKE: If the State is running the program, Mr. Chairman, and they have asked the county to take the program over, is it my understanding from the chairman of the finance committee that for the first year the State will carry the entire burden by transferring the funds over to the county--the first year, and the years after that would be on a law of diminishing returns?

CHAIRMAN: Law of diminishing returns, did you say, Delegate Blake? Would the chairman of the taxation and finance committee wish to respond to that?

DELEGATE LEWIS: The words "share" and "cost"--that is to say, are delineated down there, and "a reasonable share of such cost" is obviously subject to interpretation; but what is intended here is if you have "paying the full cost," the State could be saddled with a situation whereby if the county wanted to have make-work projects, they could put all the employees into this one program and say that now you're obligated to pay the cost even though they only needed 200 employees to carry out the program. You could have a make-work program where you suddenly add a thousand employees to that same program, then you come back to the State and say that this is part of the same program, and they are mandated to share in the cost. This is why the word "reasonable" was used, which is obviously subject to interpretation.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, I'm now speaking in favor of the amendment proposed by Delegate Peterson. I believe if a program is turned over to a county and the county understands what the scope of the program is, and if the program costs \$50,000 a year, the county should stay within the limits of \$50,000 a year. If the county exceeds the \$50,000, then this becomes the responsibility of the county. However, if the program did cost the State \$50,000, the State should continue paying that \$50,000 as long as the State intends to have the county run that program.

CHAIRMAN: Thank you, Delegate Blake. Is there further discussion? Delegate Lewis.

DELEGATE LEWIS: I rise to speak a second time against the proposal for the purpose of clarifying statements made by previous speakers. It was indicated that this was doing the same thing as the committee report, only clarifying it and perhaps strengthening it. Well, it does more than strengthen it; it substitutes the words "pay the costs" for "share," which could imply that you would have to pay the full cost under the circumstances which were just described in my response to Delegate Blake's question. And secondly, the first sentence of amendment E6 is not contained in any manner in the committee proposal; that is the revenue-sharing program which was discussed at great length in the committee, and the committee voted not to include a revenue-sharing program in its proposal. So the first sentence considerably expands on the committee's proposal and in no way is a part of the proposal which the Committee on Taxation and Finance submitted to this Committee of the Whole.

CHAIRMAN: Thank you, Delegate Lewis. Is there further discussion?

DELEGATE HALE: May I ask a question?

CHAIRMAN: State your question.

DELEGATE HALE: I'd like to ask the chairman of the finance committee why no provision was made. What were the reasons for voting--or not taking any action on giving

the counties some mandated share of general revenue costs? I was under the impression that this was going to be taken up by taxation when I was in local government and was disappointed not to find it. I am just wondering what the rationale of the committee was.

CHAIRMAN: Thank you, Delegate Hale. Does the chairman of the Committee on Taxation and Finance wish to respond to that?

DELEGATE LEWIS: The question of revenue sharing was primarily taken up at length in the local government committee, and there were nine members of the Committee on Taxation and Finance who also sat on the local government committee. So most of the discussion did, in fact, take place in local government. However, Delegate Blake submitted a proposal to the Committee on Taxation and Finance which involved revenue sharing and there was discussion in the Committee on Taxation and Finance; and it was felt that by including the mandated programs language, which was provided at the end of the committee proposal, this would deal with one of the problems that the counties were concerned about. That was the extent of the action taken by your Committee on Taxation and Finance.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE HALE: Mr. Chairman, I'd like to move that we divide the question, that we vote on the first sentence which, as I understand it, is sort of a mandate that we at least keep the kind of revenue sharing that we have now--not be reduced--and then that we vote on the other part, "No new program..." separately.

CHAIRMAN: Thank you, Delegate Hale. Are there any objections to dividing the question? If there are not, the Chair will allow the question to be divided; we shall first consider the first sentence, which has to do with grants-in-aid or revenue sharing between the State and the counties, and then proceed to the question of mandated programs.

DELEGATE HALE: I'd like to speak to this particular sentence. I'm a member of the--

CHAIRMAN: Just a second, Delegate Hale. The Chair wants to make sure that this is clear to the delegation. Proceed with speaking to the question of state revenue sharing.

DELEGATE HALE: I sit on the local government committee and this was discussed, but it was my impression that this was going to be taken up by the taxation and finance committee, and that's why we never made any decision, pro or con on it. I feel that it was a very important part of the idea of making sure that our county governments are viable government units that can give the services required by our people. Inasmuch as we have really not given them any power to change the assessments, and we have not given them any power at all to add other taxes to balance their budgets, it seems to me that we should put something in this Constitution that will enable the local governments to better plan and better budget. And the least we could do--and the only proposal I see that would even attempt to do this--would be in this first sentence, which would at least say that that proportion of state expenditures paid to all units of local governments shall not be reduced. At least they would have some floor under which they can, in the future, plan their local programs. I would urge your consideration and support for this part of the amendment.

CHAIRMAN: Thank you, Delegate Hale. The Chair would also like to ask if you are aware that Amendment No. 11 might address some of this? The Chair doesn't want to stop discussion on this, but we may have some similar discussion later on.

DELEGATE HALE: Then may I rather move that we defer this part until we take up Amendment No. 11 since I haven't gone that far. I think the other delegates would want to consider the two together.

CHAIRMAN: Fine. Is there any objection to deferring the consideration of county grants-in-aid till we get to Amendment No. 11? If there are none, we shall continue our discussion on the question of transfer of mandated programs. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, point of information. If we're going to move

deliberation on one sentence, I suggest we move both; the two are tied together. If there are no objections to deferring both of these items and then taking them up with Delegate Blake's amendment which appears several items down, they can all be taken together as county matters.

CHAIRMAN: The Chair would like to ask Delegate Peterson whether he would be willing to defer consideration of Amendment No. E6 until we get to amendment I1.

DELEGATE PETERSON: Would it be appropriate to consider I1 at this time, rather than postponing the discussion and covering this same ground again?

CHAIRMAN: The Chair would be very amenable to it, if there are no objections. In that case, we shall defer final consideration of both parts of Amendment No. E6 and proceed to Amendment No. I1 offered by Delegate Blake.

DELEGATE BLAKE: I ask for a short administrative recess.

CHAIRMAN: If there are no objections, there will be a short administrative recess.

At 3:13 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:18 p.m.

CHAIRMAN: Committee of the Whole will please come to order. The Chair apologizes for perhaps causing some confusion here. After conferring--and the delegates may correct me if the Chair states it wrong--the request to defer consideration of Amendment No. E6 and consider amendment I1 first has been withdrawn. So we shall consider amendment I1 in its regular order. For consideration of amendment E6, the movant has the floor.

DELEGATE PETERSON: Mr. Chairman, may I withdraw the first sentence of amendment E6 so that we may consider this subject altogether later.

CHAIRMAN: If there are no objections, the Chair will allow--

DELEGATE McCALL: I object.

CHAIRMAN: Delegate McCall.

DELEGATE McCALL: I wasn't in on the recess, but I object.

CHAIRMAN: In that case, Delegate Peterson, will you move to have that portion deleted from the amendment so that we may have a vote on this objection.

DELEGATE PETERSON: Mr. Chairman, I move that we delete the first sentence in amendment E6.

DELEGATE CAMPBELL: Second.

CHAIRMAN: It has been moved and seconded that we amend Amendment No. E6 by deleting the first sentence. Is there any discussion? If there is no discussion, the question on the floor has been stated. All those in favor of deleting the first sentence of amendment E6, please raise your hand. All those opposed? The motion is carried, and amendment E6 has now been amended by deleting the first sentence.

We shall now continue our consideration of amendment E6 as amended. The Chair has a record that Delegates Peterson, Lee and Blake have spoken in favor of amendment E6 and that Delegate Lewis has spoken twice against the amendment.

DELEGATE PETERSON: Mr. Chairman, may I speak last toward this amendment?

CHAIRMAN: Is there any further discussion? Delegate Sakima.

DELEGATE SAKIMA: Mr. Chairman, I speak against the amendment because of the present language, if you look on pages 20 and 21 of the committee proposal; and I

disagree with one of the speakers who stated that this enlarges upon the proposal. Our proposal is that the State share. As the chairman said, it can share--it doesn't have to be the full amount--that the State shall share. I feel that our language is better.

CHAIRMAN: Thank you, Delegate Sakima. Is there further discussion? Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I rise to speak against this amendment. My reading this very carefully--I have come to the conclusion that if there is a transfer of programs from the State to any of the counties, then funding has to accompany the transfer from the state government to one of the counties.

If you take the reverse action, which is that a function that is being done by the county--if that function is transferred from that level of government to a higher level, which is the State, similarly funding for such a program has to be transferred from the county to the State--something which all of us understand for a long time now, which would create a problem for the counties because they are in need of financial assistance. That's why we have the state grant-in-aid programs for the counties. This is the conclusion I get by reading this very carefully. If I'm wrong, I'd like to be corrected. But I think this language is very confusing, and the original language of Committee Proposal No. 14, to me, is better.

CHAIRMAN: Thank you, Delegate Taira. Further discussion? Delegate McCall.

DELEGATE McCALL: Mr. Chairman, I agree completely with Delegate Taira's analysis of this amendment, and for the same reasons I support it.

CHAIRMAN: You support the amendment?

DELEGATE McCALL: Correct.

CHAIRMAN: Delegate Taira, I believe, was against the amendment. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I see some problems with the wording as it is now. For example, if you read it literally, it would mean that if the legislature should mandate a new program--for example, on workers' compensation, a new benefit or a new program, or no fault insurance which would be paid perhaps by the automobile driver or by a private employer--under this literal wording, the legislature would have to pay the cost.

Also, if it mandates a program to a county, where the federal government were going to pay a share of the cost, nevertheless under this wording the legislature would still have to appropriate the entire cost of the program. Although I agree with the intent, I think that it is too inflexible and good constitutional planning tells us that we should leave some flexibility to the legislature to meet circumstances as they may exist in the future.

CHAIRMAN: Thank you; Delegate Burgess. If there is any further discussion-- Delegate Peterson.

DELEGATE PETERSON: Thank you very much. The argument has been made several times that we should not include the language which is shown in amendment E6 because of the possibility that the cost could rise at an alarming rate; new programs could expand. I think this is probably the best argument for accepting this amendment. When the State mandates that the counties perform some kind of service, the State should be paying for the service that it requires. The county has no opportunity to say no, we don't want to do this; and so the county will have to provide for all those costs which cannot be estimated by the State, which required the counties to perform these services.

As I mentioned before, in Hawaii 80 percent of all spending is by the State, which could easily increase the amounts which counties are expected to pay for state-mandated programs. The language of the committee proposal, which says that the State shall "share in the cost," is so loose as to allow the State to make any kind of token contribution and still expect the counties to pay for this. If we expect responsibility in government, we

should require that those who pass laws also have to pay for those laws, which is what this amendment requires. Therefore, I urge you to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, am I out of order? Is that the last speaker?

CHAIRMAN: Being that Delegate Peterson did request to speak last, we are ready to consider the question. The question on the floor is to amend Committee Proposal No. 14 by inserting new language in reference to transfer of mandated programs, as shown in Amendment No. E6 without the first sentence. All those in favor of the amendment, please raise your hands. All those opposed? The noes have it, and the amendment fails. We're now ready to consider Amendment No. F1 offered by Delegate Peterson. Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, I move that we adopt amendment F1.

DELEGATE HALE: Second.

CHAIRMAN: It has been moved and seconded that we adopt amendment F1. Is there any discussion? Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, the first sentence in this amendment is only a change in style, which changes the present words "pursuant to appropriations made by law" to the words "for legally authorized appropriations." The second change is the more substantive one, which deletes the words "[g]eneral fund" and includes the term, "Expenditures for any fiscal year shall not exceed the revenues and reserves of the State," etc.

Deletion of the words "general fund" means that deficit spending shall not be tolerated in the general or any other fund. In cases where the health, safety or welfare is threatened, funds may be provided from revenues and reserves, by other sections in the committee proposal; on page 14, second paragraph--as we discussed earlier in our deliberations--the committee proposal allows bonds to be issued without being counted in the debt ceiling for emergencies caused by disaster or an act of God. To a greater or lesser extent, the public health, safety or welfare is always threatened, and so this leaves considerable discretion in the determination of when these are threatened and when the limitations can be circumvented.

This amendment clearly provides that the State must live within its income, and I urge you to vote for it. Since I drafted this amendment, I came upon some very interesting statistics, which show the general fund for the past 15 years. There are two different columns: one is the general fund appropriations, which is the amount the general fund has been allowed to spend; the other column is actual fund expenditures. I was somewhat disheartened to note that in the past 15 years, there has only been 1 year in which the expenditures in the general fund have been less than the amount appropriated. In other words, ever since 1962 the amount which has actually been spent has exceeded the amount which has been approved--in some years, by a considerable amount. In the years 1973-74, the actual amount appropriated was \$556 million, while the amount expended was \$676 million--a difference of \$120 million. These differences are parallel almost with the full period of time under consideration for those past 15 years. We have had a history of not being bound by appropriations in the general fund or in any other fund. I think this amendment which we are considering today, which does not allow deficit spending in the general fund or in any other fund, is a necessity. Therefore, I urge you to speak in favor of this proposal.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak against the amendment. Delegate Peterson indicated that--I did not have a chance, by the way, to study the figures shown by Delegate Peterson. I assume his figures are correct. There may be an explanation in the budget passed by the legislature, based on an estimate which turned out to be lower than the revenues that actually occurred.

But principally I rise to speak against the amendment because there's a much more

fundamental defect that's contained in the amendment. And that relates to the excluded language in the middle of the amendment, which prohibits the governor from publicly declaring the public health, safety or welfare to be threatened and therefore to exceed a balanced budget. The previous speaker indicated that there's adequate relief over on page 14 of the committee proposal; the State could always sell bonds in times of emergency. Well, if you're in a situation where the public health, safety or welfare is threatened, there may not be time to sell bonds. I think it is absolutely essential that the State--the executive and the legislative branches--be allowed the flexibility to provide for emergencies. I would strongly speak against this amendment.

CHAIRMAN: Thank you, Delegate Lewis. Is there any further discussion? Delegate Pulham.

DELEGATE PULHAM: Mr. Chairman, I have a question. Does the committee proposal require a balanced budget?

CHAIRMAN: Thank you. Is there anyone who wishes to respond to that question? Delegate Lewis.

DELEGATE LEWIS: The very language is before you. If you'll turn to page 19--to look at a clean copy inasmuch as amendment F1 is bracketed and underlined--lines 17 through 21: "General fund expenditures for any fiscal year shall not exceed the State's current general fund revenues and unencumbered cash balances..." and then it does have that escape clause that allows the governor to exceed this when "the public health, safety or welfare is threatened." But that is where your balanced budget appears.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I rise to speak against this amendment. I applaud the intent of the amendment. I think all of us are concerned about a balanced budget. But in this case I agree with the chairman of the finance committee that I don't feel that you can so tie the hands of the governor of this State where we are subject to disasters and emergencies, to the effect that he could not use moneys after he declares a public emergency. I feel that the language in the proposal is clear enough; it's not just any emergency but, as I understand it, the governor has to make a public declaration that the public health, safety or welfare is threatened. I have myself had experience during disaster programs on our Island, and I think it's very necessary that we leave this flexibility in the hands of the executive.

CHAIRMAN: Thank you, Delegate Hale. Is there further discussion? If not, Delegate Peterson, would you like to speak on the motion?

DELEGATE PETERSON: May I have the privilege of speaking last?

CHAIRMAN: The privilege is at hand.

DELEGATE PETERSON: I wish to speak just for a minute. If you will notice, the wording there of what moneys are available is quite an expansion over the wording in the original committee proposal. If you will note, in the deleted words it says the "State's current general fund revenues and unencumbered cash balances" are the ones that the governor may use in the case of an emergency; in the wording of the amendment, it says all expenditures shall not exceed the revenues and reserves of the State. It might be interesting for you to note that the general fund revenues are only about 50 percent of all the revenues and expenses of the State. General fund revenues are about \$600 million, special funds receive about that amount, we receive about \$400 million from the federal government; so there are a number of sources of funds which are not included in the general fund.

In fact, unfortunately the general fund is a minor portion of the revenues of the State. So while it may limit the ability of the State in an emergency to use the general funds, it increases the opportunity of the State to use revenues and reserves of the State, which are quite substantial and provide considerably more flexibility, including the proceeds of any debt obligations and federal funding. So I think the objections which have been raised would be in order; they show a concern that, in a time of disaster or any threat to the health, safety or welfare, there does need to be money available. But this money is available through the reserves of the State, through other revenues of the State.

If it's a terrible disaster, there are always federal moneys that are available and there are a number of other sources which would be available. So I think this proposal has more flexibility than the committee proposal and provides safeguards which are not included in the committee proposal. Therefore, I urge you to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Peterson. The question on the floor is to amend Committee Proposal No. 14 as stated in Amendment No. F1. All those in favor of the amendment, please raise your hand. All those opposed? The noes have it, and the amendment fails. We're now ready to proceed to Amendment No. G1 offered by Delegate O'Toole. Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, at this time I'd like to withdraw amendment G1.

CHAIRMAN: If there is no objection, the Chair shall so note. Amendment G1 is withdrawn. Next is amendment H1 offered by Delegate Izu. Delegate Izu.

DELEGATE IZU: Mr. Chairman, I withdraw my amendment.

CHAIRMAN: If there is no objection, the Chair shall so note that amendment H1 has been withdrawn. We're now up to amendment I1, relating to the apportionment of state revenues to political subdivisions, offered by Delegate Blake. Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, I move for the adoption of amendment I1.

DELEGATE HALE: Second.

CHAIRMAN: It has been moved and seconded that we adopt amendment I1 to Committee Proposal No. 14. Is there any discussion? Delegate Blake.

DELEGATE BLAKE: Mr. Chairman and delegates, I appreciate the privilege of making this presentation today, over a presentation made in the wee hours of the morning. I think minds are clearer, and I might be able to present this in a better style-- and I'm trusting and hoping that it will be accepted in a better light.

I have here an amendment which relates to state revenues for political subdivisions. "Five percent of all state general fund tax revenues shall be reserved for apportionment to the several political subdivisions and shall be distributed quarterly to the subdivisions. One-half of the amount reserved for apportionment to the political subdivisions shall be apportioned equally among the subdivisions and one-half of the amount shall be distributed on a per capita basis and in accordance with each political subdivision's resident population as defined by law."

I have had this thing worked out, and I would like to present it. This is based on-- the purpose of this is (1) to assure the counties of an ongoing program of state financial assistance; (2) to increase the level over which counties currently receive state financial grants-in-aid. The proposal provides for a level of assistance at 5 percent of the general fund tax revenues of the State. One half of this amount is to be divided equally among the four counties, with the remaining half to be proportionately allocated to each county based on resident population. The following table displays the distribution of the counties, based on 1977 data for state general fund tax revenues and population. According to this the entire package runs to the sum of \$32,400,751. By dividing this amount--the 1977 state general fund tax revenues--equally on a 50-percent basis, this would afford each county an equal figure of \$4,050,094. This would go to the counties--the City and County of Honolulu, the County of Hawaii, the County of Maui and the County of Kauai. For distribution based on population, the City and County of Honolulu would receive \$13,106,103; the County of Hawaii, \$1,425,633; the County of Maui, \$1,069,225; the County of Kauai, \$599,414. For totals, the City and County of Honolulu, \$17,156,197; County of Hawaii, \$5,475,727; County of Maui, \$5,119,319; County of Kauai, \$4,649,508 for a total of \$32,400,751.

This we are speaking about is the operational budget for the counties. The counties at the present receive revenue sharing from the State, and it is never a definite figure-- what the counties are going to receive. You have to be on the other side of the fence, to wait and wonder what's coming in order to prepare your budget. Now I'm not talking about CIP projects. This is something else. I'd like to call the attention of the delegates

to this fact also: at the present, I know all four counties are using a tremendous amount of federal funds to promote or carry on ongoing programs. It's always been my belief that in budgeting, we should not include the federal figures for some budgets because you never know when those figures are going to be cut off.

I look at federal funding as pure cream that the counties of the State can receive. I know in the State's budget, the State receives a considerable amount through federal grants. Again as I stated, in order to work out your budget, we must have firm figures, knowing what we're going to do, where we can go and how we're going to do it. At present, the counties are left dangling, up until the last day--June 30th sometimes--to get the budget out on the first of July--they work on a fiscal year.

I ask each and every one of you to really weigh this thing. We're not asking for anything over and above what we rightfully deserve. Without the counties, there'd be no State of Hawaii. We need all four counties. We ask that the State look upon the counties and see that they receive their proportionate share to provide for ongoing operational budgets. I ask all your support on this amendment. Thank you very much.

CHAIRMAN: Thank you, Delegate Blake. Further discussion? Delegate Lewis.

DELEGATE LEWIS: I wasn't planning to make any comments, but inasmuch as no other speakers have, I will rise to speak against the amendment. My previous comments with respect to the earlier one would indicate that your Committee on Taxation and Finance did consider this matter to a certain extent, but nowhere near the extent that they deliberated on it in our Committee on Local Government. In both cases, Delegate Blake presented his position. There were some members in the committee who were in support of it, but a majority in both committees did not support it, and in lieu thereof your Committee on Taxation and Finance proposed the mandated programs language, and your Committee on Local Government transferred the real property tax function to the counties--which was amended on Second Reading. So I would urge my fellow delegates to vote against the amendment.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I would like to speak for the amendment. I'd like to say that this is really passing the buck. I was not a member of the taxation committee--Delegate Blake was. Maybe he would have some comments on that. But I know we never considered this proposal seriously because of the fact that we were told that there was something being worked out, and it was going to be worked out in the taxation committee. It's probably just as well that it didn't come out of local government, because everything that came out of local government was voted down and changed. So this is the opportunity for the Committee of the Whole to consider the plight of the counties--which has not really been considered adequately. I feel this is a very reasonable package. It's a very well-thought-out proposal. I certainly commend the delegate from Kauai, and I would hope that the committee would see fit to give some direction to the legislature in this matter and pass this amendment.

CHAIRMAN: Thank you, Delegate Hale. Delegate Hirata.

DELEGATE HIRATA: Mr. Chairman, I rise to speak against the amendment. Hawaii has a centralized governmental system which is unique. We differ from most other political jurisdictions because of our specifically different needs as an island State. We also differ from most other political jurisdictions because we provide the majority of public services, including education, welfare and health. This form of centralized government allows us to provide more public services on a more equitable basis and of generally higher quality.

This is why Hawaii is often envied and studied as a model system of government. On the other hand, our counties only assume primary responsibility for public safety, recreation and sanitation, unlike other mainland counties which are charged with the responsibilities of education, welfare and health. Our state government spends over \$670 billion, or more than 52 percent of the State's budget, on these services; we spent over \$377 billion on education alone in fiscal year 1975. Yet in terms of state and federal resources, the counties do already receive a lion's share of the funds.

For example, although they do not provide a significant amount of welfare and social

services, they receive about 70 percent of the State's allocation of federal revenue-sharing money, totalling about \$18 million annually. The state government, on the other hand, receives only \$9.1 million per annum, or 30 percent of federal revenue-sharing dollars for Hawaii, in spite of the fact that it provides many more services than the counties. At the same time, a local political subdivision continues to drain state resources by practicing the poor fiscal-management policy of funding capital improvements on a cash-only basis. This has drained away precious and finite state dollar resources from other areas, where these resources are more needed. This has also caused the State to incur considerably more bonded indebtedness.

What we are attempting to mandate here in the Constitution is already being done at the legislature. What we are attempting to mandate in this document may be a very unworkable formula, which may prove to be detrimental to the State's economy and its ability to provide the many needed services to the people of our State. With this, I ask all my fellow colleagues to vote against this amendment.

CHAIRMAN: Thank you, Delegate Hirata. Delegate Kimball.

DELEGATE KIMBALL: Mr. Chairman, I rise to speak in favor of the amendment. As I came before this body a couple of weeks ago with amendments to increase the counties' taxing authority for the main purpose of increasing their ability to financially plan, I will have to support this amendment. This is not asking for an increased share of the revenues which they receive; it's asking for an intelligently planned method to apportion those revenues. It therefore would allow the counties to financially plan in an intelligent and competent manner. For those reasons, I feel that this amendment should be passed.

CHAIRMAN: Thank you, Delegate Kimball. Delegate Harris.

DELEGATE HARRIS: Mr. Chairman, I rise to speak in favor of this amendment. There's been a great deal of lip service given to the issue of home rule and increasing county powers. I'm afraid that to date it has only been lip service. Here we have a chance to actually give the counties some more power. I think this plan is indeed workable and indeed well thought out. And as a delegate from the neighbor island of Kauai, I urge all the delegation to support this.

CHAIRMAN: Thank you, Delegate Harris. Delegate McCall.

DELEGATE McCALL: Mr. Chairman, just a couple of quick comments. I do think that public safety is one of the prime goals of the public, as evidenced by the various polls that have come out, and this is a county duty. I do not believe it makes an awful lot of difference who is paying the bill, because the money comes from the same place--from the people of this State--whether it's a county tax or not. The only difference is--do we want to increase the cost of our public safety from real property taxes, or would we prefer to pick up some of that cost from general income and excise taxes?

CHAIRMAN: For the benefit of the delegates, were you speaking for or against?

DELEGATE McCALL: Very definitely for.

CHAIRMAN: Thank you, Delegate McCall. Delegate Alcon.

DELEGATE ALCON: Mr. Chairman, I'd like to speak in favor of this proposal. Right now the State is giving the counties \$19.4 million by statute. Delegate Hirata did a good job in reciting a lot of statistics--I think he meant it for a different amendment and somehow saw fit to speak on this particular amendment offered by Delegate Blake.

The only reason I'm speaking for this amendment, Mr. Chairman, is because of the fact that it has a built-in inflation guard, that if the general fund tax revenue goes up, the aid to the counties will also go up. I think it is a well-thought-out plan, and I would urge everybody to vote for it, not because of the fact that Hawaii is a unique state. I have an earache from listening to it being a unique state in one instance and not unique in another instance.

CHAIRMAN: Thank you, Delegate Alcon. Is there any further discussion? Delegate Peterson.

DELEGATE PETERSON: I just wanted to make one short point. It may be considered by some of the delegates that this will transfer to the counties a great deal of money. In my calculations, the State already pays 4 percent to the counties in grants. So this would only be an addition of 1 percent, which is \$7 million. We have restricted the counties from receiving any portion of the general excise tax, and I think all the counties are trying to do is to be able to depend on the share of the state government revenues which they have been receiving in the past, so that they can make better plans. I think this is a convenient and appropriate way for the State to share some funds on an ongoing basis with the counties.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Sakima.

DELEGATE SAKIMA: Mr. Chairman, I speak against the amendment. The present Constitution reads that "the legislature shall have the power to apportion state revenues among the several political subdivisions." I think that they have been doing a good job of taking care of the political subdivisions; they are not starving for money, and they have been getting their fair share. We would like to leave it to the legislature.

CHAIRMAN: Thank you, Delegate Sakima. Delegate Kono.

DELEGATE KONO: Mr. Chairman, I rise to speak against the amendment, although I speak for the intent of the amendment. I'd like to say first of all that I agree with the intent because I feel that the counties should have a guaranteed income from the State, which they do not have, to assist with their budgeting. I also feel that the county grants-in-aid should be rising in proportion to the growth of the economy, which it has not done over the past 7 years. The reason I speak against this particular amendment is--first of all, it would transfer an additional \$20 million or thereabouts to the counties without the transfer of attendant services. I don't agree with that.

I would consider, however, at Second Reading or at some other time--I prefer to see an amendment that would call for 5 percent of the general excise tax, which would mean a transfer of approximately the same amount of money to the counties as they are receiving presently under the grants-in-aid program. The second major objection I have to this is the method of allocation. I don't see any particular reason why the method chosen here is the best method. I think that there are many other factors that should be considered, including the size of each island, the infrastructure in place, the population and factors of that sort; and therefore, I would like to leave the determination as to the proportionate amounts up to the legislature. I speak against this particular amendment. I'm open to the concept, however.

CHAIRMAN: Thank you, Delegate Kono. Is there any further discussion? Delegate Ontai.

DELEGATE ONTAI: Mr. Chairman, I'm in favor of the amendment. As a resident of the leeward area of Oahu, I look forward to our someday becoming a county of our own. I think the time is ripe for it. Oahu is getting too big, too complicated. Someday we'll take it up.

Anyway, I look forward to some of the goodies that the State should be giving and at times doesn't give. We talk about centralized government. I feel that at times centralized government is bad--too much of it is bad. We should have more home rule--this is more in line with home rule. Seems like the counties get money from the State presently the same way a person gets money from a drunken uncle: at times when the uncle is sober he gives good; if he's drunk he may give, he may not give. Seems to be that is how I see it now. This amendment takes care of that uncle whether he's drunk or sober. I'm for the amendment.

CHAIRMAN: Thank you, Delegate Ontai. Is there any further discussion? Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, if anybody else wants to speak--I'd like to speak last.

CHAIRMAN: Delegate Kono.

DELEGATE KONO: Mr. Chairman, I'd just like to make a comment. After considering

the question more, I am changing my position, to be in support of this particular amendment. If it does pass, I feel that we can make modifications to the specific provisions called for in the amendment. So I would speak in favor of this amendment.

CHAIRMAN: Thank you, Delegate Kono. Is there any further discussion before Delegate Blake has his last say? Delegate Tamayori--I'm sorry, Delegate Tamayori. Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I would speak against the amendment--tongue in cheek and with bad feelings because my good friend across the aisle there feels very strongly for revenue sharing and I applaud him. However, after days and weeks of consideration, in meetings with local government, meetings with tax and finance, and coming to the determination of what would be best for the local governments, I, at this time, opt that the real property taxation powers would provide for the long run the needed assurance of the continuing stability of the respective local governments. The power of assessments, the power of setting rates, of making policies, I think, will more than provide for the needed increase of revenue and for the stability of planning your budget that we need. For this reason, unfortunately I must speak against this proposed amendment.

CHAIRMAN: Thank you, Delegate Souki. Delegate Tamayori.

DELEGATE TAMAYORI: Mr. Chairman, I rise to speak against this proposed amendment. This proposal assumes two things: first, that state government has in its control funds in excess of its requirements; and second, that the counties are in dire need of additional sources of funds.

Whether these assumptions are true or not, a constitutional formula such as this would not be responsive to changes in any circumstance. Moreover, rigid formulas do not allow for differences in fiscal capabilities within the counties themselves over varying periods of time.

Finally, I believe it should be noted that the combined general fund tax revenues of Maui, Hawaii and Kauai make up only about 1/6 of Oahu's revenues alone. I urge each of you to vote against this amendment.

CHAIRMAN: Thank you, Delegate Tamayori. Is there any further discussion? If not, Delegate Blake, proceed.

DELEGATE BLAKE: Mr. Chairman, it's very hard sitting here and listening to the delegates speak against this. I would like to state that in both finance and local government this subject was never given a really good discussion. I agree with what one of the members of local government has stated. I'd like all of you to know that in the last 8 or 9 years, there hasn't been any change in the distribution to the counties. Time has gone by, costs have gone up and the level that the counties have received has remained the same. I am sure everybody here will believe me that costs have gone up but the revenues have not increased.

Furthermore, the counties are trying their best to do the best job they know how. Just a few nights ago this assembly here voted down the real property tax and put the counties on an 11-year probational period. This has hamstrung the counties considerably. I ask you to consider that. On one side you say to do this, and on the other side you say drop it. I think we should be consistent in what we're trying to say.

We are not asking for an outright grant that we have not received. As I stated, the counties have been receiving about \$19 million in grants-in-aid total, with other things about \$28 million. And as Delegate Peterson said, it's about an 8-percent increase or about 1 percent more--from 4 percent up to 5 percent. I ask you to seriously think about this. As has been stated by another member, the State is doing--all the ongoing projects are being carried by the state government. That's probably true--this all goes back to 1964 when, I remember, these things started. And it was stated to me then that "we'd like the counties to do that" and "we'll take this," and I'm sure we can work out a better way in having the ends meet. Today, as was mentioned earlier, security throughout the State is probably our greatest problem--for families, for children--and I think this should be seriously considered even in this city of ours here. The nation has gone wild on these things, and who is going to carry the burden? The counties have to do it.

And when you people come to a different county and something goes wrong, please don't blame the police department if you vote this thing down.

CHAIRMAN: Thank you, Delegate Blake. The question on the floor is to amend Committee Proposal No. 14 by inserting language that provides for an apportionment formula for determining county grants-in-aid.

DELEGATE BLAKE: Mr. Chairman, I'd like to ask for a roll-call vote.

CHAIRMAN: A roll-call vote has been requested. Are there 10 seconds? There are 10 seconds. Mr. Clerk, will you read the roll, please.

Roll call being in order, the motion to amend Committee Proposal No. 14 by Amendment No. 11 failed to carry by a vote of 35 ayes, 45 noes and 22 excused; with Delegates Alcon, Barnes, Blake, Campbell, Chun, Chung, Crozier, de Costa, Eastvold, Fernandes Salling, Fujimoto, Funakoshi, Goodenow, Hale, Hanaike, Harris, Hoe, Hornick, Dennis Ihara, Kimball, Kono, Lacy, Rachel Lee, Liu, Marumoto, McCall, Miller, Odanaka, Ontai, O'Toole, Peterson, Pulham, Sterling, Stone and Wurdeman voting aye; Delegates Anae, Barnard, Chang, Laura Ching, Haunani Ching, Fukunaga, Fushikoshi, Hagino, Hamilton, Hino, Hirata, Hironaka, Hokama, Les Ihara, Teruo Ihara, Ikeda, Iwamoto, Izu, Kaito, Kojima, Ledward, Marion Lee, Lewis, Nakamura, Nishimoto, Nozaki, Okamura, Paty, Penebacker, Sakima, Sasaki, Shinno, Shon, Silva, Souki, Taira, Takahashi, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax, Yamashita, Yoshimura and Chairman Ishikawa voting no; and Delegates Andrews, Barr, Blean, Burgess, Cabral, Calvin Ching, Donald Ching, Chong, Chu, De Soto, DiBianco, Dyer, Ellis, Hashimoto, Hayashida, Kaapu, Stegmaier, Sutton, Takehara, Takemoto, Takitani and Tam being excused.

CHAIRMAN: The noes have it and the amendment fails. We're now ready to consider subject area J, in which we have 5 amendments. The Chair believes that several of these amendments are not numbered and will proceed to do so.

Amendment J1, as we noted earlier, is by Delegate Lewis, entitled "Start of Biennial Budgeting and Appropriations." J2, offered by Delegate Barr, has to do with general obligation bonds being authorized by a two-thirds vote. Amendment J3 is offered by Delegate Peterson. J4, offered by Delegate Barr, is entitled "Certain Taxation of Food and Drugs Prohibited." And J5 is offered by Delegate Kono. At this time we are ready to proceed with amendment J1. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I move for the adoption of amendment J1, which is a housecleaning measure deleting Section 8 of Article XVI, which is a transitional section provided in 1968.

DELEGATE SAKIMA: Second the motion.

CHAIRMAN: It is moved and seconded that we amend Committee Proposal No. 14 by deleting Section 8 of Article XVI. Is there any discussion?

DELEGATE LEWIS: Mr. Chairman, as I indicated, this is a housecleaning measure and there shouldn't be any opposition to it, hopefully, inasmuch as the convention in 1968 adopted a biennial budget and this was the transitional provision which allowed it to take effect July 1, 1971. This is something that could have been taken care of by the committee on revision and amendment or the legislature committee, but they deferred to this time.

CHAIRMAN: Is there further discussion? If there is no further discussion, the question on the floor is to amend Committee Proposal No. 14 by adding a new section which deletes Section 8 of Article XVI. All those in favor of the amendment, please raise your hand. All those opposed? The ayes have it, the amendment carries.

The next item on the floor is amendment J2. Does anyone know where Delegate Barr is? Perhaps we could proceed to amendment J3 by Delegate Peterson. Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, I move for the acceptance of amendment J3.

DELEGATE SASAKI: Second.

CHAIRMAN: It's been moved and seconded that we amend Committee Proposal No. 14 in accordance with amendment J3. Is there any discussion? Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, this amendment has little substance; it's only a technical change in the wording. I think this is more clear than the words in the original proposal. If you look at the last few lines which are underlined, and right before the portion where it's deleted, it talks about any appropriation or portion of "such appropriation which is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse." The wording in the original proposal goes on from there: "Where general obligation bonds have been authorized for an appropriation...." This transfers the attention of the reader to the issuance or the authorization of the appropriation, where we have just spoken about the lapsing of an appropriation.

The wording which I suggest begins: "Upon the lapsing of any general obligation bond appropriation." This just presents a more smooth transition from the material discussed earlier to the material which is discussed at the end of the paragraph. I think each delegate may easily determine whether this wording is more clear than the original. Therefore, I urge the delegates to merely read this and vote for the amendment if it seems to make more sense.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I regretfully rise to speak against this amendment. First of all, it appears that this amendment is a question of style. By his own remarks, Delegate Peterson indicated this is more style than substance. And if that is the case, then I would recommend, as in other situations in Committee of the Whole deliberations, that this be left to the style committee.

Secondly, I have been informed by the attorneys who drafted the language in the original proposal as well as by resource people available to the Convention that technically there is no such thing as a "general obligation bond appropriation." Instead, what the legislature does in effect is to make appropriations which carry an identification of the source of funding. That is why the language in the committee proposal has been written in the way it appears. In other words, we're dealing with authorizations rather than appropriations. In any event, if there is any problem, the Committee on Style can take this matter up. I would recommend that this particular amendment not be passed--a vote against the amendment--and if there is a question of clearing it up, that it be done by the Committee on Style.

CHAIRMAN: Thank you, Delegate Lewis. Is there further discussion? If not, the question on the floor is to amend Committee Proposal No. 14 as presented in amendment J3. All those in favor of the amendment, please raise your hand. All those opposed? The noes have it and the amendment fails.

We're now ready for amendment J4. Does anyone wish to speak for Delegate Barr? If not, we will go to amendment J5 offered by Delegate Kono.

DELEGATE PULHAM: Point of order, Mr. Chairman.

CHAIRMAN: State your point, Delegate Pulham.

DELEGATE PULHAM: Are you indicating then that the two amendments by Delegate Barr are being filed?

CHAIRMAN: Yes.

DELEGATE PULHAM: May I request a short administrative recess to check on his whereabouts? These may be very important to that delegate, and I don't think we should treat it this way. I'm perfectly willing to go to his office and see if he's there.

CHAIRMAN: The Chair would request that you do that without recessing the deliberations. If you so please, you may; and we shall offer the question to the Committee of the Whole whether they would have these things considered today. Delegate Silva.

DELEGATE SILVA: Mr. Chairman, if it be possible, I'd like to have these things filed and later give Delegate Barr a chance to speak at Second Reading.

CHAIRMAN: The Chair would leave that up to the Committee of the Whole, if Delegate Barr should appear before we adjourn. However, Delegate Barr did miss the first submission for this and he was told he would have another opportunity at Second Reading. This is the second time that this amendment is not being offered at the right time. Delegate Kono, would you like to speak to J5.

DELEGATE KONO: I'll yield the floor to Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, may we have an administrative recess?

CHAIRMAN: Is there any objection? There will be a short recess.

At 4:21 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:29 p.m.

CHAIRMAN: The Committee of the Whole will please come to order. The Chair now recognizes that Delegate Barr is here. So we shall disregard the former statement that the Chair made, although we shall proceed with amendment J5. Delegate Kono.

DELEGATE KONO: Mr. Chairman, I move for the adoption of amendment J5.

DELEGATE HOE: Second.

CHAIRMAN: It has been moved and seconded that we amend Committee Proposal No. 14 by inserting language contained in amendment J5. Is there any discussion? Delegate Kono.

DELEGATE KONO: Mr. Chairman, I'd like to reserve the opportunity to speak first and last.

CHAIRMAN: Proceed.

DELEGATE KONO: This amendment calls for a lowering of the authorization ceiling for the issuance of bonds. And for those delegates who are not familiar with the bond issue, presently there's about \$1.97 billion of authorized bonds, and only about a billion dollars of issued bonds--meaning that the legislature has authorized roughly a hundred percent more than the amount of bonds that have actually been issued and are now outstanding. In other words, the governor has the opportunity--it's within his purview--to issue another billion dollars' worth of bonds. As your Committee has decided, it is prudent to issue only about 150 million dollars' worth of bonds per year, meaning that the governor really will issue about 15 percent of all the bonds that are now authorized.

There are several problems that this creates, and I'll get into that. But I'd like to first of all illustrate the problems that this presents to the members of the public appearing before the legislature and dealing with the legislative process in trying to get their own projects through the state government. I was a member of a number of organizations that coalesced to get a new hospital in Hilo. For those of you who have been unfortunate enough to spend several evenings in Hilo Hospital--and I've spent several there myself--this is a facility that was built in 1950 and it was built as a tuberculosis facility. Therefore, it has long corridors, which are highly inefficient, and large roll-up windows which make it virtually impossible to contain and isolate diseases. Because it was built as a tuberculosis facility, it has the long corridors and sufficient airflow; it is not conducive to efficient operation and not conducive to containment of diseases.

Therefore the building is very expensive and the result is that it is the most expensive hospital--it is the loss leader in the State of all the state hospitals. Since the legislature has mandated that 80 percent of all costs in the hospital be met by the hospital fees and charges, this means that patient costs go up, partially because of the inadequacy of Hilo Hospital. So we formed a group in Hilo, and we were able to secure 21,000 signatures on a petition. We went the petition route after talking to our legislators, who told us that because of the tremendous backlog and the wait necessary before issuance of

any capital improvements projects could be secured, there was no chance of getting a new hospital in Hilo. Our position was that there was no better use of public funds than to provide for needed health facilities for the public. Therefore, we went about getting a petition.

As I said, we got 21,000 signatures on this petition, of the roughly 36,000 voters on the Island of Hawaii. We were never able to confirm the actual number of good signatures, but I think that amounts to about 40 percent of the signatures on the entire Island. Upon securing these signatures, we received a lot of political action, being an election year--this by the way happened late last year. It has now been promised to us that the legislature will provide funding for Hilo Hospital. However, this is a tremendously long procedure. The first aspect of the hospital was funded--the design phase; \$3 million has been appropriated and is now being spent. However, the cost estimate for the entire hospital is \$45 million and the legislature is now promising to provide incremental payments for the various phases of the hospital, in increments of about \$10 million a year. We have absolutely no assurance, even though the appropriations are made, that the governor will have the ability to issue these funds or will see fit to issue these funds. Therefore, we have a two-tiered system, where we first have to approach the legislators to get their approval, and secondly we have to get the governor to issue the funds.

The problem here that's very frustrating for the public is that it takes a long time to understand the appropriations system. I finally understand it now, although I don't agree with the fact that the legislators have such tremendous leeway in authorizing for projects that they know have a very small chance of actually being issued. I think that most of you can sympathize with the fact, from the public's point of view--that if you've ever tried to get a park, or to lobby for any other kind of governmental appropriation of moneys for a building project--that it's an extremely obscure process you have to go through.

So the purpose of my amendment would be to cut through this bureaucratic mess that we have, to cut back on the amount of appropriations that the legislature is entitled to and to make that level of authorizations a reasonable proportion of the actual issued and outstanding debt. There are two purposes in doing this: first of all, the legislature will become more accountable to the public, and the public will be better able to understand the capital improvements system and have greater confidence in the political system, which I think is very important; and secondly, I think it would enable the legislature to have better control over the actual capital improvements projects. Presently they have virtually no control--they just control the appropriations process. They have no control over the actual issuance of the bonds.

So I'd like to explain the proposal that I have before you. It calls for the total authorized general obligation bonds to not exceed 140 percent of the total outstanding general obligation bonds. This means that the legislature in any one year can appropriate no more than 40 percent of the outstanding general obligation bonds. So what this means in reality is that we have about a billion dollars of general obligation bonds outstanding; this provision would allow the legislature to appropriate 40 percent more than this, or \$400 million more than the presently outstanding billion dollars. So in effect we would have no more than \$1.4 billion of authorized bonds, compared with the present \$1.973 billion. So there would be a reduction of approximately half a billion dollars in authorized bonds.

You should have on your desks a copy of the information, containing many numbers, that we passed out. The first page should be sufficient for mostly everybody; the next two pages are merely backup information. But if you would turn to the first page, the first chart on the front page, is a comparison of the historical to the proposed amendment. The left column shows the years 1969 through 1977. This is a historical chart comparing the amount of authorized debt that would be issued under this program with the actual authorized debt that the legislature engaged in. And you will see that if we had instituted this proposed amendment from 1969--that we would have saved, in the last column, between \$200 and \$650 million less authorized by the legislature than was actually authorized.

So, for instance in 1977, if the proposed amendment were effective, there would have been a maximum of \$1.396 billion of authorized debt. This is compared to the actual \$1.973 billion that we have presently in 1977. This affords a cutback of \$577 million of authorized bonds. The follow-up question to that, I would imagine, would be whether this would allow the legislature sufficient leeway to authorize sufficient debt to fund our

capital improvements projects. And I submit to the delegation that 40 percent is much more than sufficient to cover the projected issuances of budget and finance in the administration.

The second chart shows the reasoning; on the left-hand side of the bottom chart, this shows the amount of appropriations in excess of the amount of bonds that were actually outstanding for fiscal years 1969-1977. So the chart shows the amount of increases in bond issuances on an annual basis; in 1977 there were 121 percent more bonds issued and outstanding than were issued and outstanding in 1976. The relationship between this 121-percent figure and the 140-percent figure that I'm speaking of is that there would be a 19-percent leeway of authorized indebtedness over and above the amount that was actually issued. This chart also shows that the maximum amount of increase in any annual amount of outstanding issued bonds was 133 percent of the preceding year. So this demonstrates that, in the past 10 years, the 140 percent would have allowed sufficient leeway to the governor to issue the amount of bonds that he intended to.

If I can briefly summarize the right part of this graph, it shows that budget and finance is projecting annual increases in the total amount of outstanding debt between 110 percent, 113 percent and 105 percent; in other words, the 140 percent would leave the administration a tremendous leeway over the next 5 years, a tremendous amount of flexibility. I see that my time is up, and I'd be happy to answer any questions that the delegates have about this.

CHAIRMAN: Thank you, Delegate Kono. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak against this amendment. I am sorry that this matter should have come to our attention at this late date. Certainly as important an issue as debt limitation or debt authorization deserves a great deal of discussion, a great deal of analysis and a thorough examination of the pros and cons of the issue. Unfortunately, we are not able to do this at this time. This much I do understand about the amendment--its thrust is to create a second debt limit, a limit in addition to the limit which has already been agreed to by the Committee of the Whole, which relates the debt service to the general fund revenues of the State.

I'm not exactly sure what the 140-percent limitation would do. However, certain questions do arise. It would appear from the supporting data that if this amendment were to be ratified by the voters in November, we would have already exceeded the authorized debt limit at the very next session of the legislature by approximately \$600 million. If this is so, it might effectively prohibit the legislature from authorizing any new bonds for any new projects until some future time when authorized debt can be brought below the level allowed by the amendment. What this would do in terms of our current and programmed capital improvements program of course is uncertain. Also, it would appear that if the legislature would use up most of the debt margin allowable in any year but still remain legally under the authorized debt limit which I referred to earlier, this could mean that debt would be legal under one limitation but illegal under another. These are just a few of the questions which come to mind and quite frankly I don't think we're ready to deal with this problem at this point.

I would finally add, with respect to the question of authorizations--and I believe the thrust of the amendment is trying to limit authorizations--that your Committee on Taxation and Finance has attempted to provide a limitation to authorizations by four methods. The first method relates to the adopted amendment, which would provide a 3-year lapsing period where currently there is no constitutional lapsing period. The second area deals with the provision that requires the over \$1 billion of currently authorized but unissued debt to be dealt with by 1980--in other words, either to be encumbered, to be reappropriated or lapsed. Thirdly, a provision has been made that would require only a majority vote for bond authorizations, thus avoiding what has happened with the two-thirds majority, which has resulted in increased authorizations. And finally there is the restraining effect of the strict debt limit, which has already been adopted by your Committee, which is related debt service ratio. And for these reasons, Mr. Chairman, I urge my fellow delegates to vote against this amendment.

CHAIRMAN: Thank you, Delegate Lewis. Is there further discussion? Delegate Villaverde.

DELEGATE VILLAVERDE: Mr. Chairman, I rise to a point of clarification.

CHAIRMAN: State your question.

DELEGATE VILLAVERDE: There's been implied that the 21,000 signatures that had been gathered to have our legislators be more responsive to the needs of the Big Island--I think is in error. Yes, it's very effective getting 21,000 signatures, but to imply that it's effective to have our legislators be more responsive, I think, is irresponsible. Our legislators in the County of Hawaii--

DELEGATE HALE: Point of order.

CHAIRMAN: Delegate Villaverde--one second, Delegate Hale--Delegate Villaverde, the Chair was under the impression that you were asking a question. If you are making a statement of clarification, the Chair will require you to speak for or against the amendment.

DELEGATE VILLAVERDE: Okay, I will speak against this amendment. And for the point of clarification for the rest of the delegation as they decide to make their vote known, I will repeat that our legislators have been very, very responsive to the needs of the Big Island. We have received a tremendous share--unfortunately for some others who may not have received theirs--I feel that our legislators have been. The hospital has been forthcoming. It takes a hospital, or a major project such as we have, to be built in stages and we've had the house and senate health committees on the Island continuously to respond to the needs of the county. And to say that the 21,000 signatures were one of the reasons why the legislators have been responsive, now at this stage, I think that is in error.

CHAIRMAN: Thank you, Delegate Villaverde. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I speak in favor of the amendment. As to the point that it comes at a late date, I think that is really not well taken because until the last time this Committee of the Whole met, we had a good lapse provision that lapsed at 2 years. And that in itself works to put the responsibility where it should be--on the legislature--to do good planning when it comes to capital improvements.

Just yesterday that lapse period was changed from 2 years, which was good, to 3 years, and in addition there was a large loophole put in which would prevent any lapsing from any program for which there is any portion of federal funds needed in order to insure federal funds. So the change taken yesterday in the lapse provision makes it all the more important that we do have some provision which puts the responsibility on capital improvements back in the hands of the legislature.

Secondly, the point that if this provision is passed it would mean that we're already in excess of the debt limit--that would not be so because the legislature would be able to resolve that simply by reviewing all of the present \$1 billion worth of authorized but unissued debt, realistically looking at them and eliminating the ones that are not expected to ever be actually issued.

Finally, the point was made that the legislature has been very responsive. That is exactly the problem. The legislature is responsive; it's so responsive that it simply cannot say no. The point is that it is not responsible. The legislature, from the testimony before the committee, has really given up and abdicated voluntarily any responsibility on capital improvements projects. They appropriate and approve virtually anything, with the knowledge that the executive will not issue all that are appropriated. This provision is one which would apply to the legislature at the time of authorization. It is a very generous limit. It is 140 percent of the total outstanding issued and outstanding bonds. That would mean that next session the legislature would still be able to authorize up to another \$400 million of general obligation bonds. It's not an excessive limitation. It is one, however, which would serve the very desirable purpose of putting the responsibility back in the hands of the legislature, where it belongs.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Hale.

DELEGATE HALE: May I ask a question of the mover of the amendment?

CHAIRMAN: Ask your question, please.

DELEGATE HALE: Does this purport to change the debt service ratio or is it in addition? I wasn't quite clear.

CHAIRMAN: Thank you, Delegate Hale. Delegate Kono, would you yield to that question?

DELEGATE KONO: Yes, I'm glad you asked that question. I think that the chairman of the finance committee was not quite aware of the intent of the amendment. It does not in any way affect the debt service function at all. It merely puts a limitation at the point of authorization of the debt. As a further point of clarification to Delegate Hale, this allows, at the present time, about \$400 million more than the amount of debt that is presently issued. In other words, the administration would have to choose about \$400 million worth of projects, as opposed to \$150 million that they intend to issue over the next year. So there will still be a significant margin there.

CHAIRMAN: Thank you, Delegate Kono. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment for two reasons basically--one, because I think it would only complicate our present debt ceiling, which is a very clean measure which limits the amount of money that we can spend from our general fund to pay for our debt service. This would complicate the matter by adding a secondary debt limit, which in my opinion is really not necessary, because the real measure of the cost of debt to the public would be what we pay for it. So if we're limiting the amount of money that we can pay already, it doesn't seem to me--I cannot see what this would achieve.

The second part of it is that we do have a lapsing provision, which means that at least at 3-year intervals the entire amount of authorized but unissued debt minus the federal fund exemptions would be lapsed. So I don't see what this would add to our present debt provision, and it would complicate it, I believe, unnecessarily.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Hale.

DELEGATE HALE: May I ask another question, of the finance committee chairman?

CHAIRMAN: State your question.

DELEGATE HALE: I wonder if we could be told what the limit, say, next year would be under the wording now, of the ratio? How much in bonds would the legislature be allowed to float next year?

CHAIRMAN: Thank you, Delegate Hale. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, in response to that question--I do not have the figures in front of me. It would be--and this is just an approximation--approximately \$1 billion--I'm guessing about \$1,300,000,000, between \$300 million and \$400 million. I do not have those figures in front of me. I could get them if it's important to this debate.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE HALE: Pardon me, Mr. Chairman, that was not my question. I'm trying to figure--what I really want to know is, Delegate Kono said this proposal of the 140 percent would allow \$400 million more next year and I'm just wondering--without this, what would be allowed next year?

CHAIRMAN: Thank you, Delegate Hale. Would the chairman wish to respond to that question?

DELEGATE LEWIS: To respond to the question with respect to Delegate Kono's amendment, presently there is no constitutional prohibition, in the proposal before this body, on authorizations. As I indicated in my response, the limitation on authorization is in these other areas--3-year lapsing, the debt limit we have, the majority vote and the 1980 cancellation of the existing \$1 billion--these are the effective methods of limiting authorization.

CHAIRMAN: Thank you, Delegate Lewis. Any further discussion? Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, I just want to make a comment, that I think this issue might easily be overlooked. I think this issue is probably one of the two most important issues that we've talked about in the last two days.

CHAIRMAN: Delegate Peterson, would you speak for or against the amendment?

DELEGATE PETERSON: I'm speaking in favor of the amendment. The issue under consideration is probably one of the two most important issues that we've discussed over the past few days as far as finance. The debt limit is one of the most crucial issues that we'll be presenting from this Constitutional Convention. The subject of lapsing, which we discussed in detail in changing it from 2 to 3 years, was the reason given in committee for the elimination of any restriction on the authorization of debt.

I think we should point out that there is considerable difference--and I think it hasn't been discussed enough--between the authorization and the issuance of debt. Authorization means that the State says you can borrow so much money. Issuance is where the State actually goes out and sells bonds. So there are two different processes; the legislature allows for the authorization of the bonds, while the executive goes out and sells or actually issues the bonds. What we have done in the committee proposal is to limit the issuance of debt, but we have said nothing about the authorization of debt.

In the Constitution prior to this Convention, there was a limit of 3-1/2 times general revenues, which prevented the legislature from authorizing all kinds of projects which the governor could not issue. By the committee proposal, we have eliminated any limitation. In other words, if this committee proposal is accepted, the legislature could theoretically, even though it might not be reasonable--they could theoretically authorize billions of dollars of debt and the governor could take his choice from the whole menu to see what he wished to issue.

There was considerable comment, during the testimony we received, as to the reasonable manner in which our debt is presently being managed. Nobody really thinks that the governor has been irresponsible in the way debt has been issued. However, there was considerable concern about the amount of debt which is authorized by authorizing twice as much debt as we can issue. The governor may simply choose whatever projects he wishes to fund. This allows the governor really to do almost whatever he wants. The legislature gives up control for almost all funding; and this is the serious problem which is not addressed in the committee report, which we thought would be covered by a reasonable lapsing period, which was changed to 3 years, which many of us feel is not a reasonable period.

So the real issue is, how much debt can the legislature authorize and allow the governor to choose from? If the legislature authorizes debt, they can say--we have authorized a hospital in Hilo, we have authorized a bridge on Kauai, and it's the governor who's withholding funds. So they transfer the blame to the governor, and the governor can point his finger back at the legislature and say--the legislature is irresponsible, they have authorized all these programs for which we just don't have the money. And so the buck goes back and forth. The real issue here is accountability: the legislature should not authorize debt which it cannot reasonably expect to be issued; the governor should not be allowed so many projects he can choose to issue bonds for that he really has no fiscal limitations imposed by our organization of government. That's why I see this as probably one of the most important issues we'll consider during the Convention and why I would urge you to vote in favor of this proposal.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Hale.

DELEGATE HALE: I'd like to speak in favor of this amendment. I have nothing further to add. The explanations given by Delegate Peterson certainly convinced me, and I hope it convinces all of you.

CHAIRMAN: Thank you, Delegate Hale. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, does anyone else wish to speak? I was going to speak before Delegate Kono.

CHAIRMAN: Delegate DiBianco.

DELEGATE DIBIANCO: Mr. Chairman, if I could speak very briefly in favor of the amendment. I would remind those delegates--I believe it was on the executive committee when I was there and we had some speakers come over from the legislature, and they told us one of their primary concerns was the fact that they felt that, over the past 15 years, they had given too much power to the executive. They wanted us to help restore the balance of power, and I think that this amendment goes a little ways toward helping to restore the balance that our own legislators have asked for.

CHAIRMAN: Thank you, Delegate DiBianco. Is there any further discussion? Delegate Lewis.

DELEGATE LEWIS: I rise for a second time briefly to speak against the amendment. If the issue is accountability, which the speaker previous to the previous speaker addressed, our new debt provision, which has already been debated by this Committee of the Whole and presented to the Committee of the Whole, does provide for accountability and much more accountability than the current authorized debt limit does. The current authorized debt limit has allowed a \$1 billion overhang. There are those who say there is no accountability in the current debt authorized--the limit related to authorization. So the current one--the proposed debt limit related to debt service--provides for accountability. By adopting this amendment, you would in fact bypass that 2-year period which the legislature is given to deal with the \$1 billion of authorized but unissued projects. Some of those projects are meritorious ones that do deserve the period of 2 years to be dealt with, and not be forced to be dealt with in a matter of 2 months. And so I would urge the delegates to vote against this amendment.

CHAIRMAN: Thank you, Delegate Lewis. Is there further discussion before the movant speaks last? If not, Delegate Kono.

DELEGATE KONO: Mr. Chairman, I think the point with regard to this particular amendment is a question of whether we're going to have a greater accountability over the debt system or whether we're going to leave it totally up to the legislature. And I think history has shown that the legislature has abused the privilege that was granted to them, in terms of the loose debt ceiling that we previously had, in terms of overauthorizing indebtedness.

There is no reason to believe, now that we have done away with the 2-year lapsing provision and amended it on the floor to a 3-year lapsing provision--and I might add for very questionable reasons--that there is the legislative restraint that we had intended to achieve, in committee, and believed we had achieved, from all of the testimony that was provided us. Therefore, I urge all delegates to support this amendment. As Delegate Peterson has pointed out, there is absolutely no check on the amount of authorized debt that the legislature can enter into.

Now there are two very good reasons for this: first of all, because it would result in greater accountability from the public's point of view. The system would be much more visible, and you could see what your legislators were really getting your district, rather than just giving up on the whole system and feeling that it's such a terrible mess that you could never figure out how CIPs were authorized. I think that the legislature should not try to obscure what they're doing; I think they should be out in the open, and make tough decisions regarding the priorities for spending. I don't want to get on the bandwagon on this, but I think it's about time we stopped giving the legislature such tremendous leeway. We're electing them to a tough position, a responsible position, and I think they should exercise that responsibility, given the limited resources that the State has.

The other thing is that I think it would help the legislators, in the sense that the legislature would be able to gain greater control over the actual capital improvements process. By limiting the amount of authorizations, it increases the chances that a legislator's approved program will actually be implemented by the executive office. Presently, with all the political games that are being played--as I understand the political system, there are a lot of tradeoffs and you have a lot more projects than you would like to see because people support other politicians' projects. In this circumstance, we're limiting the number of games that can be played, and we're cutting down the number of frivolous projects, the ones that would never be implemented anyway. And I think that this would help the legislature.

In closing, I'd just like to say that this finance package as a whole is a good one. The debt ceiling has been taken care of pretty much in terms of the point of issuance. However, nothing has been done about the point of authorization. There are two aspects to the debt problem and I think we should deal with both of them, not just one of them. So I would urge all delegates to vote for this amendment. And one other thing that Delegate Lewis did bring up--about the fact that in the present debt provision there is a period granted the legislature, until June or July of 1980. This provision does not allow the legislature that flexibility. I would not be averse--in fact, I would be supportive--of allowing the legislature to resolve the problem, given a 2-year or 1-1/2-year period with which to work out the priority projects they wish to maintain on the books. I urge all delegates to vote for this amendment.

CHAIRMAN: Thank you, Delegate Kono. The question on the floor, then, is to amend Committee Proposal No. 14 by providing for a separate limit on general obligation bond authorizations in addition to the committee's proposed limit on the issuance of general obligation bonds. Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I ask for a roll-call vote.

CHAIRMAN: A roll-call vote has been asked. Are there 10 seconds? Thank you, there are 10 seconds. Mr. Clerk, will you please read the roll.

Roll call being in order, the motion to amend Committee Proposal No. 14 by Amendment No. J5 failed to carry by a vote of 39 ayes, 45 noes and 18 excused; with Delegates Alcon, Barnes, Barr, Blake, Blean, Campbell, Chu, Chun, Crozier, DiBianco, Dyer, Eastvold, Fernandes Salling, Goodenow, Hale, Hamilton, Hanaike, Harris, Hino, Hoe, Hornick, Dennis Ihara, Kimball, Kono, Lacy, Rachel Lee, Liu, Marumoto, Miller, Odanaka, Ontai, O'Toole, Peterson, Shon, Sterling, Stone, Takitani, Wurdeman and Chairman Ishikawa voting aye; Delegates Barnard, Chang, Calvin Ching, Laura Ching, Chung, de Costa, Fukunaga, Funakoshi, Fushikoshi, Hagino, Hayashida, Hirata, Hokama, Les Ihara, Teruo Ihara, Iwamoto, Izu, Kaapu, Kaito, Kojima, Ledward, Marion Lee, Lewis, McCall, Nakamura, Nishimoto, Nozaki, Okamura, Paty, Pulham, Sakima, Sasaki, Shinno, Silva, Souki, Taira, Takahashi, Takehara, Tam, Uyehara, Villaverde, Waihee, Weatherwax, Yamashita and Yoshimura voting no; and Delegates Anae, Andrews, Burgess, Cabral, Donald Ching, Haunani Ching, Chong, De Soto, Ellis, Fujimoto, Hashimoto, Hironaka, Ikeda, Penebacker, Stegmaier, Sutton, Takemoto and Tamayori being excused.

CHAIRMAN: The noes have it and the amendment fails. Earlier the Chair had said that we might have to defer the two amendments offered by Delegate Barr. Delegate Barr did come in prior to the end of the recess, so the Chair would allow the amendments to be considered at this time, the first being J2, on the question of a majority versus two-thirds vote to authorize general obligation bonds. Delegate Barr.

DELEGATE BARR: Mr. Chairman, I move that Committee Proposal No. 14 on page 7, starting at line 6, be amended to reinsert, after "General obligation bonds," the words "may be issued by the State when authorized by a two-thirds vote of the members to which each house of the legislature is entitled."

DELEGATE HALE: Second.

CHAIRMAN: It has been moved and seconded that we accept amendment J2. Is there discussion? Delegate Barr.

DELEGATE BARR: Mr. Chairman, if you will allow me a very brief indulgence, with the understanding it's charged against my 10 minutes. I would like to apologize for not being here earlier and thank you and the delegates for their indulgence. I was not sleeping, I was not out drinking, I was not out doing anything that the delegates would normally find enjoyable but would find reprehensible if they knew I was doing it while they were here working. It is unavoidable that when we meet morning, noon and night there are other obligations in life which must be met, and I apologize very much that I was not here meeting my obligation to you.

Having said that--looking at page 7 of Committee Proposal No. 14, you will notice that in the Constitution as it now reads--with the one little change of the word "bonds" to "general obligation bonds"--in the Constitution it now reads: "General obligation bonds

may be issued by the State when authorized by a two-thirds vote of the members to which each house of the legislature is entitled, provided that. . . ." That section about the two-thirds vote was recommended to be eliminated by the committee. The thrust of my amendment is to put it back in.

Now, we discussed this at great length in the committee, and I would misrepresent it to you if I represented that it was even a close vote. The committee felt rather overwhelmingly that it should be changed to only a majority vote. Part of the reason for that is that some of the financial experts who talked to us recommended that, with the debt limit based upon issuance and with a tight lapsing provision and with some of the other things that we talked about, that a two-thirds majority was no longer necessary. And part of the reason for that is that one of our delegates, a retiring senator, very eloquently defended the majority vote as being a more reasonable political thing than the two-thirds vote. And I was in fact impressed by his arguments, but not impressed enough to support them--and I mean no disrespect to him for that.

I think the underlying issue is whether or not the issuing of debt by government is to be seen as ordinary or extraordinary. If it is an ordinary act, if it is really our intent that forevermore government will with relative ease be able to borrow money, and apparently in greater and greater quantities, in spite of our debt limit, then perhaps the majority vote makes some sense. On the other hand, I am a fiscal conservative. I think borrowing money is an extraordinary measure, one to be taken only where there are no alternatives. And extraordinary measures require extraordinary votes for their approval. And therefore the two-thirds vote makes much more sense.

Now I realize that the current political makeup of the senate makes the two-thirds vote awkward. But I always maintain faith that the voters in their wisdom can correct problems like that by electing new senators. And as a matter of fact, the real issue is to look at the structure, and the intent of the two-thirds vote is to be sure that the minority is taken into account in consideration of extraordinary measures by the body. And a two-thirds vote in the long run most often will assure that, in spite of the fact that--yes, as the senator and delegate pointed out--there are sometimes short-term situations where it is inconvenient. Therefore, I respectfully ask that you consider reinserting the two-thirds vote into the provision for bonded indebtedness of this State.

CHAIRMAN: Thank you, Delegate Barr. Is there further discussion? Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak against the amendment. I will speak briefly so that I may defer to the eloquent retiring senator from District 15B so that he may further address this body. But in any event, as Delegate Barr indicated, your Committee on Taxation and Finance did discuss this measure at some length and the vote was overwhelmingly in favor of moving from a two-thirds to a majority vote. This question does address the previous amendment that was defeated. And one of the reasons that your chairman on tax and finance spoke against the previous amendment was that by reducing the required vote from two-thirds to a majority you would reduce the number of authorized issues; in other words, because of the interplay that goes along with requiring a two-thirds vote, you can end up, at least historically, with a greater number of authorizations than you might have with a majority vote.

We have come up with a relatively stringent debt limit and, coupled with that, this is part of a package that involves reducing the term of bonds from 35 to 25 years, and the other part of it involves reducing the requirement for the approval of these general obligation bonds from two-thirds vote to a majority vote. I would urge the fellow delegates to vote against this amendment.

CHAIRMAN: Thank you, Delegate Lewis. Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I rise to speak in favor of this amendment. This is not really a tax and finance provision--what the committee is doing by reducing the required vote from two-thirds to a simple majority. It is really a matter that I think would more appropriately have been handled in the Committee on Legislature. It is--if you'll excuse the term--tampering with the legislative process, and it's a significant encroachment upon the rights and powers of the minority representatives in our legislature.

I don't really think it's a financial matter at all, and I think that due consideration

should be given to the rights of the minority in the legislature because it's only through exercise of their rights that they can protect those portions of the public that they represent. I don't think it's necessary for the overall restructuring of our tax and finance package here, that we're trying to present to the voters, that we change the general bond elective process from two-thirds to a simple majority. I would just hate to see this slipped in as a tax and finance proposal when I feel that it actually should have been given a complete airing in the Committee on Legislature if it was going to be changed at all.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I want to speak very briefly against this amendment. In so doing, I'd like to assure my colleagues here that I have not changed the position I had during the committee deliberations. I'm very flattered that my Maui colleague had such wonderful, congratulatory remarks to make about me, but I'm very sorely disappointed that he does not agree with me in my conclusion. But that's all right; it makes this a very lively and very fruitful Convention.

First of all, I think all of us know by now that in the finance and tax package as contained in Committee Proposal No. 14, we do have enough limitations by way of how much to issue in the way of spending, because from the issuance standpoint, there is a very strict limitation.

One of the reasons we got into a big discussion in setting a lapsing period of 3 years or 1 year or finally, as we agreed, 3 years was because of the great amount of authorized but unissued bonds that we saw in the books--about a billion dollars. And I told the committee that because of my experience in the legislature all these years, it was my recollection that much of the cause of such a large mass of authorized but unissued bonds was because of the requirement that a two-thirds majority was needed to pass bond legislation. You see, the difference between a majority vote and a two-thirds vote--my experience has shown me that the more you have to have by way of a vote to pass the bond bill year after year, the more each legislator would like to have as his share of what we call the pork barrel plum. To get a majority vote is quite simple, but if you need that one or two extra votes in order to pass a bond issuance package by two-thirds, great exchanges must be made. As a result, a number of projects that may not really be necessary and may not come to fruition may go on the books. The result is, as we have seen over the years, the accumulation of a large mass of what we call authorized but unissued bonds.

This is what my colleague referred to when he said he was convinced that night, but in the cold gray hours of the next morning he suddenly changed his mind. But that's all right. For these reasons, Mr. Chairman, I'd like to oppose this amendment.

CHAIRMAN: Thank you, Delegate Taira. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I'd like to speak for this amendment. Before they changed it to a majority, it was two thirds for one reason--for many reasons. One of them is because this is a money matter, and the more people looking at money matters, the more chances everybody has to be honest with each other.

The second part--normally when laws are made, a majority is used and everybody has the same share in the laws that are made. But when it comes to money matters, if just the majority has the power and they assign their projects, the minority people will not share in the benefits. So for this reason I'd like to speak for the amendment.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Peterson.

DELEGATE PETERSON: I would like to speak as one member of the finance committee who was convinced initially that a majority was the appropriate vote to be required to pass these appropriations bills. However, as I considered some of the ramifications since that time, I have become convinced that two thirds is a proper requirement for passing general obligation bond authorizations. As we have talked about for considerable time this afternoon, there is now no limit to the amount that may be authorized by the legislature; so adding a little bit more pork for a minority legislator won't make any difference.

However, the requirement of a majority vote would not take into account the desires

of those who may be in the minority as much as would the requirement of a two-thirds vote. In other words, a simple majority of the members could do whatever they wanted in the authorizations and forget about the other half of the legislature which had desires and constituents to be represented. I think there has been much said concerning the possibility that a few legislators may hold out for a little more and I think that is a benefit of requiring a two-thirds vote--especially because of the issuance limitation, expecting a two-thirds vote isn't going to cost any more. It's only going to allow for debt to be authorized, which will be controlled at a point in the future before this debt is issued. Therefore, I feel there are no disadvantages and considerable advantages to requiring a two-thirds majority before debt can be authorized. I speak in favor of this amendment.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I commend the silver-tongued delegate from the verdant province of Makawao for bringing us this amendment, because it seeks to make it harder to borrow money at a time when I think, in our general economic state, it should be harder to borrow money. I am quite seriously distressed that since yesterday we seem to have consistently defeated one measure after another which seeks to assure greater fiscal responsibility. All of us know that one of the matters of greatest concern to the people of our State has been that of fiscal responsibility in government.

There has been a call from the people for controlled as against uncontrolled spending and for the institution of appropriate spending limits. I therefore urge my fellow delegates to support this amendment. Mahalo.

CHAIRMAN: Thank you, Delegate Campbell. Delegate Kono.

DELEGATE KONO: Mr. Chairman, I speak in favor of this two-thirds vote. I think that debt is something that--as has been said, it's not something to be entered into lightly, and in many jurisdictions it does require much more severe measures than a two-thirds vote of the legislature. I feel that the arguments that have been presented hinge upon the politicization of the debt issuance process. I think that if people are concerned about politicizing of the authorization process, they should be more concerned about a majority vote than about a two-thirds vote. It is always better, in my opinion, to be more conservative in dealing with finances than more liberal. I think that by allowing a majority vote, you're allowing the much more liberal alternative of a simple majority controlling the budget and controlling finances.

I think it's much better to have the two-thirds as a protection for the public, to insure a more conservative approach to financing.

CHAIRMAN: Thank you, Delegate Kono. Delegate Lee.

DELEGATE MARION LEE: Mr. Chairman, I rise to speak in favor of this amendment. It is now in our Constitution that there should be a two-thirds vote and I see no reason to change it to a lesser majority vote. Also, I would like to say that general obligation bonds are secured by the full face and credit of the entire State, and a matter as important as this should definitely require stricter controls. I think it would be contrary to our entire goal of trying to limit spending and to place stricter limits--to make it much easier to pass GO bonds by placing a majority vote. Therefore, I would urge you to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Lee. Is there anyone else who wishes to speak? Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment because I believe the effect of this, instead of limiting debt, may have a tendency to create more debt, to which I would be opposed. I think that what sounds good in theory does not always work out in practice; and it sounds good in civics textbooks that a two-thirds vote before the issuance of debt is a better control measure. Except that what happens in practice is that when one issues CIP projects, one needs to issue more debt in order to acquire the vote.

So instead of satisfying 50 percent of the people with all their little projects, one needs to then satisfy two-thirds of them, and thereby instead of controlling debt what

we do is we increase debt for the State of Hawaii. So I think before we vote on this amendment we ought to think clearly what is theory and what is reality. For these reasons I would speak against the amendment.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Lacy.

DELEGATE LACY: Mr. Chairman, I speak in favor of the amendment and in opposition to the remarks made by the previous speaker. We're not increasing debt at all. No authorization increases the debt. You don't even have it lapsing now in 2 years-- you've got it for 3 years. There is no debt whatsoever until the bonds are issued. And this is only an authorization to the governor to consider.

And you can go ahead and have \$2 billion or \$4 billion or whatever you want. The only thing that will stop you is a two-thirds vote or somebody having enough votes to keep you from issuing \$2 billion or \$4 billion. Nothing in any proposal put before this body so far has shown acceptable limits.

CHAIRMAN: Thank you, Delegate Lacy. Any further discussion? Delegate Barr, will you wind up the discussion. Delegate Barr.

DELEGATE BARR: Thank you, Mr. Chairman. I will be brief. I was impressed by the comparison of a textbook principle with the vote in practice. I would like to suggest that that does indeed capture the point, but not quite as it was represented to you. Our textbooks identify the principles that have been developed over 2 or 3 centuries of parliamentary practice and political experience, and the practice that was made reference to is the relatively recent practice of the particular state legislature we have in this State. I submit that when we're designing constitutional principles, Mr. Chairman, we shouldn't look narrowly at the recent past, but should look at the long-range and enduring principles that we can derive from human behavior. And when we do that we will determine that a two-thirds vote in the long run will produce better results where we are dealing with an extraordinary matter.

CHAIRMAN: Thank you, Delegate Barr. The question on the floor is to amend Committee Proposal No. 14 by reinserting the two-thirds requirement for authorization of general obligation bonds. All those in favor of the amendment, please raise your hand. All those opposed? The noes have it and the amendment fails.

DELEGATE HARRIS: Mr. Chairman, I call for a division of the house, please.

CHAIRMAN: A division of the house has been called. All those in favor, please rise. All those opposed, please rise. The vote is 37 ayes, 40 noes. The noes have it and the amendment fails. We shall proceed to--Delegate Ching.

DELEGATE LAURA CHING: I move to reconsider amendment I1 by Delegate Blake.

CHAIRMAN: Do we have a record to indicate that the delegate had voted in the affirmative, or with the prevailing side? Delegate Ching, the Chair would request you to defer this matter until we finish the next item so we can also examine the situation. Would that be permissible? Yes or no? Do you have another spokesperson?

DELEGATE HARRIS: Mr. Chairman, I second her motion and request the vote be taken now.

CHAIRMAN: One second. The Chair has been informed that the motion is in order, is not debatable and requires a majority vote. All those in favor of reconsidering amendment I1-- Delegate Ching.

DELEGATE LAURA CHING: May I withdraw my motion, please.

CHAIRMAN: If there's no objection, the motion is withdrawn.

DELEGATE LES IHARA: I object.

CHAIRMAN: Delegate Ihara. One moment--

All those in favor of withdrawing the motion, say aye. All those opposed, no. The ayes have it and the motion is withdrawn. We're now up to amendment J4, "Certain Taxation of Food and Drugs Prohibited." Delegate Barr.

DELEGATE BARR: Mr. Chairman, I would like to move at this time that Committee Proposal No. 14 be amended by adding the new section that reads as you have it on your desk in amendment J4.

DELEGATE CROZIER: Second.

CHAIRMAN: It has been moved and seconded to amend Committee Proposal No. 14 as stated in amendment J4. Discussion? Delegate Barr.

DELEGATE BARR: Mr. Chairman, if I may once again start with an indulgence, I would like to point out that it was poetic that my last amendment lost by a bare majority and it was an amendment that asked for two-thirds to be put in the Constitution. There is poetry there.

This one, I trust, I hope will have a different fate because it is a matter of great moment to me personally. I would like to start first by making clear what the amendment does so you might be clear on that point. It provides, in essence, that the 4-percent tax on food and drugs will be eliminated. However, it is not a simple elimination because the issue is not a simple issue.

It specifically provides that the food must be purchased for domestic preparation and consumption and that the drugs be prescription drugs. It also gives to the legislature the power to define these because that is in fact an important issue, as will become apparent presently. Also in this amendment is a provision that the section will take effect on July 1 following ratification by the electorate. The reason for that is that this provision would indeed reduce the revenues of this State and that is indeed an important thing, and therefore it gives the legislature a session to deal with that issue.

All right, let's go back for a moment and look at this thing. It identifies several kinds of tax--sales, transaction, gross income, general excise or other similar tax--so that not by any name could we have this tax on food and drugs. In our own case, the tax is the gross income tax. The effect of this tax is to be regressive; that means that the higher your income, the less percent of your income that you give in payment of this tax. The reason in major part for that is because the tax is on food and drugs, and those people on the lower end of the income scale tend to pay a higher portion of their income for food and drugs. As people become wealthier, they can afford other things and a lot of those things--including investments, including travel--do not have the 4-percent tax on them. So the tax is a regressive tax and the part particularly on food and drugs is the most regressive part of that.

Our State has tried to face this issue, and I understand that there are two reasons why the legislature has not adopted this particular provision in the past. One of those is an unfortunate one, if it's true, and that is that the issue is identified in Hawaii as a Republican issue. I submit that in almost all of the northern and midwest states that have this provision already, they were put in by the Democratic party, not by the Republicans; and it would be a shame to see it here as a partisan matter. The second reason that has been represented to me as to why we have not put this in already in the State relates to the fact that we already have a tax credit on the books and that tax credit makes it possible for the lower income people to declare a certain amount on their state income tax in order for them to not feel the bad effect of this.

I have a chart that I know will be very difficult for everyone to see at great length, and I'd be more than happy for you to see it closer. You may be able to see this green line on the chart; that's the distribution of family incomes in this State. You'll notice that the lower-income group doesn't tend to pay very much of this tax, partly because they don't make enough money to pay any tax. And here is the large middle-income group; the top of this line goes up to about \$20,000. And then of course as the income goes up, the line starts down because it is a regressive tax.

All right, the blue section of this chart is the tax credit that is given by this State. You will notice that, sure enough, the people up to about \$5,000 get such a nice tax credit

that they actually have in effect a negative income tax, in compensation for the sales tax. But that large group of our population between \$5,000 and \$20,000 income does not get such benefits. The benefit of the tax credit drops very rapidly; the tax continues high and they pay, and they pay a lot because they pay a lot on food and drugs. I submit to you that also a large number of the people in that lower end of the group do not in fact file income tax returns. The best information I could get was that 72 percent of the people who are eligible for that tax credit take it. It is not known exactly how they distribute on the income level because the tax agency did not have that information. But it is apparent and probable--let me assert this without real evidence, and I'm sure you will recognize that it is probably true--that those people on the poor end of the scale are more likely to be the ones who don't know they can take that tax credit and therefore don't take it.

So that the tax credit system doesn't really solve the problem. What will solve the problem is for us here and now to recognize the seriousness of this matter and to eliminate the 4-percent tax on food and drugs. Now, if we do that we must be aware of how serious a step it is. The State at the present time, according to the tax foundation, gets somewhere in the neighborhood of \$50-\$55 million from the 4-percent tax on food and drugs. That's a lot of money. In this particular amendment, I ask for you to support domestic consumption and prescription drugs, and the best information I can get from the State is that that's around \$40 million worth of tax, and from the tax foundation that it's somewhere in the ballpark of \$37 million or \$38 million. So we are talking about a large amount of money that the State would not get in revenues.

I think the urgency of the matter is enough for us to do it anyway, but let me suggest what would probably have to happen. One is that the legislature in its next session may have to raise the other part of the gross income tax to 5 percent to offset what they'd lose on food and drugs; and we need to understand that that is a possibility if we pass this measure. Another thing is that they might have to adjust the income tax to take up the slack because of the money that's lost, and we must understand that that is a possibility if we pass this measure. And third--and very unlikely in these days of pressure upon our legislature--they may have to absorb this in the growth of the State and not expand other programs, not increase certain other costs that there will be great pressures upon them to increase. We should be aware that that is, however, another possibility if we indeed pass this measure.

One final point that I would like to make--and Mr. Chairman, I would like to speak last--this matter did not come up before the taxation and finance committee, and I'm frankly not sure why. I did not push it because I intentionally wanted to bring it to all your attention and not try to deal with the matter in the committee. And that is a fault--I stand at fault for that, and not the chairman of the committee. The chairman had way more than enough to deal with, as you know from the grueling 2 days that we've had here, and I would not want that to be a factor in your consideration and humbly ask that you not make it so. In any case, I'm sure there will be lots of other people who have things to say on this matter. I ask your serious consideration.

CHAIRMAN: Thank you, Delegate Barr. Delegate Miller.

DELEGATE MILLER: Mr. Chairman, I rise to speak in favor of the amendment. I come from a section, again, that has a large segment of older people--I know that they're in all districts in the State--and these people do not have the chance to have their wages raised, they can't bargain for higher income and so on. Many of them, too, are dependent on medicine and will be to the end of their days. Just last week I had one of these constituents appeal to me; she wished something could be done on the taxes on medicine. With inflation and the rising cost of food for these same senior citizens, they are hard-pressed. Since this is a rising element in the population in this State, it would be a big relief to a lot of them. Their social security payments are limited in many cases. So this would be of great value and help to the older people of the State.

CHAIRMAN: Thank you, Delegate Miller. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I rise to speak against the amendment. Delegate Barr is correct, there was no discussion in the committee; but I might add further that at the public hearing on this particular proposal--at which time it was distributed to the press and others--nobody came to speak on the issue. So as a result the committee did not, in fact, take this up.

Without getting into the merits of the issue, I would merely submit that this is a legislative matter. It has been before the legislature in the past and that is where it really belongs. It would be constitutionalizing such words as "sales, transaction, gross income" and "general excise" tax--words that do not appear in the Constitution now. I would recommend a vote against the amendment and leave it up to the legislature.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Ching.

DELEGATE HAUNANI CHING: Reluctantly I rise to speak against this particular amendment. As Delegate Lewis has said, we have not discussed it in our finance and taxation committee. The other thing is that I have been around in government for a while, and there are all kinds of areas that need tax reform. Before we start going from the frying pan into the fire, I think we have to have more discussion. We did not have any testimony relating to this particular area. We don't know exactly what the ramifications will be. It sounds good, I am for it--but not here. I think this is an issue that belongs in the legislature to work out with the budget and finance department because they know how the total picture of our State looks. We here as convention delegates have not been privy to all the kinds of information and data and analysis that they have. And it would be unfortunate for us to vote for an amendment like this where on the one hand we're trying to do good and on the other hand we don't know what the total ramifications will be. So I ask my fellow delegates--this is a sexy idea that has been a Republican idea for the last 20 years, but let's be patient and work through the legislative system and do it right.

CHAIRMAN: Thank you, Delegate Ching. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I speak for the amendment. And let the record show that I am not a Republican. At first I was against having any kind of an amendment like this because the first argument that comes up is if we cut out the 4-percent tax on food and drugs, then the tourists that come to Hawaii are going to get a break and that's not right; we should get their money since we don't have a hotel room tax. But now that this has been taken care of--where it will be on food purchased for domestic preparation and consumption--I can live with this and therefore speak for it.

CHAIRMAN: Thank you, Delegate Crozier.

DELEGATE HAUNANI CHING: Mr. Chairman, can I speak again on this particular issue?

CHAIRMAN: Of course, this will be the last time.

DELEGATE HAUNANI CHING: The other thing that I'd like to bring out, which Delegate Crozier mentioned and Delegate Barr mentioned, there is no such thing as a domestic tax and commercial paying for it--because that can be ruled unconstitutional, too. For those of you who are not familiar, there was a hotel room tax bill that covered hotel rooms and only restaurants in hotels. Now we got an opinion on that particular section that ruled it unconstitutional, and that particular bill was referred to as the "saimin bill," because when you put a tax on restaurants, all restaurants throughout the State must be included, not only restaurants in one particular area. So you cannot give an exemption on an excise tax for only domestic, without considering commercial. And I doubt very much if this could even come about.

CHAIRMAN: Thank you, Delegate Ching. Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I wish to amend the amendment on line 4, to delete the semicolon after the word "drugs" and insert "for those citizens 65 years of age and older."

DELEGATE RACHEL LEE: I second that motion.

CHAIRMAN: It has been moved and seconded that we amend amendment J4 to Committee Proposal No. 14 at line 4 by inserting the words "for those citizens 65 years of age and older." Delegate Souki.

DELEGATE SOUKI: First of all, with reference to those who use the term "sexy,"

I wish to make it a little sexier--if I can use that word in a very general sense. I believe, as some other delegates have stated, that senior citizens are in need of this kind of relief. We have here in the State over 30,000 senior citizens who are at, near or below the poverty guideline. And to provide for them the basics in food and drug savings from the 4-percent tax would be a tremendous relief. And I think we would be showing good faith if we included this amendment, in keeping pace with the previous amendment that we made in the Constitution--that we're going to be taking, hopefully, to the public for their ratification--to provide for the economic security of senior citizens. So therefore, Mr. Chairman and fellow delegates, I hope that you will look at this in a very generous and wise fashion.

CHAIRMAN: Thank you, Delegate Souki. Delegate Lee.

DELEGATE RACHEL LEE: Mr. Chairman, I had originally submitted a proposal to delete excise tax from food, drugs and medical supplies to the public health and welfare committee, and I understood that it was filed. Now I'm delighted that it's come back to life.

Without sounding redundant, I would like to say again that these elderly people are in urgent need of help. These people are, unlike young people, unable to go out and take part-time jobs to subsidize their meager income. Remember that these people are receiving social security benefits which are piddling amounts. These people were working during times when wages were very low. Therefore to meet the standard of living with today's high costs is most difficult. We must heed their cry for help. So please, fellow delegates, I urge you to support this.

CHAIRMAN: Thank you, Delegate Lee. Delegate Barr.

DELEGATE BARR: I am reluctantly rising to speak against the particular amendment that has been offered. Not because I do not want this to apply to old people--I do indeed. But I think those people whose incomes are on the low side who are only 64 or 63 or 21 also have need of not having to pay this tax as it applies to food and drugs. It may be that the maker of the motion intended that this would somehow make this more acceptable to you. But frankly I can't believe it's unacceptable to you in the form it's in. I would hate to put that amendment in for such a purpose.

CHAIRMAN: Thank you, Delegate Barr. Delegate Fushikoshi.

DELEGATE FUSHIKOSHI: Mr. Chairman, I would like to speak against this amendment to the amendment. Basically, we have had many senior citizens who did come to our public health and welfare committee and testify on this particular reduction of that tax. And their concern was more on the basis that it was only small amounts and what they were looking for was bigger things, especially on fixed incomes; they were more concerned about that. In the testimonies that we had, they said that they were not concerned about that tax. Therefore, I'm against this amendment.

CHAIRMAN: Thank you, Delegate Fushikoshi. Is there further discussion? Delegate McCall.

DELEGATE McCALL: I wasn't going to speak again because I don't like to speak against popular issues, but I'm speaking against the motion. Primarily because no one else mentioned the impossibility of limiting a tax like that just to the elderly. I'm sure you all know the experiences with ship's service stores and this sort of thing where people go to buy their materials tax-free from those types of organizations. I'm sure every grandmother in the family would be the one who would have to buy all the food and all the drugs for the family if we had this sort of thing.

CHAIRMAN: Thank you, Delegate McCall. If there is no further discussion, Delegate Souki, do you wish to speak?

DELEGATE SOUKI: Mr. Chairman, I just wish to alert the members here that in effect senior citizens throughout the State--and I say this for a fact because I worked with them--look at the elimination of the 4-percent tax on food and drugs as the highest priority. When they were here at public hearings, they were looking for the big bird--for a form of economic security. However, from the history of this Convention--in its wisdom it has not provided senior citizens economic security, as it felt this is more deserving of

consideration in the legislature. But at no time--not at any time do senior citizens think that the waiver of the 4-percent tax is not a high priority.

I'd also like to mention, as to the previous maker of the amendment who said that he would like to see this across the board and that I provided this amendment to make it more palatable, that is not so. The reason this amendment was made is because I believe that citizens 65 and older are those in the most need. With the relatively limited revenue that we have, we've got to make priorities. And in making priorities, we look at the group in our socio-economic system that needs the most help. And the group--and I think we will all agree, however you vote on this amendment--the group that needs the most assistance is the 65 and older, especially in the area of drugs. So therefore, please consider this amendment, not as the basis for a compromise of the 4-percent tax but as the basis for a more deserving amendment.

CHAIRMAN: Thank you, Delegate Souki. The question on the floor is to amend amendment J4 to Committee Proposal No. 14 by inserting in line 4, after "drugs," the words "for those citizens 65 years of age and older." All those in favor of the amendment to the amendment, please raise your hand. All those opposed? The noes have it, and the amendment to the amendment fails. The question on the floor remains amendment J4. Delegate Pulham.

DELEGATE PULHAM: Mr. Chairman, I would like to speak in favor of this amendment. I, hopefully, very seldom get upset. But I'm upset at the moment. A delegate a minute ago stated that she had put in a proposal which the chairman of the committee and an influential member of that committee said never saw the light of day. I have before me Proposal No. 278, submitted on 7/18/78 by this delegate, which addresses the same subject and, yes, it too never saw the light of day. Now that disturbs me--

DELEGATE OKAMURA: Point of order, Mr. Chairman.

DELEGATE PULHAM: I am speaking for this amendment, I stated that--

DELEGATE OKAMURA: Point of order, Mr. Chairman.

CHAIRMAN: Just a moment, Delegate Pulham. State your point.

DELEGATE OKAMURA: I believe that Robert's Rules states that you're not supposed to refer to anything that happens in the committee's deliberations.

CHAIRMAN: Your point is well taken. However--

DELEGATE BLEAN: Point of order, Mr. Chairman. He's referring to something that didn't take place in the committee.

CHAIRMAN: Perhaps we can keep everyone happy, Delegate Pulham, by confining your remarks to the question, and minimize your reference to the activities of the tax and finance committee.

DELEGATE PULHAM: Mr. Chairman, I believe--and you may correct me if I'm wrong--did these people not, moments ago, make these statements on the floor of this body? I'm not talking about what happened in the committee--the statements were made here. A delegate sitting over there referred to her proposal, I have mine in front of me--that is a matter of record.

I am speaking for this proposal because it's a good one--I'm talking about the amendment that's before us now. Now Delegate Barr has outlined, if I may use the delegate's name, the problems that we're going to confront. And I submit to you that this is true--we are going to. Also, a lot of partisan political elements have been injected here. I know there's enough of that going on in the hallways but I don't think we need it on the floor of this body, because we are all nonpartisan delegates to this Convention. And I would submit to you that that's what we ought to act like.

This is not a partisan issue. We're talking about a very crucial issue for the citizens of the State of Hawaii. And that's really all I'm trying to say--let's judge this on its merits. I am truly sorry that it was not taken up in committee; I think it should have

had its day in court. But it did not and we have to try to do justice to it here and now. So I think we should deliberate on this thing, and I'm asking you to pass this amendment.

CHAIRMAN: Thank you, Delegate Pulham. Delegate Kono.

DELEGATE KONO: Mr. Chairman, I rise to speak for the motion. I'm rather surprised that this--if in fact it is true--that this would be a Republican proposal. I think this is something extremely democratic in nature if, as I understand it, the Democratic party in Hawaii is for the working man and for the poor and disenfranchised. I may be missing the boat on this--I've wondered for the past 10 years why the State of Hawaii continues to impose a 4-percent tax on food and drugs, whereas many other states have taken a more progressive tack and eliminated this 4-percent tax.

I do understand that it is a legislative measure; however, surprisingly enough the legislature has not acted upon it. I think, therefore, that it does fall under the purview of the constitutional convention. I do think it would be a very progressive and a very helpful measure to the majority of the people living in this State. In my opinion, and according to the studies that I have read on it, it would definitely help people of low income and older people. The other thing that Delegate Barr had mentioned--it might require a 1-percent increase in the general excise tax; according to the figures I have, it would result in only about a half-percent increase in the general excise tax, necessary to cover the \$40 million. I would urge all delegates to vote for this amendment.

CHAIRMAN: Thank you, Delegate Kono. Delegate Hirata.

DELEGATE HIRATA: Mr. Chairman, I rise to speak against this amendment. Let me preface my statements with some remarks of personal privilege. I believe that a constitution should set forth the basic principles of formal organization known as state government, and this document should--

DELEGATE HALE: Mr. President, I object. Point of order.

CHAIRMAN: The objection has been noted. However, the Chair has allowed several delegates to preface their remarks--including yourself, Delegate Hale. So, Delegate Hirata, please proceed, but get to the question very quickly.

DELEGATE HIRATA: Okay. This document should be short, concise and not cluttered with needless complicated formulas which will complicate this constitutional structure and not allow government to react with sufficient flexibility in times of crisis.

I believe that each law-making body with its technical expertise is then responsible for making decisions and developing the specific. I believe that our job here is to lay the cornerstones of our governmental system, not to provide all the specificity in detail. I believe that we are beginning to act worse than state legislators that many here have chastised as being nearsighted and bureaucratic.

Mr. Chairman, I rise to speak against this measure. Some people have stated that the legislature has not taken this matter up. In 1976 a bill was introduced in the house of representatives to exclude elderly citizens from this 4-percent food and drug tax. What happened was that the bill went through committee and there was great fear that to exclude elderly citizens from this tax greatly eroded the tax base of this State. Instead what was legislated was a tax credit for elderly citizens. My fellow delegates, if we do adopt this, I would feel very scared; I believe it would jeopardize the State's economy. With this, I ask my fellow colleagues to vote down this amendment.

CHAIRMAN: Thank you, Delegate Hirata. Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I speak against this amendment, because of the very same problems that the movant explained in his opening remarks. I am afraid that if this is included in the Constitution, our legislature will be forced, as was mentioned earlier, to look for a source of additional revenues. I think we ought to keep this in mind as we act on this particular amendment.

Secondly, if taxes are not increased to meet this great loss of revenues, estimated

anywhere from \$37 to \$55 million, there has to be a shift of emphasis in various programs. The shift will be of a lessening nature, and there have to be some programs that will be good. These are the things you have to keep in mind as we examine this issue and vote as individual delegates. I therefore oppose this amendment.

CHAIRMAN: Thank you, Delegate Taira. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I would like to speak for the amendment. My first reaction when I saw this amendment was that it's a legislative matter; and I felt that possibly this was the kind of thing that I have objected to other times that should be done by the legislature. But having heard a member presently, who is retiring, say that it is a legislative matter and knowing that the legislature hasn't done anything about it, and being a Democrat also, I would like to add my voice to the amendment.

I'd like to also say that a previous delegate said that the proposal scares him. I would like to say that many of the things we have passed in this Constitutional Convention so far scare me. I'm glad that somebody else is being scared too, now. I would say that this would be probably one of the most important things that we could pass and put before the people to enable them to vote favorably upon all the other issues, including all the issues that we have voted upon this morning--to enable this Constitution and these amendments to be accepted by the people. I urge you to put this on the ballot and vote favorably on this amendment.

CHAIRMAN: Thank you, Delegate Hale. Delegate Goodenow.

DELEGATE GOODENOW: Mr. Chairman, I would like to rise on behalf of the grandmothers doing the shopping. I have taught many units on the family, and today's families are known as what we call "nuclear" or else "global." So I would like to bring to your attention that this is probably why we find waiting lists to get into nursing homes, retirement complexes and that sort of thing.

I would also like to say that the grandmother usually lives so far away that she would spend all her social security money traveling to do the family shopping for her children, most likely all over the world.

CHAIRMAN: Thank you, Delegate Goodenow. Delegate Shon.

DELEGATE SHON: I have a question for the mover.

CHAIRMAN: Ask your question.

DELEGATE SHON: As I read this, the legislature could either narrowly or broadly define "food and drugs," which could affect the amount of money that is eliminated from the revenues--or increased. So I guess the question is, that this approximately \$40 million--could it not be considerably less if the legislature defined "food and drugs" rather narrowly?

CHAIRMAN: Thank you, Delegate Shon. Would the movant care to respond to that question?

DELEGATE BARR: Mr. Chairman, I would be glad to respond to that question if it doesn't count as my last time to speak.

CHAIRMAN: No, it won't.

DELEGATE BARR: Yes, indeed the complete intent of the provision is to allow the legislature to either narrowly or broadly define it, because what is and what isn't domestic use is an important matter. In fact, I'm going to address this in my closing remarks. However, I caution the delegate and all the rest of the delegates who might wonder the same thing, that you shouldn't try to rationalize support of this by saying--well, since it will only be \$30 million instead of \$40 million, it's okay. We are giving the legislature a problem, and we should not apologize for that. We should do it because we know it's right to do. And therefore the amount of money for purposes of our thoughts should be on the high side.

CHAIRMAN: Thank you, Delegate Barr. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against this amendment because I do not believe it will accomplish what I have perceived to be the intent behind it.

The reason I speak against this amendment is that I believe it will be more detrimental to those who are poor and who are elderly if this is passed. Let me explain. This amendment is a broadside exemption of all people who buy food and all people who buy drugs, including--as was mentioned earlier--tourists, visitors and many of us who can afford to pay this tax. One of its weaknesses is that it does not focus in specifically upon those who need the help, which is what I perceive the delegate from Maui was trying to do. It does not focus the exemptions on the needy and those who cannot afford to pay.

It is for this reason that the legislature, rather than making exemptions, has allowed for tax credits and other breaks that equal the amount of taxes that are paid, so that they can target in on those who need the relief most. That would be my first concern, that this provision does not target in on those who should be relieved.

Second, what it does do, however, is that it reduces funds that the legislature is presently receiving. And this reduction in funds, believe me, will affect the services that the poor and the elderly are getting from the State. So instead of solving a problem for those we wish to aid, we may be creating more headaches. For these reasons, I speak against this amendment.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Pulham.

DELEGATE PULHAM: Mr. Chairman, from a calmer standpoint, thank you for your forbearance. As someone said previously, I think we need to look at this because it just plain has merit. I think that as a Convention, we are saying to the legislature--we know we need taxes, we know we need money, but we as a society don't feel that it should come from this particular place--that is, from domestic food and prescription drugs. So from that standpoint, I do think that again we have an obligation; it's not a subject that just came up here. As someone said, it's been kicking around for a great number of years. What it's been waiting for is a group of people, legislative or otherwise, who have the courage to say--this is what we don't want for our citizens, all of them--not special groups, be that as it may. I would ask you to be courageous enough this day to take that step. Thank you.

CHAIRMAN: Thank you, Delegate Pulham. Is there any further discussion? Do other delegates wish to speak before Delegate Barr makes his concluding statements? If not, Delegate Barr.

DELEGATE BARR: Mr. Chairman, I'll try to be brief; however, that may be difficult. There were several matters raised that I need to address. Let me first deal with the question of whether or not it is a legislative matter and why the legislature hasn't done anything about it. The claim I think that I made was not that the legislature never considered it, but that they hadn't eliminated the 4-percent tax on food and drugs, which is factually correct--they have not. Yes, indeed they have considered it, they have considered it several times; it is tempting to say, for every year for as long as I've been here, because it seems like that. As a matter of fact, that's one very good reason to put it in the Constitution, to eliminate it as a political issue.

Now as for the matter of basic structure, I am proposing this as a constitutional amendment exactly because I think it is basic. Human beings on this earth, who must have food and drugs for a decent life and health, should as a matter of basic structure not have them subject to tax. That's my intent. So the exact argument that was given for why it should not be constitutional is the reason you should consider it a constitutional matter. It is basic; it is that important. All right, that's probably sermon enough on that.

Let me try to clarify this thing on domestic use because it has been misleading. Unfortunately, I have the same problem of a diagram that you may not be able to see very well. I have on this diagram a chart of Hawaii and two other states, Michigan and Ohio. Michigan and Ohio both have eliminated the tax on food and drugs. In the left column it shows the percent of tax of people's incomes and then the bottom line shows the income. You'll notice that the low incomes pay a higher percent of their tax. That shows you the regressive nature.

Now I picked Michigan and Ohio for two reasons: one, because it was the Democratic party in both cases that put it in, and I wanted to emphasize that this has been a Democratic issue in every other state in this country; secondly, those two states, you'll notice, do not have the exact same percentage, and that's because their state legislatures define differently what it means to have domestic use. Domestic use does not include restaurants at all. That's the specific reason for putting domestic in--so that it doesn't, even for locals. In other words, this isn't a local versus tourist thing; it's domestic versus away from the home. So that even if we go out to eat at a restaurant and we're local, we belong here, we still pay the tax just as the tourists do.

The difference in the case of Michigan and Ohio is the way they treat fast-food stores. In the case of Michigan, if the fast-food purchase is taken home, they don't pay the tax. But if it's eaten on the premises, they pay it. So if you go to McDonald's and eat there, you pay the tax; you go to McDonald's, get in your car and drive off, you don't pay the tax. In Ohio, they said--hogwash to that, let's get it both ways--and so when you go to McDonald's in Ohio, you pay it, period--regardless of whether you eat there or at home. That's the power the legislature would have and the difference it could make.

Now, the only way that tourists would not pay it is if, as a matter of fact, they were here for long enough to get a condominium or set up shop in a residence, and bought food at the grocery stores and took it home. I admit that we're not getting them, and it would be nice to get them, but we wouldn't get them with a hotel room tax anyway, would we. And so I think that we shouldn't really be thinking in those terms and should consider that even the rich, as a matter of fact, ought not to have that tax on food and drugs. Let's get them another way. But let's have everyone able to buy the food, to buy the drugs, without having to pay a tax on them. That's the intent of this measure, and it is basic, it is constitutional. Thank you very much.

CHAIRMAN: Thank you, Delegate Barr. The question on the floor is to add a new section to Committee Proposal No. 14, "Certain Taxation of Food and Drugs Prohibited."

DELEGATE BLEAN: Mr. Chairman, I'd like to have a roll-call vote.

CHAIRMAN: Roll call has been requested. Are there 10 seconds? There are 10 seconds. Mr. Clerk, will you read the roll.

Roll call being in order, the motion to amend Committee Proposal No. 14 by Amendment No. J4 failed to carry by a vote of 32 ayes, 46 noes and 24 excused; with Delegates Barnes, Barr, Blake, Blean, Campbell, Chu, Crozier, Dyer, Eastvold, Fernandes Salling, Goodenow, Hale, Hamilton, Hanaike, Harris, Hoe, Hornick, Dennis Ihara, Kimball, Kono, Lacy, Rachel Lee, Miller, Nakamura, Pulham, Shon, Souki, Sutton, Takemoto, Takitani, Uyehara and Wurdeman voting aye; Delegates Alcon, Barnard, Calvin Ching, Laura Ching, Haunani Ching, Chung, de Costa, Fukunaga, Fushikoshi, Hagino, Hino, Hirata, Hokama, Les Ihara, Teruo Ihara, Ikeda, Iwamoto, Izu, Kaito, Kojima, Ledward, Marion Lee, Lewis, McCall, Nishimoto, Nozaki, Odanaka, Okamura, Paty, Penebacker, Peterson, Sakima, Sasaki, Shinno, Silva, Stone, Taira, Takahashi, Takehara, Tam, Villaverde, Waihee, Weatherwax, Yamashita, Yoshimura and Chairman Ishikawa voting no; and Delegates Anae, Andrews, Burgess, Cabral, Chang, Donald Ching, Chong, Chun, De Soto, DiBianco, Ellis, Fujimoto, Funakoshi, Hashimoto, Hayashida, Hironaka, Kaapu, Liu, Marumoto, Ontai, O'Toole, Stegmaier, Sterling and Tamayori being excused.

CHAIRMAN: The noes have it. The amendment fails. At this point, the Chair notes that we have completed consideration of all amendments. Delegate Lewis.

DELEGATE LEWIS: Mr. Chairman, I move that we rise and report that the Committee of the Whole has adopted amendments A2, B2, C1, E2 and J1 to Committee Proposal No. 14 and that after the necessary copies have been printed and distributed, we recommend that the amendments be adopted by the Convention and after their adoption, that Committee Proposal No. 14 as amended be adopted on Second Reading.

DELEGATE SASAKI: Second the motion.

CHAIRMAN: It is moved and seconded that we rise and report as stated. All those in favor, say aye. All those opposed? The ayes have it, the motion is carried.

At 6:30 p.m. the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on

BILL OF RIGHTS

Committee Proposal No. 15

(Article I)

Chairman: DELEGATE KEKOA KAAPU

Friday, September 8, 1978 • Afternoon Session

The Committee of the Whole was called to order at 4:49 p.m.

Delegate Kekoa Kaapu presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The Convention has referred Committee Proposal No. 15 to this Committee of the Whole for consideration. In addition to the committee proposal, we have a number of proposed amendments to consider. We'll arrange the proposed amendments in the following sequence. The amendment by Delegate Hale entitled "Right to Know" beginning, "The people shall have access..." will be Amendment No. 1. Next the amendment entitled "People's Right to Know" introduced by Delegate Villaverde--

DELEGATE VILLAVERDE: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Villaverde.

DELEGATE VILLAVERDE: I stand to make a request to withdraw my proposal, being that both Delegate Hale's and mine are exactly the same.

CHAIRMAN: Thank you, Delegate Villaverde. Please withdraw Delegate Villaverde's amendment. Next would be the one introduced by Delegate Barnes entitled "Access to Public Records," which will be Amendment No. 2. Take next the proposal introduced by Delegate Tam entitled "Right to Privacy." That would be Amendment No. 3. Next in order the amendment entitled "Bail, Excessive Punishment," introduced by Delegate Penebacker.

DELEGATE PENEBACKER: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Penebacker.

DELEGATE PENEBACKER: At this time, with a sad heart and after due consideration, I'd like to withdraw this amendment.

CHAIRMAN: Thank you, Delegate Penebacker. Please withdraw the amendment entitled "Bail, Excessive Punishment" and put in its place the amendment also entitled "Bail, Excessive Punishment" introduced by Delegate Tam. That should be Amendment No. 4.

DELEGATE HALE: Point of inquiry.

CHAIRMAN: Delegate Hale, state your point.

DELEGATE HALE: If you'll notice in the right-hand corner, they now have A, B, C, D, E. If you could announce it that way, it would be easier.

CHAIRMAN: Thank you for your point. We attempted to do that and found that it confused the issue considerably. Numerical lettering does not relate to any order which the Chair and the committee chairman had chosen to organize. I think it would be better to follow this sequence.

DELEGATE HALE: My point is that when you point them out to us, to use these so we can find them.

CHAIRMAN: Delegate Hale, we will use that designation if it helps you to locate it. At the upper right-hand corner of Delegate Tam's amendment entitled "Bail, Excessive Punishment," please note the letter B. Let's next take the amendment by Delegate Penebacker entitled "Rights of Accused." That would be Amendment No. 5. If anyone doesn't have the proposed amendment, please indicate so the clerk--so that it may be delivered to you. Let's go next to the amendment, also entitled "Rights of Accused," by Delegate Tam. That should be Amendment No. 6--Delegate McCall.

DELEGATE McCALL: Mr. Chairman, we seem to have two "Rights of Accused," both by Delegate Tam.

DELEGATE TAM: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Tam.

DELEGATE TAM: Mr. Chairman, to facilitate the order, there are two "Rights of Accused" that I submitted. I would ask that the one designated with the letter A be taken first. It's the amendment with a supplemental "Exhibit 1" in back. I ask that that be taken as No. 6. Then the second one, also designated "Rights of Accused," be made No. 7.

CHAIRMAN: Delegate Tam, do you have any reason--is there any difficulty you feel would be encountered by taking them in the order the Chair suggests? Since it was in consultation with the committee chairman, it appeared that the order was to go from the general to the specific; it would be easier in terms of debate to do it that way. But if there is some point relative to the nature of your amendment, please so state.

DELEGATE TAM: I think it would clarify things--if we did go with the one marked A first and then to the general one without any letter.

CHAIRMAN: We'll take that under advisement. Delegate Weatherwax.

DELEGATE WEATHERWAX: We have no objection to the order that was stated.

CHAIRMAN: We will now take as No. 6 the amendment entitled "Rights of Accused," which has two pages and is distinguished by the last words, "for more than thirty days." That would be Amendment No. 6. Then No. 7 would be Delegate Tam's other amendment, which is only one page and does not contain the letter A. Next in order is the amendment entitled "Grand Jury Counsel," introduced also by Delegate Tam, with the letter C in the upper right-hand corner. That should be designated Amendment No. 8. Next, Amendment No. 9 is entitled "Insanity Defense," introduced by Delegate Tam as well. It is the only one under that title. Are there any questions concerning the numerical designations to the amendments being considered? Delegate Shon.

DELEGATE SHON: I have another amendment by Delegate Penebacker. Is that withdrawn?

CHAIRMAN: Would you describe it.

DELEGATE SHON: On punishment by death penalty.

CHAIRMAN: He regretfully withdrew it. Any other questions? If there are no further questions, the order for consideration of each proposed amendment will be followed. The Chair requests as a courtesy that delegates who have been assigned the floor state which side they are speaking on before they begin debating. Delegates will be allowed to speak for 10 minutes the first time, for 5 minutes the second time. Delegates will not be allowed to yield any of their time to another delegate. The mover of the primary amendment may request that he be allowed to speak last in debate. Any frivolous or dilatory motions calling for a recess or roll-call vote will be declared out of order subject to an appeal. The Chair will attempt to maintain a certain sense of good humor and generosity in conducting the meeting and the principles which are on the back of our rule cards, which call for courtesy to all, justice to all, take one thing at a time, the rule of the majority will prevail while the rights of the minority be respected and there will be partiality to none.

I will now call upon the chairman of the Committee on Bill of Rights, Suffrage and Elections to give us a summary of the committee proposal. The Chair recognizes Delegate Weatherwax.

DELEGATE WEATHERWAX: Mr. Chairman, in light of the time and the necessity for brevity, I will just point out to the delegates that the rationale of the committee is contained in Standing Committee Report No. 69, and that we get on with the amendments.

CHAIRMAN: Okay. The Chair now asks if there is any further discussion from the minority view on the committee proposal as such. If not, we will go to Amendment No. 1. No discussion? The Chair recognizes Delegate Hale.

DELEGATE HALE: Mr. Chairman, I would like to move to amend Committee Proposal No. 15 by adding a new section, "Right to Know," as written in Amendment No. 1.

DELEGATE VILLAVERDE: Second.

CHAIRMAN: It has been moved and seconded that we amend Committee Proposal No. 15 in accordance with the amendment entitled "Right to Know." The Chair would like to suggest and ask that the issue be divided; so we will take up first: "The people shall have access to all government records and proceedings in the absence of a proven and compelling state interest" and take up secondly: "...journalists shall not be compelled to divulge their confidential sources of information."

Is there any objection, Delegate Hale, to taking this separately? The Chair recognizes Delegate Hale to speak first upon the first portion of the division.

DELEGATE HALE: Can we do it the other way around?

CHAIRMAN: No problem. If it meets with your desires, we will take the second part first and speak to the journalists' right to confidentiality of sources.

DELEGATE HALE: Inasmuch as there is another amendment on access to public records and perhaps that delegate will want to speak for this, I think it would be better if we discussed journalists not being compelled to divulge their confidential sources of information.

I'd like to say that I for one do not believe it's fair for journalists to have to go to jail because they refuse to divulge their sources. If a reporter does refuse--as with Matt Levi of a local television station--he is subject to jail. If it were not for Carl Bernstein and Bob Woodward and the Washington Post, the Watergate story would not have been broken. The only way a journalist has to get to the bottom of important stories very often is to rely on informers. And if in the interest of exposing crime a reporter is willing to take the risk of libel suits by not revealing his or her sources, this same person should not also have to be jailed for a sincere conviction.

This proposal would give a reporter a constitutional right not to be required to reveal his or her sources. In this way the public interest is served. A free press is the basis of a free society. This proposal would only help that free press to survive. An example of this is what recently happened in the state of New Jersey. A reporter there was in jail until recently because of his story on a hospital fraud. His investigation reopened the case and started a criminal investigation. However, because he would not reveal his sources he was put in jail and The New York Times was fined. Other examples of the investigation that resulted in the disclosure of the "Pentagon Papers" and the break-in of Daniel Ellsberg's psychiatrist's office by the federal government.

The County of Hawaii has realized the seriousness of this proposal and has passed an amendment to its county charter providing for this protection to journalists. We believe that this protection should be provided on a statewide basis. I'd just like to quote a little bit from a letter by Marcia Reynolds, who is the president of the Big Island press club and also the chairman of the media committee that is promoting this proposal: "A democracy can function properly only if the people have access to their government and if the people can be kept informed through a free press."

"The Hawaii Constitution is the proper place for a 'Right to Know' amendment because

both the State and United States Constitutions address themselves to open and free government and freedom of the press. Both documents recognize that open and free government and freedom of the press go hand-in-hand."

I urge your favorable consideration of this, and I would also like to reserve the right to speak last to answer any arguments that come up in the meantime.

CHAIRMAN: Thank you, Delegate Hale. Is there further discussion? Delegate Barr.

DELEGATE BARR: Mr. Chairman, your delegate from the beginning of the forest would like to speak very strongly in favor of this amendment. In my sordid past I was a news reporter both for a newspaper and for a series of magazines. While I was never threatened with winning the Nobel prize of uncovering any great truths that would change the course of history, I did cover political events of one kind or another and discovered that political people are inclined often to want to know--where did you find that out? And it was a very important thing to be able to maintain as an ethical standard that sources of information were confidential.

Once having done that, Mr. Chairman, it was amazing--once your reputation was established as a reporter who did not reveal sources--how many people were then willing to talk to you and give you information that as a reporter it was very handy for you to have. While I know there are dramatic cases like Matt Levi and others that could be referenced, the day-to-day life of a reporter would be, I think, a bit more pleasant knowing that there was a constitutional premise upon which to base that confidentiality, so that he might have opportunities to develop new sources and do his job representing the people of our Islands and of this country. So I speak very strongly in favor of this provision.

CHAIRMAN: Thank you, Delegate Barr. The Chair recognizes Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, your delegate from the windward side, home of the Portuguese man-of-war, rises to speak in favor of this amendment. It is true that if we were to pass this type of an amendment, there's a danger that there will be irresponsibility among some reporters who--I suppose the danger is--could make up statements and attribute them to confidential sources knowing they couldn't be brought to task for these remarks because nobody could force them to divulge their confidential sources. But I think that that's highly unlikely. We also have to keep in mind that there's nothing in this provision that says you can't sue if a newspaper or a reporter comes out with a defamatory, slanderous or libelous remark. All it says is that we cannot force people to go to jail for printing stories and refusing to divulge their sources.

It's something that the press has been asking for a long time. Although it does put a few members of the press into a privileged status, I would submit that freedom of the press is one of the greatest privileges that democracy has and it's a small price to pay for the freedom of expression that we get through our news sources.

CHAIRMAN: Thank you, Delegate DiBianco. Is there further discussion? The Chair recognizes Delegate Villaverde.

DELEGATE VILLAVERDE: Mr. Chairman, I speak in favor of this amendment. Especially, by request--I have been called by several people, including a reporter Marcia Reynolds, as well as Hugh Clark--and they've asked me to attempt to go to bat for this particular amendment. There is some bleeding in my heart even though I spoke against this particular amendment earlier in the committee hearing. For one, I have a press pass, and I am a television news photographer, free-lance, with TV 2, "Eyewitness News" on the Big Island. I cover sports as well as the news, and I also might be involved in a situation such as this--as I've been thinking about since I spoke against it.

I have a prepared statement that has been lifted in different areas, but I'd like to read my statement. The concept that Delegate Hale has talked about, the concept of open and free government and freedom of the press, is applied in the United States Constitution to open and fair trials. Both rights are given equal treatment in the United States Constitution and are meant to function together as part of the total concept of a democracy. Open government and protection of a journalist's confidential sources of information have already been affirmed by the voters of Hawaii county. In 1974, a source-protection law

was placed on the general election ballot in Hawaii county; the voters approved the law by a substantial margin, and it is now a part of the Hawaii county charter. The voters recognized that these two laws properly belong in the Hawaii county charter, which in essence is the county constitution. A county open government meeting proposal was initially rejected by Hawaii county's Charter Review Commission, but the proposal was reconsidered, placed on the ballot and approved by the voters.

Two major elements of that proposed amendment already are incorporated, as separate entities, in the Hawaii county charter. Since the strict open meeting provision was imposed in 1969 and the right of reporters to protect confidential sources was added in 1972, there are no recorded instances of these measures hindering the operation of county government. Big Island residents know more about county government and participate in its decision-making processes because of the general air of openness. Such a similar imposition on state government would similarly benefit the general public.

A source-protection law would not prevent persons who believe they have been libeled or slandered in the media from filing suit. Reporters and their respective news organizations would still be subject to the libel and slander laws. The recent U.S. supreme court decision in the Stanford University case, which allows police to make unannounced searches of newspaper offices, has heightened the need for a source-protection law in Hawaii. The Hawaii senate approved a source-protection measure twice by a 25-0 margin, but the source-protection bill has always failed in the house of representatives. The voters statewide should have an opportunity to voice their opinion on this proposal.

Without the source-protection law, stories are occasionally written by those who do not abide by the ethics codes of journalism. However, it is rare indeed that such stories are printed in legitimate news publications or broadcast on radio or television. There are two main reasons for this. Editors see the unidentified source as a tipster whose information is then checked and confirmed through other sources. The editor or news director will be certain of the legitimacy of the information obtained from the confidential source before allowing it to appear in his publication or be broadcast on his news show. The editor may not require the reporter to tell him the identity of the confidential source, but the editor will be certain that the information from the source is factual before allowing the reporter to use it in a story. In many cases, this means the reporter will verify the information much more thoroughly than he would when the information comes from a non-confidential source who can be held directly accountable for the accuracy of the information given.

The second deterrent to reporters dreaming up sources and writing stories based on wished-for or imaginary information is the reputation the newspaper or broadcaster must maintain in the community. Newspapers, radio stations, magazines and television stations develop reputations either as trustworthy and factual or as those who play fast and loose with the truth. Once a news organization loses the public's trust, it also loses its effectiveness as far as the potential confidential source is concerned. It would not be sensible for a person to come forth with information he hopes will help redress a wrong if he knows when this information is published, the public will automatically doubt its truth due to the bad reputation of the newspaper in which it is published.

This is a source-protection measure and not a reporter-protection device. The person who sees a wrong and feels he cannot give information on it without endangering himself, his family or his job is the person who is protected under such a provision. Maintaining confidential sources has been a longstanding practice among journalists, but the concept has never been secured by law in Hawaii. It is included in the laws of several other states.

If we want to guarantee a responsible press within a free society, then this "Right to Know" amendment should be passed.

CHAIRMAN: Thank you, Delegate Villaverde. The Chair recognizes Delegate Odanaka.

DELEGATE ODANAKA: Mr. Chairman, I support this amendment. I have a feeling that some of the delegates opposing this amendment do agree with its basic premise that reporters should be free to collect the news and that they should be able to use confidential sources in collecting that news.

But opponents don't see a threat to this process. Well, in the August 29 issue of Esquire magazine, the magazine's columnist on law indicated that there is a threat to this procedure and a constitutional amendment such as this is the only protection. I will paraphrase. The author Brill writes about the recent Farber case in New Jersey where a New York Times reporter was put in jail for not allowing a judge to look at his notes to determine if they should be used in a trial. Farber, the reporter, had written a series of articles about murders in a hospital that led to the indictment and trial of a doctor. The doctor's lawyer requested that Farber's notes be used as evidence. Though the judge could have claimed that the New Jersey shield statute would make such action illegal, he instead ordered that he be allowed to view the notes to determine if they were relevant to the trial. Farber, like any good reporter, refused. The New York Times has appealed Farber's contempt conviction on the grounds that his notes are protected by the shield law and the First Amendment. If the judge's order is upheld, it could mean that any time a reporter writes on a crime that goes to trial, his notes could be requested by the judge and possibly turned over to the defense, to the very people and sources who were afraid of it in the first place.

A quote from this article states that "the next time there's a Watergate, defendants like John Mitchell could find out who a 'Deep Throat' was. It's a process that would quickly shut off the supply of future Deep Throats." Brill further quotes Floyd Abrams, who he describes as "probably the best First Amendment lawyer in the country," as saying, "If we lose this, all good reporting is in terrible trouble."

To summarize, reporters now are only as safe as the judiciary wants them to be. Placing this amendment in the Constitution would protect reporters' sources.

CHAIRMAN: Thank you, Delegate Odanaka. The Chair recognizes Delegate Tam.

DELEGATE TAM: Mr. Chairman, I would like to speak in favor of this amendment. I would like to point out that this must be an auspicious moment--the first time that the delegate from the City of Refuge and the delegate from the edge of the forest and the delegate from the home of the man-of-war and the delegate from Hamakua have all been together on one issue. I'd like to add that also together on this issue would be the delegate from the depths of the Valley Isle.

The rationale for acceptance of this particular portion of the amendment is that even though we cannot stop all modes of crime in the State, with a shield law like this we can at least know about them, that they are in fact going on out there, because there are sources who will talk to journalists and not be afraid that in talking to journalists they will then be named. So for that reason, Mr. Chairman, I would speak in favor of this portion of the amendment.

CHAIRMAN: Thank you, Delegate Tam. The Chair recognizes Delegate Hamilton.

DELEGATE HAMILTON: Mr. Chairman, the delegate representing the poor people of Kahala rises to support this amendment. Newspaper reporters have in recent years taken almost as much of a beating as lawyers and much of it I think is unjustified. But the truth of the matter is that a free press is absolutely essential to a democratic society.

Now, the assurance of a free press is a far more complicated problem than is represented by this relatively simple statement; and yet this statement is an appropriate statement of principle to be included in the Constitution, and I shall therefore support it. My only personal complaint about the media, that I've ever had, is that they always quote me accurately and in context.

CHAIRMAN: Thank you, Delegate Hamilton. The Chair recognizes Delegate Shon.

DELEGATE SHON: Mr. Chairman, your delegate from the crime center of Hawaii rises to support this. Quite seriously though, the issue of crime has been brought before us many times, and many constituents have said--can't you do something about it? In many cases we cannot. In many of those cases it is one of those detailed things where a constitution has very little ability to reach out and touch the kinds of activities that are needed to deal with growing crime. But I think this is one of the areas where we can respond to very serious problems: the deterioration of our aloha spirit, of our environment, of our urban areas; that crime is rising, that we need to protect the press

in their efforts to expose crime and to bring it to our attention in the newspapers and on TV. So I urge you very seriously--this is one of the few ways in which we can take a positive step to deal with the problem of crime.

CHAIRMAN: Thank you, Delegate Shon. The Chair with some trepidation calls upon Delegate Barnard to speak.

DELEGATE BARNARD: Mr. Chairman, I also support this amendment for the reasons that have already been given. With your permission, I have a fairly lengthy written statement regarding that portion of Standing Committee Report No. 69 dealing with the journalists' privilege law. The statement is 4 pages long and I don't want to take up the Convention's time reading it. With your permission, I'd like to submit it to the clerk for entry into the journal. It contains rebuttals to the committee report arguments against the shield law.

CHAIRMAN: Thank you very much, Delegate Barnard, it is so noted, and we appreciate your forbearance.

[The following is written testimony as submitted by Delegate Barnard.]

DELEGATE BARNARD: I'd like to express my objections to that portion of Standing Committee Report No. 69 (Bill of Rights, Suffrage and Elections) concerning reasons for opposing a constitutional provision relating to protection of news sources (shield law).

Since such a constitutional law is unprecedented among the 50 states, I can understand the committee's reluctance to be the first state to recommend such a provision in its Bill of Rights, despite expert testimony that the shield law is worthy of constitutional status.

However, it appears to me that Standing Committee Report No. 69 argues beyond the point that a shield law should not be in our State Constitution and implies that it should not even be in the state statutes.

My greatest objection to this portion of the committee report (I concur with most other sections) is the implication that "tipping the scales toward [a] free press" right versus a fair trial right is a dubious move. By federal law, state legislatures are permitted to establish their own standards in this area, and 26 states have chosen to implement some form of shield law. At least one of these states, to my personal knowledge, has a major paper which printed a Pulitzer Prize-winning series of investigative articles (the Nashville Tennessean).

A good newspaper reporter avoids printing potentially libelous or slanderous information to protect the reputation and finances of the publications affected, not to mention his or her job. Some informants may provide information to a reporter only with the understanding that their identities will not be revealed, probably from fear for their lives. A good reporter would not print information from a confidential source if there were any question in his or her mind that the source was reliable or that the information is not in the public interest. A good editor likewise.

Additionally, a good reporter for a high-caliber publication would be willing to go to jail rather than to betray the trust of a reliable confidential source who acted in the public interest. A publication with reporters and editors who did not function at this level would win the distrust of both expert journalistic critics and the general public, and would achieve a bad reputation. In other words, newspapers have inbuilt checks in that they never want to be accused of "poor journalism" or to be sued for libel or slander.

Willingness to face jail rather than to reveal a confidential source must be a basic job qualification for reporters if such sources are to continue coming forward, particularly in the organized-crime arena. There is always the chance of a slip-up, however; there is always the chance that a reporter thought to have the required courage may in the end prove vulnerable. It takes the most courageous of informants to trust the reporter, and it takes the most courageous of reporters to risk imprisonment. I contend that if there is more legal protection, reporters and informants will be more courageous. Therefore, I strongly object to any implications that a shield law should not be enacted in the statutes, if not in the Constitution.

My specific rebuttals to Standing Committee Report No. 69 statements are as follows:

- (1) That an accused should have the right to know his accuser.

A person should not be arrested without sound evidence of guilt obtained through the criminal justice system's investigators.

- (2) That a court of law, rather than reporters, should decide on the innocence or guilt of an individual.

A reporter will never make a direct accusation. The report would say, "According to a reliable source . . ." It is up to the reader to weigh to what extent the report is to be believed. This is where the basic reputation of the publication comes into play. If it's true and in the public interest, it ought to be reported, no matter what.

- (3) That the people have no assurance flagrant reporting will not occur.

Whatever the meaning of the concept "flagrant reporting," I submit that anything "flagrant" usually becomes obvious--if not immediately, then after passage of time.

- (4) That a defendant facing trial has the right to information that may pave the way for acquittal.

If the source is unreliable, the defendant, being innocent, should be able to establish lack of clear guilt. Again, it's the criminal justice system's job. If there was insufficient evidence, there should have been no arrest. Insufficient evidence will lead to an ability on the part of the defender to establish a "reasonable doubt" in the jurors' minds--especially if the defender can attack the reliability and quality of the publication involved.

- (5) That federal constitutional laws could take precedence over a state shield law.

Hopefully, those working for a federal shield law will one day be successful.

- (6) The press has survived well many years without a shield law.

Yes . . . economically. So have crime and corruption.

The power of the media cannot be denied. The public needs more education on the impact the media have on their lives and on their thinking, and how they should evaluate the media messages they receive. Whatever the public believes or doesn't, "you can't fool all of the people all of the time," and the more freedom of information there is, the more chance there is for truth to prevail.

CHAIRMAN: Delegate Chung.

DELEGATE CHUNG: Mr. Chairman, I too want to advocate the amendment submitted by Delegate Hale. I think it's very important that we have this in our Constitution. In fact, I submitted a proposal in the same spirit, the right to know. We all know that with rising white-collar crime and so-called organized crime--particularly white-collar crime--it's very difficult to infiltrate, and the power of the press can be an excellent way of doing it. In fact, most of the cases that have been busted or exposed have been through the press. Therefore, I feel it is important that the press be protected and that we address these needs.

In police work, the most important factor is informers and the informers must be protected. Without informers, it's most difficult to crack the difficult cases. Likewise, I feel that the press needs a lot of support, particularly in Hawaii, as Delegate Shon has pointed out in the rise in crime, which is very familiar. Use of the press--and their cooperation--I feel, is a very vital phase in the overall problem of attacking the rise in the crime problem in Hawaii.

CHAIRMAN: Thank you, Delegate Chung. The Chair recognizes Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, in the case of Caldwell and The New York Times, which was handed down by the United States Supreme Court in 1972, it was decided by the court that newsmen are not protected from compulsory disclosure of their news sources. However, the court in that same decision said that it was possible for lawmakers to fill this void with enactment of appropriate laws. The news people have apparently tried without success to secure enactment of a shield law in this State, and as a result they have appealed to the Constitutional Convention to take action. I believe that the kind of protection the public would get from protecting newsmen requires that we act positively in assuring that this proposal actually does become a reality.

CHAIRMAN: Thank you, Delegate Campbell. The Chair recognizes Delegate de Costa.

DELEGATE DE COSTA: Mr. Chairman, I have a point of information.

CHAIRMAN: State your point, delegate.

DELEGATE DE COSTA: Coming from the Garden Island, in the newspaper there when you want to write something to the people in the letters to the editor, you have to give your name and address. I don't know if it's so here in Honolulu--could anybody tell me if when you write to the papers you have to disclose your name?

CHAIRMAN: The Chair will restate the question as he understands it. Apparently on the Garden Island, people who write to the press must state their name and address--is that correct? And you would like to know if this is true in Honolulu? Is there any delegate who wishes to respond to that, simply to provide the information? Delegate Hale.

DELEGATE HALE: On the Big Island, our paper says that the name and address should be provided, but the paper will not necessarily print them. You can use any kind of pseudonym you want as long as the paper knows who put it in.

CHAIRMAN: Is there anyone who has that information? Delegate de Costa, apparently that information is not available in this body, so the Chair will recognize another delegate to speak.

DELEGATE PETERSON: Mr. Chairman, I just wished to respond to the question.

CHAIRMAN: Delegate Peterson, can you answer the question?

DELEGATE PETERSON: In this paper the name is required, but the name is often withheld by request in certain sensitive matters.

CHAIRMAN: As I understand it, the name is required in order to get your letter published, but sometimes your name is not printed with your letter if you so request. Does that answer your question, Delegate de Costa? Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I rise to speak against the amendment. I do this because I like to think of confidentiality in terms of the real big picture. We're talking here about protecting people in the news media--protecting their sources of information--and I've heard my colleagues talk about this as a good way to fight crime, and so on. I think that's a good point. And yet when I think of the bigger picture, of many people like myself and many others here who are in public office, I feel very strongly that if there is any kind of information given to a news reporter or a radio commentator about me as a public servant, to have such a person protected by constitutional mandate as to the source of whatever information comes out--and if my reputation is hurt, I'd like to face my accuser. It's very simple. And for that reason, as a member of the BORSE committee, I oppose this concept.

I'd like to repeat before all my colleagues on the convention floor my reason for saying that this amendment is not going to be in the best interest of everybody concerned. True, it might make progress in fighting crime; but in the long run, in the big picture, I think we are going to be hurting a lot of individuals who feel that if they are referred to as having done something wrong, they should be able to face their accusers. And nobody should be excused by constitutional mandate or by statute.

CHAIRMAN: Thank you, Delegate Taira. The Chair recognizes Delegate Takemoto.

DELEGATE TAKEMOTO: Mr. Chairman, I also speak against the proposed amendment. So far we have heard quotes from various sources, including Esquire. Well, according to documentation that I have, including one famous reporter, Renata Adler, who writes for The New York Review of Books--she states, in particular on the question of informants and news sources, there are three basic points she makes in stating that it actually has been a great problem in protecting sources, and so on.

One is that--according to her, the first thing is that "[t]he reliance on such sources is turning journalists away from far more important though less romantic sources of inquiry and to facts. The richest such sources with which the fewest reporters seem to bother are documents already published, in particular documents published by the government itself." That's one. Two--she emphasizes that under the rarest circumstances, however, is the understanding of a public situation much enhanced by what anonymous sources say. And three, when she discusses the entire concept of sources and witnesses, she mentions this: "As for witnesses, test after test establishes that they are unreliable in describing fundamentally and in detail what they saw moments ago. Their accuracy declines with time. Yet an investigative reporter's primary resource is the informing witness." And then it goes on to say that what happens is that using sources like that and protecting them will then ultimately end and it has begun to lose its value altogether and to become a positive almost insurmountable obstacle for investigations of all kinds. Based on this sort of analysis, I will have to vote against the amendment.

CHAIRMAN: Thank you, Delegate Takemoto. The Chair recognizes Delegate Villaverde. Do you rise on a point of information?

DELEGATE VILLAVERDE: Point of inquiry--if the delegate--my friend Delegate Taira--would yield to a question?

CHAIRMAN: Please state your question, and I'll see if the delegate will yield.

DELEGATE VILLAVERDE: I previously stated that the Hawaii senate approved a source-protection measure twice by 25 to 0. Now, my question is if this particular amendment here that we are addressing ourselves to is extremely different--or is there any definite conflict with the bill proposed earlier by the senate? Is it the same or different? If you can remember--I don't want to pin you down on this.

CHAIRMAN: The Chair will ask Delegate Taira if he recalls and cares to yield to that question.

DELEGATE TAIRA: Mr. Chairman, because I don't want to mislead this Convention in giving information definitely that the bill would be exactly what this is here--all I know is that that bill has many more paragraphs and many more words than what we have here. So I will have to say that it's not exactly the same.

CHAIRMAN: Thank you, Delegate Taira. Does that answer your question, Delegate Villaverde? The Chair recognizes Delegate Kimball.

DELEGATE KIMBALL: I rise to speak against this amendment. The amendment, as I see it, contains two concepts: the first, the people's right to know, which I'm not against; the second is the journalist's confidential source--against compelling the disclosure of such. I speak against that because, as I see it, it is not a constitutional right but a legal privilege similar to the privilege enjoyed between an attorney and his client, a doctor and his patient or a government investigator and his confidential informant--having 8 years of criminal investigation experience with the federal government and having dealt with numerous confidential informants myself. A problem arises as to the activity and the control over that confidential informant. The federal statutes prohibit the informant from partaking in illegal activity; in my experience, it becomes very difficult with respect to the enforcement of the wagering laws. To have a confidential informant who deals or operates within the law is equally as important as catching the criminal himself because of the principle or doctrine that in future trials the individual accused has the right to cross-examine the witnesses against him. As I said before, this is, I believe, a legal privilege and not a constitutional right.

CHAIRMAN: Thank you, Delegate Kimball. The Chair recognizes Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I'd like to speak against this amendment. I

realize this is a problem for journalists and maybe that's a good thing--that it's a problem. As long as that problem is there, that's some form of check on the journalist. If we remove that check, then they would have an undue leverage on the rest of the community. Right now they are of the highest quality, and I think this check kind of forces them to be of high quality and high character. But if we remove that major check, once they get that undue leverage, they can start to abuse it and the power of the press, or the power of the pen, is unlimited.

CHAIRMAN: Thank you, Delegate Crozier. The Chair recognizes Delegate Penebacker.

DELEGATE PENEBACKER: Mr. Chairman, I am rising to speak against the amendment, for the reason that this morning we debated for an hour and a half or so about the qualifications of a person to be a judge; and there was strong argument against a lay person, a nonattorney, sitting in that capacity and sitting as a judge. In my estimation, Mr. Chairman, I think we put journalists in the same capacity or the same position of acting as judge, jury, prosecutor, etc. I don't think they should be put in that position--be unchecked, and have all this power over the public. Therefore, I speak against this amendment.

CHAIRMAN: Thank you, Delegate Penebacker. Delegate Kojima.

DELEGATE KOJIMA: Mr. Chairman, I speak against the motion. I feel the basic issue here is the rights of the private individual citizen, and his rights need to be protected. He has a right to the pursuit of happiness and liberty. I feel that what is being asked for in this amendment is a special privilege for one small group of people--the press. The press, through its means--radio, newspaper, TV--has a great influence upon the people of the community, and yet they want further protection, a special kind of privilege. To me this looks like license. I feel strongly that the basic issue is protection of the rights of the small person. So I ask the delegates to vote against this amendment.

CHAIRMAN: Thank you, Delegate Kojima. The Chair recognizes Delegate Weatherwax.

DELEGATE WEATHERWAX: Mr. Chairman, I rise to speak against the amendment. I probably will be reechoing some of the previous statements made, but let me kind of quickly summarize. I agree with the statement made by Delegate Kimball that--I think it was the consensus of the committee--that this was more a statutory privilege. I believe that they also--perhaps I may be out of order speaking for the committee, but it was also my observation at the time of the committee meeting--that there is some concern about the power of the press, that they are a very powerful instrument in our society. And the confrontation comes particularly with the Sixth Amendment, where a criminal defendant has a right to face his accuser.

And so you come to a point where there is a confrontation between the press and the law; and unfortunately--and perhaps fortunately I am biased, being a lawyer--I would put my trust in the law and in the judiciary. The question boils down to who watches the watchdog. If the press is allowed to at any time perhaps abuse the privilege, then I believe that we need the court on a case-by-case basis to be able to handle that and determine, particularly in the situation where there is a criminal defendant who has his life on the line who would like to face his accusers.

CHAIRMAN: Thank you, Delegate Weatherwax. Is there any delegate who wishes to speak for the first time on the proposed amendment? If not, the Chair will recognize those delegates who wish to speak for a second time.

DELEGATE ALCON: Point of inquiry, Mr. Chairman.

CHAIRMAN: State your point of inquiry.

DELEGATE ALCON: Does this proposal cover the nine journalists who were arrested in Hilo last week--from getting arrested? For illegal entry.

CHAIRMAN: The question, as I understand your point of inquiry, is whether this particular amendment, if it were in the Constitution, would-- Would anyone care to answer that? The Chair would recognize the movant first.

DELEGATE HALE: No, this would have nothing to do with the journalists arrested on Saturday. This is only in protecting his sources, where he does not want to disclose where he got information.

CHAIRMAN: Thank you. Is there further information any delegate would like to contribute? Delegate Villaverde.

DELEGATE VILLAVERDE: I was asked also to shoot that particular activity, and if I did and I crossed that fence--my agreement with the police and the law enforcement people, as well as the airport, I guess, is to not trespass.

CHAIRMAN: Your answer is that it would not cover either. Delegate Alcon, does that answer your question?

DELEGATE ALCON: Yes.

CHAIRMAN: Is there any other delegate who wishes to speak for or against this amendment? Delegate Ontai.

DELEGATE ONTAI: I'm a delegate speaking for the first time on this subject. I'm in favor of this amendment. All recent polls in the State of Hawaii show that crime is the number 1 concern of the people of Hawaii. Crime, like the weather--we all talk about it all these years, but no one has done much about it. Now is our best opportunity, right this moment. In a few minutes or so, we are to vote on this amendment. Now is the time for us who have been talking about crime to put our money where our mouths are.

This amendment will no doubt expose more criminal activities which are normally suppressed. I see this amendment as doing all good, and I see this amendment as doing no harm. Therefore, I speak for this amendment.

CHAIRMAN: Thank you, Delegate Ontai. Delegate Marumoto.

DELEGATE MARUMOTO: Mr. Chairman, I think we all are impressed when a reporter comes forth with a story exposing corruption in business or government or exposing activity in organized crime. I feel that we could squelch all investigative reporting by not giving reporters sufficient protection. I'm very much in favor of a shield law, and I urge the passage of this amendment.

I think our reporters are generally very intelligent and they are members of a profession that tries to report the news as accurately as possible. They are under tremendous peer pressure to be accurate, to report the facts as they are. They check their sources, recheck them, talk to as many people as possible. So I really feel we owe it to them to give them this protection and give their sources the protection they need.

CHAIRMAN: Thank you, Delegate Marumoto. Delegate Hamilton.

DELEGATE HAMILTON: There has always been, of course, a tension between the Sixth Amendment and the First Amendment, of which this tension here is simply another example. There is a brilliant book--and I'm sorry that I forget the name of the man, a sterling professor of law at Yale, who died not too long ago--dealing at some length with this particular problem--the conflict between the First and Sixth Amendments. And he came to the conclusion, which I think is a valid one, that the only absolute truth about constitutional law is that there is no absolute truth about constitutional law. And so it is considered to have to be a matter of adjudication. Of course there will be questions at times when the rights of the accused have to take precedence. But nevertheless it seems to me that this is an important principle to have in our Constitution.

CHAIRMAN: Thank you, Delegate Hamilton. Any further discussion? The question before us--Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment. First of all, I think we're laboring under a misapprehension. I think that what this will do--No. 1, we've discussed the fact that this is the tension between the First and the Fourth or the Sixth--depending on what constitution you're looking at--Amendments; and what

we have now, I think, is we have protection for the journalist, which is then taken to court and weighed on an individual basis. I think we have to recognize that right now most of the journalists' sources are privileged, and it's only when they directly conflict with a compelling state interest--which in most cases is the fighting of crime--when a prosecutor needs to know exactly what it is or what it takes to bring somebody to justice that the issue arises.

The second incident when this comes up is when a defendant--as is the case in Maryland--needs evidence to fight for his life. So, under our present state of the law, we only have these kinds of tensions arising in the situations that were described by a previous delegate. That's the present state. Lastly, I think that even if we were to change the Hawaii Constitution, I don't think that we would be--my impression is that what we would be doing is merely increasing litigation. Because what would happen if I had a client who was a defendant being tried in the state courts and I needed a source disclosed from a reporter and I couldn't get it, I'd immediately proceed to federal court to assert my client's Sixth Amendment rights, which is the case again that is happening in Maryland. So it seems to me what would happen then is that I'd be in federal court, I'd get the court there to give me the right to compel disclosure, then I'd be back down in federal court for the merits.

Just in the sense of having justice decided all in the same place, I think this type of provision would be premature. At best this ought to be solved by national solution, so this kind of tension between courts does not occur. For these reasons I speak against the amendment.

CHAIRMAN: Thank you, Delegate Waihee. The Chair will ask if there is anyone else wishing to speak for the first time. If not, the Chair recognizes Delegate DiBianco.

DELEGATE DiBIANCO: The tension that everybody is talking about really doesn't exist. The case where this is going to apply is not the criminal case where a criminal defendant seeks information from a news reporter, the news reporter refuses to give it and therefore the criminal defendant is at a loss, because, as the previous speaker pointed out, our due process rights and right to confront our accuser pursuant to the federal Constitution would more than likely mitigate in favor of that reporter having to divulge his information, whether we pass this amendment or not.

What passage of this amendment will do, however, is it will stop the following situation. It will stop the situation, which we've seen in this State, where a news reporter writes a story on organized crime, identifies one or two people as being members of organized crime and then gets sued for defamation because of it. He goes into court, his deposition is taken, he refuses to tell under oath who these sources are and then his newspaper is faced with one or two possibilities: they can either default on the case, in which case the trial goes on just on the issue of damages; or they can pay a substantial settlement and, in short, they can pay off the plaintiff in the defamation case, even though they know full well that the information they printed, they have every reason to believe, is true. It's to stop that kind of extortion that we're trying to support a shield law here.

I think as far as criminal defendants are concerned, their interests are always paramount, the courts have always recognized that their interests are paramount, and this particular proposed amendment here would not in any way interfere with their Sixth Amendment rights. So I would urge its passage.

CHAIRMAN: Thank you, Delegate DiBianco. The Chair recognizes Delegate Tam again.

DELEGATE TAM: Mr. Chairman, I would just like to respond to some of the debate. The reference was made that prosecutors would not like this because we would like to get to the source and thereby prosecute. I would have to disagree with this, Mr. Chairman. Again, the reason is this: if the reporter has to reveal his source, we would not in fact even find out that a crime had been committed. In order to have this information, that in fact there is criminal activity going on, we would yield the possibility of being able to prosecute at every possible time.

Also, there has been reference that when a defendant's rights are on the line,

he would like to face his accuser. As the previous speaker has mentioned, this would not occur. This was not meant to apply in this type of case. In a criminal proceeding, we have to prove that the person is guilty beyond a reasonable doubt, and we have to produce a body to speak on the stand and give direct testimony. So we can't convict on mere accusation alone.

The third and last point regarding--again in the political arena, if a story comes out about a particular politician and he would like to know his accuser--not that this would apply to anyone in this body or any aspiring politician in this body--there is always the action of slander if in fact the information is wrong, the civil action of slander. So that anyone who is--if there is incorrect information about anybody in the paper, they can always take this action against the reporter and his company. Furthermore, the alternative to this is that we could have possible political corruption and no one willing to speak up about it, because if you in fact expose someone who is dealing in an underhanded manner and that person finds out about you, your prospects for a job or for any type of help you may need in the future go down the tubes. So for that reason, Mr. Chairman, I would speak in favor of this portion of the amendment.

CHAIRMAN: Thank you, Delegate Tam. The Chair will declare a 30-second administrative recess.

At 5:55 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:56 p.m.

CHAIRMAN: Delegate Blake, you're recognized.

DELEGATE BLAKE: Mr. Chairman, I speak against the amendment. I found myself in the same predicament that my colleague Delegate Taira found himself in. And I have gone to the press and asked, I would like to know who did this or who said this. And they refused to give me the name. I asked them how I can defend myself and I never did get a satisfactory story. And if you try to answer something in the paper without knowing the source, it just complicates the issue. I've found this in other cases.

It's true that this would be a great help to the police department. And maybe what should happen is that throughout the entire State we should prepare a much larger budget for the police department so they can do their job without finding these kinds of informers. And I'm serious about this. But at the same time, there have been many people hurt; and it's cost a lot of money to go to court, and they've never taken papers for a day in court to be sued. For these reasons, I speak against the amendment.

CHAIRMAN: Thank you, Delegate Blake. The Chair recognizes Delegate Waihee.

DELEGATE WAIHEE: I'd just like to clear a few things up. Mention was made of the fact that by passing this shield law what we're in essence doing would be to stop this type of--what one delegate characterized as extortion. It's my understanding that this really would not do that because the slander suit or the defamation suit would be in the civil court. So when somebody makes a prima facie case out, the opposing party, which in this case would be the newspaper, has to submit the evidence proving the truth of the matter. If they don't want to do that or they can't do that, they obviously lose and have to either pay up or produce it. So this won't remove that kind of a situation.

I'd also like to point out that the tension in the law comes now--in fact the cases that have dealt with this where they've held that the First Amendment is not absolute--comes up in the criminal context. It came up in the criminal context when the reporter refused to give the sources necessary to prosecute someone for crimes--that's No. 1, and in effect that's the supreme court case. The next case, that is going on right now, is again in the criminal context when a defendant needs the information to fight his case. And I think in both instances what we have is a compelling state interest, and what the courts have resolved is, in weighing the balances, have found to weigh it in favor of the defendant in one case and the State in the other. Now, under normal circumstances there is a privilege and the balance tips the other way; so that what this law in effect would be doing is stopping in those areas.

CHAIRMAN: Thank you, Delegate Waihee. The Chair recognizes Delegate Shon.

DELEGATE SHON: Speaking for the last time in favor of this, the kinds of political abuses that were noted earlier--I think it's important to recognize that these were so-called abuses without this kind of a shield law, that it is not because of a constitutional shield law that these kinds of things have happened. The second thing I would like to point out is that the kind of abuse by the media in general, as a force that is unchecked, is really more in the realm of editorial policy--the cutting back of stories, the baring of stories, inflammatory headlines--these are the kinds of things that I think have much greater impact and are much more in the area of media abuse than a reporter's right to protect his sources.

Now quite often the reporter's right to protect his sources is totally unrelated, I believe, to the kinds of abuses that many of us are aware of in terms of editorial policy. So I urge you to support this.

CHAIRMAN: Thank you, Delegate Shon. Delegate Odanaka.

DELEGATE ODANAKA: Mr. Chairman, I would like to speak for the second time in favor of this amendment. I would like to stress to the delegates that the press serves the public best when it operates independently of government. To do so, it has to be able to get information from people who will not talk to the government. People will not talk to reporters if they think the reporters will reveal their conversations to police, prosecutors or other government officials who receive grand jury testimony. I strongly urge you to support this amendment.

CHAIRMAN: Thank you, Delegate Odanaka. Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, never before in the history of this nation has organized crime had the kind of stranglehold it has on us as it has today. And organized crime is not visible like it used to be. It is an insidious force that has penetrated at all levels in our way of life; it has entered government in many areas. It seems to me if this vehicle can be used to protect news reporters to bring this evidence to the people, we have a responsibility as delegates to make it a reality, because it hasn't happened in the legislature. We can stand here from today until the end of the Convention saying that this is a legislative matter, but nothing has happened in the legislature. I urge my fellow delegates to adopt this proposal.

CHAIRMAN: Thank you, Delegate Campbell. The Chair recognizes Delegate Alcon.

DELEGATE ALCON: Mr. Chairman, I'd like to offer an amendment. I'd like to insert between "journalists" and "shall" the words "and other informants."

CHAIRMAN: As the Chair understands it, your amendment to the amendment would be to insert, after the word "journalists" on the second to last line, the words "and other informants." Is that correct? Is there a second to the motion to amend the amendment?

DELEGATE RACHEL LEE: I second that motion.

CHAIRMAN: It is moved and seconded that the amendment shall be amended in the form just read. Delegate Alcon, would you like to speak to your amendment?

DELEGATE ALCON: I'd like to speak in favor of my amendment because of the fact that the news media, or the journalists and newspaper people, are not the only sources of information. There might be some people around here or any building or political subdivision who know some information they would like to reveal also, but by doing so they would get canned. As a good example, the building behind us had an informant; and because of the fact that he was informing on his superior for some wrongdoing, he got canned, and I don't think that is proper.

If we are to correct corruptions in government, I think other informants must also be protected.

CHAIRMAN: Thank you, Delegate Alcon. Would anyone else care to speak to the amendment? Delegate Hale is recognized.

DELEGATE HALE: Mr. Chairman, I appreciate Delegate Alcon's intention but I will have to speak against this because I think it's not the same thing. We're not talking

about protecting anyone, and we're not talking about not getting somebody canned from their job. What we're talking about here is that courts, or that no one can compel a journalist to reveal his source of information. And that's an entirely different thing. Therefore, I just don't believe that this amendment--I would support his idea if he could present it in another fashion--but I don't believe that this amendment will clarify the original amendment to the committee proposal.

CHAIRMAN: Thank you, Delegate Hale. Does any other delegate care to address the question of the amendment to the amendment? If not, the amendment to the amendment is as follows: on line--

DELEGATE ALCON: Mr. Chairman, may I speak last?

CHAIRMAN: Yes, Delegate Alcon, you're recognized to speak.

DELEGATE ALCON: Mr. Chairman, you don't have to be a journalist to be an informant; and in this case, if I do not want to reveal my source of information, under my amendment I am protected. Do I have to carry a press card to be protected under this amendment? I don't think so. Therefore I think I am also entitled to the same protection as a newspaperman who carries a press card and can go to any old places he feels like. Therefore, I would urge everyone to help me in my amendment.

CHAIRMAN: If there is no further discussion on the amendment to the amendment, it is to read in this fashion: after the word "journalists" on the second line from the last, insert the words "and other informants." All those in favor of the amendment to the amendment, raise your hand. Opposed, raise your hand. The amendment to the amendment is defeated.

DELEGATE ALCON: Mr. Chairman, you didn't count the ayes.

CHAIRMAN: Delegate Alcon, would you like to have a division of the house?

DELEGATE ALCON: I would like to have it, Mr. Chairman, because of your procedure taking the vote.

DELEGATE BLEAN: Point of order, Mr. Chairman. The delegate is out of order--

CHAIRMAN: Delegate Blean, state your point of order.

DELEGATE BLEAN: In a show of hands it is not required to give a total. If a delegate wants a division of the house and wants a total, then the delegate asks for it. He is totally out of order to call you on your procedure. You were totally correct.

CHAIRMAN: Delegate Blean, your point is well taken. The Chair had determined that the count was so clear there was no need for a division. However, if there is any question in anyone's mind, the Chair is willing to take under advisement that we determine the vote in some other manner. But it was very clear to the Chair that the amendment was defeated. Would you like to proceed with this, Delegate Alcon?

DELEGATE ALCON: Mr. Chairman, despite what Delegate Blean has said, I think I still had my hand up when you announced the tally.

CHAIRMAN: The question, Delegate Alcon, is--would you like the Chair to determine in another manner what the vote count was? I will do so this time, but I will not do so again. Would you care to do that?

DELEGATE ALCON: Mr. Chairman, I call for a division of the house.

CHAIRMAN: Okay. All those in favor of the amendment to the amendment, please stand. Mr. Clerk, will you please count those standing. You may be seated. Will those who oppose the amendment please stand. The vote is 12 ayes and 45 noes. The Chair will state that, out of courtesy to the delegate, the Chair will try to find the method of determining the vote that is satisfactory to all. I had contemplated a voice vote, but I thought it would be better to have a show of hands. I shall so do this in the future. Delegate Villaverde.

DELEGATE VILLAVERDE: I rise on a point of personal privilege.

CHAIRMAN: State your point, please.

DELEGATE VILLAVERDE: This is not to discredit my powerful colleague there, but I think his voice is strong enough. I don't think his voice is really the one causing this amplification, but it hurts my very delicate sense of hearing. I believe maybe it's the control box in the back that could be turned down a little bit. I think it hurts for a delegate to get the votes with this kind of loud amplification in the back.

CHAIRMAN: Thank you, Delegate Villaverde. I think we all appreciate this.

DELEGATE ALCON: Mr. Chairman, I have no control of the box behind you.

CHAIRMAN: Are you speaking on a point of personal privilege?

DELEGATE ALCON: Yes, Mr. Chairman.

CHAIRMAN: Please proceed.

DELEGATE ALCON: I'm trying to speak as softly as I can, but I have no control over the amplifier that you have behind you, Mr. Chairman.

CHAIRMAN: The Chair thanks the good delegate. We will proceed with the matter at hand. We have before us now the original section of the divided amendment that reads, "...in furtherance of the people's right to know, journalists shall not be compelled to divulge their confidential sources of information." Is there any delegate who wishes to speak further on this portion of the amendment? If not, the Chair will call for the vote. Delegate Hale, you are recognized.

DELEGATE HALE: I took some notes and they're not in order, so you'll have to excuse me. But I would like to answer some of the points that were brought up. It was brought up by one delegate that in a public office this particular delegate would like to face the accuser. I would like to say that in public office I think a person realizes that he is going to be subject to all kinds of talk and publicity, some of it favorable, some not. None of us who have ever been in public office ever object to any favorable publicity, but we all object to unfavorable publicity. In any case, if it's something that's slanderous, the person can sue.

No. 2, the question came up that somebody being guilty--I think it was brought up by one delegate that you want to face your accuser, and I am saying that to protect a journalist's source has nothing to do with a person's guilt or innocence. That is going to be proven in court under court rules. And no one is guilty on the basis of a journalist's source or just on the basis of an investigation. They're only guilty after they've been tried in court.

I'd also like to say that it is more than just a statutory problem, not only because the legislature has not taken this into consideration, but also in the case in New Jersey where they did have a law, the court saw fit to feel that the law was not strong enough protection; and therefore it is necessary to put it in the Constitution to give this protection.

The next point I'd like to state is that it's really no check on journalists. Someone said that they wanted a check on journalists so they wouldn't go too far. Whether we put this in the Constitution or not, it's not going to be a check on journalists--it's not going to give them a free rein. All it means is that if it does not go into our Constitution, that journalists will continue to go to jail, because this is part of their code of ethics and they will not reveal their sources.

So the real question is--do we really feel that journalists should have to go to jail in order not to reveal their sources. They are willing to be sued; they are subject to slander. But they feel they should not have to go to jail and be fined. That's the other problem about extortion--that without this in the Constitution, the court has the power to impose monetary fines. This is not slander or suing--this is just fines for refusing to reveal your sources.

I would say that the best protection for private citizens if they feel they're being

abused by the press or by a reporter is to sue. And that's been proven fairly recently in our courts, where the court did give an award to a citizen who felt he had been slandered; he did get the award and he did get some money out of it. All we're asking is that, in order to protect all of us and in order to protect the basic principle of freedom of the press, that journalists not have to go to jail if they refuse to reveal their sources. I urge you please to vote for this amendment.

CHAIRMAN: Thank you, Delegate Hale. The question before us now is the amendment to Committee Proposal No. 15, the second section of the divided question that reads, "...and, in furtherance of the people's right to know, journalists shall not be compelled to divulge their confidential sources of information." All those in favor of this language, please raise your hand. All those opposed, please raise your hand. The noes have it, 32 ayes and 40 noes. The second section of Amendment No. 1 fails.

The first section of the amendment is that portion that reads: "The people shall have access to all government records and proceedings in the absence of a proven and compelling state interest..." Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, since we were planning to quit at 6:30 and we're almost there, rather than starting a new debate, I would at this time move that we rise and report to the Convention that we are making progress--I'll defer to my colleague.

CHAIRMAN: Delegate Weatherwax.

DELEGATE WEATHERWAX: Mr. Chairman, I would move that the Committee of the Whole rise and report to the Convention that we have not completed our deliberations and need additional time.

DELEGATE BLAKE: Second.

CHAIRMAN: The motion has been made and seconded that we rise and report. All in favor say aye. Opposed, no. The motion is carried.

At 6:15 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Saturday, September 9, 1978 • Morning Session

The Committee of the Whole was called to order at 9:49 a.m.

Delegate Kaapu presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. Yesterday we had just completed the second half of the divided question on Amendment No. 1 to Committee Proposal No. 15, entitled "Right to Know." Right now the question before us is the first section, which reads: "The people shall have access to all government records and proceedings in the absence of a proven and compelling state interest..." The Chair recognizes Delegate Hale.

DELEGATE HALE: Mr. Chairman, I would like to withdraw that section. We've already voted on the important section.

CHAIRMAN: If there is no objection, the Chair will recognize Delegate Hale's request and we shall withdraw this and move on to Amendment No. 2 offered by Delegate Barnes. Delegate Barnes, the Chair recognizes you.

DELEGATE BARNES: Thank you, Mr. Chairman. At this time I would like to move that Committee Proposal No. 15 be amended by adding a new section, to read as in Amendment No. 2 entitled "Access to Public Records."

DELEGATE HALE: Second.

CHAIRMAN: It has been moved and seconded that Amendment No. 2 to Committee Proposal No. 15, entitled "Access to Public Records," be approved. Delegate Barnes, you're recognized.

DELEGATE BARNES: Mr. Chairman, there is a concern with the "right to know" as it was set out in numerous proposals submitted to the Committee on Bill of Rights, Suffrage and Elections. The problem and the confusion come from the fact that there are really two parts to the right to know, as you saw in the previous proposal. One part is essentially the "sunshine" idea that any citizen should have access to any public government meeting. The second portion of the right to know is access to public government records. Montana's constitution, among others, sets out a right to know that has both of these in it. However, it's my feeling at this point in the Constitutional Convention that Hawaii does not need a complete statement of this two-pronged right to know in our Constitution, because our state sunshine laws, plus the provisions recently passed by our legislature committee in this Constitutional Convention applying sunshine directly to our legislature, have made a sunshine provision in our Constitution unnecessary.

However, the existing state laws of our nation, and Hawaii in particular, have what I see as a gaping hole in terms of rights for citizens requesting access to a public government record from one of the agencies of the state government. In Hawaii, I'm familiar with one recent example, of a University of Hawaii professor requesting a copy of a public report of a commission and being refused the report for no stated reason. Also, within the last year or two many of us have seen newspaper accounts of the frustrations of reporters who have been trying to do research on the contracting practices of the state as well as the city governments. These reporters have been very frustrated, being bounced from one agency to another and never able to get a concrete reason or rationale for whether they should or should not have access to these public records.

Therefore, I commend to your attention this amendment, which is based almost word for word on the federal Freedom of Information Act. This is a federal statute that has been in existence for about 10 years and has an extensive amount of case law to back it up in the interpretation. The way this amendment is worded, the "reasonable restrictions" are provided by law. In the federal law they are set out specifically, and I'll read them to you very briefly: national security, internal personnel rules and practices, trade secrets, internal memoranda, privacy--again now, with our new privacy provision, it means that the federal privacy act as well as our own state constitutional provision would have to be taken into consideration in the enforcement of this--investigatory records--the records of a police crime division, for example, would be exempt normally, again with a compelling state interest. And finally, for the concerns of the delegate to my right here, the whole judicial branch is exempt from this; this only applies to the executive branch. Family court records would not, as a policy, be open to public access.

So as this is worded then, it would only be a one-sentence statement in the Constitution, that the public should have access to all public records of the executive branch, which I feel would be very helpful at this time. We would be asking the legislature essentially to enact the same exemptions in their statutes as is done in the federal Freedom of Information Act. So I urge you to consider this amendment.

CHAIRMAN: Thank you, Delegate Barnes. Is there further discussion? The Chair recognizes Delegate Weatherwax.

DELEGATE WEATHERWAX: Mr. Chairman, I rise to speak against the amendment. I believe the statements just made by the last speaker indicate the reasons for not passing this as a proposal to the public. I think everyone believes in public access to public records; however, it's quite sufficient that--the laws we presently have are quite sufficient. The delegate mentioned the FOIA, the Freedom of Information Act; Hawaii also has, in chapter 92 of the Hawaii Revised Statutes, the very same type of statutory items.

But I believe also the major concerns in the committee rested on this idea of privacy, the privacy rights. The language here is in very broad terms--"the right of access to public records"; I believe in the previous amendment, the one by Delegate Hale, there was language about "all government records," and I'm hopeful this one here doesn't address all public records. However, there is still that problem. I believe it should be left to the courts, again, to make these determinations. We have the body of law already; it's unnecessary to put it in the Constitution.

Other questions that come up would be for instance, in the use of the word "person"-- "Each person shall have the right of access...." Necessarily--we've had an illustration that individuals have had some problems; I don't believe that this is the case necessarily but that, in fact, I believe the majority of people have not had difficulty here. And in the instance where there is difficulty, perhaps the explanation is that there was a valid right to be protected, of valid governmental interest. For that reason I would urge the members of this delegation to vote against the amendment.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair recognizes Delegate Odanaka.

DELEGATE ODANAKA: Mr. Chairman, I would like to speak in favor of this amendment, and I'd like to use an example that we all can relate to. There have been many decisions made in secret meetings in this Convention. At first it was only one or two groups; but then, almost in retaliation, others started until even the most pious delegates, including myself, were calling for secret meetings. This is a shame, but it shows how secrecy gathers momentum until things are assumed to be confidential until proven otherwise. This is the equivalent of being guilty until proven innocent. We should hold back this momentum by voting in favor of this amendment.

CHAIRMAN: Thank you, Delegate Odanaka. Is there further discussion? If not, the question is--Delegate Barnes.

DELEGATE BARNES: Mr. Chairman, I'd like to speak last.

CHAIRMAN: Delegate Tam.

DELEGATE TAM: Mr. Chairman, I would rise to speak against this amendment. If you recall, I spoke on behalf of the second portion of the amendment yesterday, but now we're on the first half--or one similar to it. I would speak against the Freedom of Information Act--well, not against the Freedom of Information Act but against the proposal. I've looked at the Freedom of Information Act and I've also looked at the "Access to Public Records," and it goes beyond--this is in the form of the federal Freedom of Information Act, and it has problems. Now I'd just like to, if I can, briefly indicate to this body some of the problems that crop up with this and why we should just leave things as they are.

I have an article from The Honolulu Advertiser dated Friday, August 11, 1978, wherein a confessed underworld assassin named Gary Bowdach testified yesterday that criminals use the Freedom of Information Act to track down police informers. And he believes that some of his fellow--or some of his cronies, as it says here--caught and killed at least one man in this regard. [The article goes on:] "The act, intended as a safeguard against unwarranted government secrecy, 'can be used to subvert the criminal justice system and...to assassinate people'"--this was before a senate hearing on organized crime. In his appearance, Bowdach indicated that--by the way, he was a loan-shark and admitted to murder and drug-smuggling--he indicated that between 1971 and 1977 while in the Atlanta Federal Penitentiary, he had filed many freedom of information requests for access to classified police documents on behalf of himself and other prisoners. Although the names of informants were deleted from the documents he received, "he and his cronies would...puzzle out the identities from the context of the information. The objective, he said, was to 'take care of business later.'" When he was asked what this meant, whether he meant to murder them, he answered, "Yes, sir." At one point he said that "he and his friends were able to identify an informant because the censor had failed to erase one letter of his name." When he was asked what happened to this man, Bowdach indicated, "Knowing the people I am talking about, I don't think the informant is living any more." He believes that the Freedom of Information Act may have "a chilling effect" on potential informants, "plus endangering the lives of those who want to help law enforcement."

I see the same problems in the amendment that is proposed, and therefore I speak against this amendment.

CHAIRMAN: Thank you, Delegate Tam. Delegate Weatherwax.

DELEGATE WEATHERWAX: Mr. Chairman, I rise again to speak against this amendment. I think, first of all--and this is a philosophical argument--people oftentimes view

secret meetings or meetings of individuals or the government whenever it has a meeting to discuss vital issues before the public--that automatically there is an evil intent on the part of the government. I would hope that we would be more optimistic, and I would hope that a belief we would change, perhaps as to our approach to government--that people who have major concerns on major issues of the public--they aren't doing it necessarily in secret. At times, you cannot extend decision-making to such a broad scope that it leads to too much diversity; and on that basis I would say that perhaps the philosophical view of government as always being secretive is not necessarily a true one.

I grant that there may be some abuses; however, I think that in the view of optimism, we would consider another way. Also, there was some reference to how the people, or the person, should have access to government; I think a majority of the people who would use this are the press, primarily to gain access. And this is all part of the investigatory journalism that has come to the forefront these days. There are other bodies in society to represent public interest. And I would hope that, I believe, there is a swing today to perhaps prevent some of the muckraking that occurs in our society. So on that basis, I believe that this is a representation of the sentiment of the committee.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair recognizes Delegate Hale.

DELEGATE HALE: I was always for this right of access, but I'm amazed at the chairman of the bill of rights committee saying that there is sentiment against muckraking and that the people are turning against it. By what I understand, muckraking means exposing corruption in government; I certainly hope that there is no turnabout from that and that we will do everything we can as delegates to make government as open and as accessible as possible. And that's what this amendment does. And it seems to me that it should be our responsibility to see that this is done so that people will know what's going on in government today. If it's bad, then it should be exposed. If it's good, they should be proud of it.

CHAIRMAN: Thank you, Delegate Hale. The Chair recognizes Delegate Harris.

DELEGATE HARRIS: Mr. Chairman, I rise to speak in favor of this amendment. I hadn't intended to speak until I heard some of the opposition to this amendment. I'm very disturbed that there is a feeling that we should try to tighten the controls on state records and access to state materials. I believe if anything we should open them up; I believe our government should be open to the people, and information within government agencies should be open to the people. I believe we need more openness and honesty and not tighter controls. If muckraking is what brought public notice to Watergate and other examples--even local ones here, such as Kukui Plaza--then I think we need more of that and not less. I speak in favor of this amendment.

CHAIRMAN: Thank you, Delegate Harris. If there are no--Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, just a brief statement. I think perhaps one of the primary reasons there is a deep distrust and perhaps a demoralization in at least some segments of our community with respect to government is precisely the fact that some people feel things are being done in a secret fashion and the public has not had an opportunity to peruse and see what is going on.

If this is a means by which we can safeguard the public trust in our governmental officials, I think it is wrong not to use it. I had only one reservation, which the delegate to my left had mentioned earlier, which is taken care of by the manner in which this is drafted. I had been concerned about confidential records in the family court with respect to adoptions, paternity, etc., which are by nature confidential, sealed and not accessible to the public; and I was afraid that if, in the language of the first amendment we had before us, the court had to justify denial each time, it would be a burden on the family court. This has been eliminated by the language of the amendment before us, and therefore I strongly urge my fellow delegates to vote in favor of it.

CHAIRMAN: Thank you, Delegate Campbell. Are there any further speakers? Delegate Sterling.

DELEGATE STERLING: I'd like to speak in favor of the amendment. We've had

some good examples of why it should not be approved, but we also have some very good examples, as of today, of why it should be approved. The GSA scandal going through our country and millions and millions of dollars lost through theft and corruption, contracts-- This started, as I understand, with newspaper writers being able to dig out this kind of information.

In our own State, we've had an investigation now that might be rocking the boat a little, regarding CETA funding and nepotism among the different levels of our state and county governments, causing the CETA people to completely revise the requirements. This too came about by those persons with enough initiative going out and digging up these records. I speak very much in favor of having public records open for this purpose, so that these kinds of things can be dug out and brought to light.

CHAIRMAN: Thank you, Delegate Sterling. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to a point of inquiry.

CHAIRMAN: State your point, please.

DELEGATE DE SOTO: Does this language take care of the situation that was addressed--the concerns that were addressed by Delegate Tam with respect to criminal proceedings, in that an informant's participation is protected, or does it not? I need to know that.

CHAIRMAN: I'll check with the movant. Delegate Barnes, could you answer that?

DELEGATE BARNES: I'd like to respond to that question. Yes, as I mentioned in the beginning, one of the specific exemptions in the federal Freedom of Information Act, which we would recommend to our legislature, is investigatory records. Because of that concern, I would strongly urge that the legislature pass a rather broad exemption for investigatory records, so they could not be abused as in the case of organized criminal activities.

CHAIRMAN: Thank you. Delegate De Soto, does that answer your question? Is there anyone wishing to speak first? I will recognize Delegate Tam for a second time.

DELEGATE TAM: I'm not rising to speak, I'm just rising to add further to--

CHAIRMAN: Is it a point of inquiry that you wish to-- You would like to add further information in answer to the question Delegate De Soto asked?

DELEGATE TAM: That is correct.

CHAIRMAN: You're recognized to do so.

DELEGATE TAM: It is correct as the prior delegate answered on the Freedom of Information Act, which is 5 U.S.C. sec. 552 (1970). In one section it does exclude investigatory records compiled for law enforcement purposes, but it says only to the extent that production of the records would interfere with enforcement proceedings, or deprive a person of a fair trial or impartial adjudication, or constitute an unwarranted invasion of privacy, or disclose the identity of a confidential source.

Now, even with these provisos, these restrictions, criminal people in jail have still been able to get these records and still have been able to piece together law enforcement, whether they're informants or people who are working with law enforcement officials. And that's why I brought the attention of this body to that particular article where someone who should know, a confessed assassin, indicated that this was the case.

CHAIRMAN: Thank you, Delegate Tam. Delegate De Soto, are you satisfied? Is there further discussion on the amendment proposed? If not, the question before us is that we-- Delegate Barnes, you did reserve to speak last. Proceed.

DELEGATE BARNES: Mr. Chairman, I'd just like to briefly address, again, the points that have been addressed by other speakers. "Person" does refer in many cases to journalists because they are the people that we rely upon for presenting this information to the public. But obviously it affects each and every one of us. I'm sure all of you can remember a time when you wished access to a public document that affected your life.

Secondly, one of the previous speakers mentioned that we have the federal Freedom of Information Act, and we don't need this at the state level. The federal Freedom of Information Act only applies to federal agencies, it does not apply to state agencies at all. So if we think this issue is important enough--access to state agencies, public information--then I urge you to vote in support of this amendment. Again, on investigatory records, because there is no federal law governing our state agencies now on investigatory records, our legislature can decide. By passing this amendment, we will tell them that we are concerned about this investigatory problem and ask them to focus on that exemption, because we are concerned about the problem that has been expressed with confidential names being released of people involved in these investigations and retributions. So again I urge the adoption.

CHAIRMAN: Thank you, Delegate Barnes.

DELEGATE STERLING: Mr. Chairman, point of information, please.

CHAIRMAN: State your point of information, Delegate Sterling.

DELEGATE STERLING: Just a few weeks ago, didn't we have a case like this in our community, where the chief of police of Hawaii county refused to release some records, and I believe he was upheld? I'm not too sure--perhaps one of the attorneys here could answer my question. He refused to release some records he had because he might be releasing information containing informants' names, and I believe he was upheld in the court.

CHAIRMAN: Delegate Sterling, I'll check with the movant or anyone else who may have that information. Is there anyone here who has that information? Delegate Burgess?

DELEGATE BURGESS: I believe that Chief Keala was directed by Judge Fukushima to produce certain records and subsequently he prepared a sealed affidavit which was submitted to the court in confidence. And according to the newspapers, the judge considered the affidavit and decided on that basis that it was not necessary to have the records produced.

CHAIRMAN: Delegate Burgess, before you sit down, did the matter before the court have a relationship to the language in this amendment?

DELEGATE BURGESS: I'm not sure.

CHAIRMAN: Thank you, Delegate Burgess. The question before the body is the amendment entitled "Access to Public Records," that each person shall have the right of access as written. All those in favor will raise their right hand. All opposed, by like sign. The noes have it. The amendment is defeated.

We will now take up Amendment No. 3 offered by Delegate Tam. This has to do with the right to privacy. Delegate Tam, you're recognized.

DELEGATE TAM: Mr. Chairman, before I do this, I would just like to preface this by saying that is the beginning of several--

CHAIRMAN: Delegate Tam, why don't you make a motion first, and then you can say whatever you wish.

DELEGATE TAM: Mr. Chairman, I move to amend Committee Proposal No. 15 by deleting paragraph 6 relating to the right to privacy, as contained in Amendment No. 3 as submitted, entitled "Right to Privacy." I won't read it.

DELEGATE SOUKI: Second.

CHAIRMAN: Okay. Please proceed.

DELEGATE TAM: Mr. Chairman, before I embark on this, I'd just like to say that this is the beginning of several amendments that I proposed, and I would ask the indulgence of this body. I've tried to limit my comments, up till today, in response to a message that

I once received while eating with some friends at Wo Fat. And we were served some fortune cookies, as a Chinese restaurant is likely to do, and in my fortune cookie there was a fortune, as there sometimes is, and this fortune said: "Open your mind before you open your mouth." And so I've been trying to do that, up until today. However, today I feel very much compelled to open my mouth, having opened my mind up until today on several matters. This is the first of several matters.

I will start off by declaring a bias, in a sense, because I do work in the prosecutor's office in Maui county. However, I proposed these both from the viewpoint of my occupation as well as a private citizen. And I do so because there has been a great concern expressed about the growing crime rate, and it seems like every candidate nowadays is trying to espouse it. But for once we have a chance to do something about it instead of just giving lip service.

Now in this particular amendment where I have proposed deleting the right to privacy provision, I can understand that some people may feel--it's like speaking against motherhood, to some extent. Why is it wrong to include the right to privacy? or what are my objections to this? Let me first of all say that I am not against privacy, individual privacy; we're not trying to get a state of Big Brotherism or 1984. My principle objections are that this right is already in the Constitution. It's set out very clearly and it's delineated very clearly. This provision does not add to it; in fact, this provision as I see it--and I might be wrong--will in fact hamper law enforcement.

As to my first point, that this right is already here, I would refer the delegates to Section 5 of Article I--if you would please look at your Constitution. For those of you who do not have copies of your Constitution with you, I will quote it: "Searches, Seizures and Invasion of Privacy. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures, and invasions of privacy shall not be violated...." This was put in by the 1968 constitutional convention.

If I may, I would draw the attention of this body to Standing Committee Report No. 55 from the 1968 convention, as to what this right of privacy involves. I'm referring to the Proceedings of the Constitutional Convention, Volume 1, page 233. "Your Committee is of the opinion that inclusion of the term 'invasions of privacy' will effectively protect the individual's wishes for privacy as a legitimate social interest. The proposed amendment is intended to include protection against indiscriminate wiretapping as well as undue government inquiry into and regulation of those areas of a person's life which are defined as necessary to insure 'man's individuality and human dignity.' Your Committee urges the adoption of this amendment."

Therefore, Mr. Chairman, in reading Standing Committee Report No. 69 on our present Bill of Rights, I find nothing new that is being proposed. There is the same language relating to man's individuality and human dignity as was contained in the standing committee report 10 years ago when rights against invasions of privacy was put in the Constitution. So the point is that everything the committee report wants is already there. Why then are we trying to modify the Constitution? I'm very leery when anyone tries to tamper with the Bill of Rights. They've stood with us since 1787, and these are basically consistent with our U.S. Bill of Rights. Now, what alarms me is that by putting in the language as it is right now--that the right to privacy "is recognized and shall not be infringed without the showing of a compelling state interest"--goes beyond our present statutory law and would in fact hinder law enforcement.

I call the attention of this body to page 9 of Standing Committee Report No. 69, where it indicates, near the top, that "it is expected that in certain situations the interest of the State will rise to such an intensity that it will be deemed a compelling state interest." Now this is not the present understanding of our case law. We do not have to find a compelling state interest; for instance, to be able to obtain a search warrant when there is illegal activity going on, what has to be done is an affidavit has to be produced to a judge showing probable cause that there is criminal conduct in a particular dwelling and that this should therefore entitle law enforcement officers to enter and try to stop it.

I emphasize--probable cause must be shown to a judge. This language for "compelling state interest," to me, would necessitate a much higher standard to execute a search warrant. The result would then be that it would be virtually impossible, as I can see it, to stop criminal activity conducted in what can be considered a dwelling.

For instance, if a person were to manufacture cocaine, angel dust or what have you, if it's for the purpose of manufacturing for personal use, I don't see how anyone can say--if that be the will of this body--I don't see how anyone can say that there's a compelling state interest to go in there. This language seems to say that it's all right for a person to do anything he wants as long as we cannot show that someone else will be affected. So, in other words, again the manufacture of drugs--I don't even know....

CHAIRMAN: Why don't you finish up, Delegate Tam, as I understand your 10 minutes is almost up.

DELEGATE TAM: I'm near the end, Mr. Chairman. I don't even know if this particular matter-- Let me stop with that and just say that almost any criminal conduct will be virtually impossible to stop. I would like to know what particular matters are being addressed by this amendment. The concept is nice; it's like a motherhood concept--it's very nice. But what is this proposal seeking to remedy? What evil is it trying to correct? If it can correct an evil that the standing committee report of 10 years ago does not cover--fine. But if it cannot, if it doesn't go beyond that and in fact will only encourage criminal conduct, then I would speak against it.

CHAIRMAN: Thank you, Delegate Tam. Would you care to speak last, also?

DELEGATE TAM: Yes, Mr. Chairman.

CHAIRMAN: Is there further discussion on the amendment to delete this section in the committee proposal? Delegate Hino is recognized.

DELEGATE HINO: Mr. Chairman, I have been asked by my BORSE committee chairman to speak against this amendment. First of all, I'd like to allay the fears of law enforcement officials and people connected with law enforcement that this provision will make it a little more difficult for the law to be enforced. This factor was recognized during our committee's deliberations. And in deference to concerns raised by Delegate Chong, we decided in the committee that Article I, Section 5, which presently contains provisions for searches and seizures, would not be changed at all. We left the two provisions that the 1968 convention proposed as is.

Instead we proposed that this privacy provision be put in a separate section, of and by itself, to show that it was not the intent of the committee to upset any kind of precedents on criminal justice or law enforcement procedures; that this privacy provision would refer to and protect the rights of noncriminals. This privacy proposal, Mr. Chairman, looks to the future, not to the injuries of the past. This is one of the few proposals in this Convention that recognizes that because of our limited resources in land and water and because of the growth of our population, some time in the future all of us are going to have to give up some individual liberties and freedoms if we are to live harmoniously in these Islands.

This proposal then alerts the legislature to the fact that when we do have to give up these freedoms, that when the legislature makes up certain rules and regulations for us, that they not forget the right of privacy, individual dignity; that whenever they make regulations so that we may live together harmoniously, they take the least intrusive means to accomplish this task. The privacy proposal is more like an inoculation to prevent future undesirable events. It recognizes the inevitability of government encroachment upon certain of our rights which we take for granted today. As our State becomes more and more crowded, we know that some of the rights we take for granted are going to have to be encroached upon. This is merely a request for the legislature that when they look at our rights of privacy, that they look at the rights of individuals and really take the least intrusive means.

Now, there are other reasons which were discussed in our committee as to why privacy serves society, and I'd like to bring up two of these. Privacy fosters the growth of autonomous, free-thinking individuals, which is necessary for self-government. The controls on government, aside from law enforcement, prevent government from acquiring powerful tools of repression. We have many more reasons why privacy is indeed another good issue. Privacy is the kind of right that is not lost until you experience it yourself. Most people in high places don't feel that they have a need for the right

of privacy because no one bothers them. This is really a protection we are offering to ordinary people who don't know how to protest.

The delegate from Maui asks what it is designed to correct. Really, at this point I don't know what it's designed to correct, but I know what it's designed to protect. It's designed to protect our individual freedoms, those things which we hold dear. Every one of us should be entitled to some kinds of secrets that we may want to keep. In our behavior with other people, we should be allowed to act in a certain way. We should be allowed to drop the masks that we have to wear in public so that when we go home there is no need to keep this mask on.

I recall from my childhood days on Maui, when we went walking up to the foot of the west Maui mountains and said--let's climb it--and we did, and afterwards deep in Iao Valley we went skinny-dipping. I would hate to think that we would no longer be able to do things like this. But I see that we have cases where a policeman would drive all the way out to Kaena Point--and Kaena Point is as remote as you can get on this Island of Oahu--and give a ticket to someone who was sunbathing out there. I would like to think that our legislature would consider that there should be places where we would be allowed to do these things that give us a sense of freedom and relaxation. I remember in Iao Valley, where as a child I dreamed about what could happen, I wondered if this was something like Walden Pond; and then, being brought back to Hawaii, thinking--was it Kalaniopuu or Kahekili or Kamehameha, which of the rulers had come up and fought in these valleys, so that part of Iao Stream is now called Kepaniwai. I think we should have the right to have these opportunities, when we can go in solitude and think about the world in general, about history, and just have a place where we can totally relax, without fear of breaking laws, without fear of government intervention. For these and many other reasons, I ask that the delegates vote down this amendment.

CHAIRMAN: Thank you, Delegate Hino. The Chair recognizes Delegate Takitani.

DELEGATE TAKITANI: Mr. Chairman, point of inquiry. I would like to ask a question of the chairman, or anyone else.

CHAIRMAN: State your question.

DELEGATE TAKITANI: Would the words "compelling state interest" allow an individual to smoke marijuana in the privacy of his home without being harassed?

CHAIRMAN: The Chair will inquire of Delegate Weatherwax whether he wishes to yield to that question.

DELEGATE WEATHERWAX: I'll try to respond. First of all, any language in the Constitution, of course, is not going to prohibit anyone from doing what he intends to do anyway. However, in response to your question as to whether or not--it's really an unanswerable question; it would have to go to the courts. I believe that in Alaska, however, based on the right to privacy, there was a law or case law which permitted the smoking of marijuana in the privacy of one's home. That is an Alaska case.

But also--I believe the question was as to "compelling state interest"--I believe there are federal case laws which deal with "compelling state interest" and define it--that would be the Griswold case. Also while I'm answering questions, I might point out to the delegate from Maui that there has been a case here in Hawaii--I believe it's State v. Roy--which answers his concerns as to--

CHAIRMAN: Delegate Weatherwax, which delegate's question are you--

DELEGATE WEATHERWAX: Well, I was answering Delegate Takitani--both are from Maui.

CHAIRMAN: That's right. Does that answer your question to some extent, Delegate Takitani?

DELEGATE TAKITANI: Yes.

CHAIRMAN: The Chair recognizes Delegate Sterling.

DELEGATE STERLING: Some polls, although they're not given very much publicity--I'm speaking against the amendment--very few, but they're very enlightening; they show that most of the people in our country are very good people--regardless of the headlines--very good people. And on many occasions we react to law enforcement and to the criminal and criminal activity. But I think that we have to give just as much thought to protecting the rights of all of these good people, the quiet people who do not organize, who do not wish to become involved, participate in meetings and so on. This right to privacy as it's stated in the committee report takes into consideration the privacy of all these good people, the little people who do not choose to demonstrate or participate. I believe we should honor this right to their privacy.

CHAIRMAN: Thank you, Delegate Sterling. The Chair recognizes Delegate Chung.

DELEGATE CHUNG: I speak in behalf of the amendment by the delegate from Maui. As he mentioned, this concern is already addressed in Article I, Section 5, which protects people's rights in their property and home. I also feel that if we reemphasize this with another section on the right to privacy, while it's well and good and well intended, I feel that the greatest benefit in the long run in Hawaii shall be from the criminal element.

In 1950 there were 5,467 reported index crimes. These are the serious felonies; index crime simply means criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft. In our first constitutional convention, the scorecard was 5,467 such offenses. In 1968, according to the police report, it was 31,044. Last year, 1977, it jumped to 58,549. This year from January to June--the past 6 months--there were 28,565 high-fear crimes committed or reported [at this time] in Hawaii; and out of these 28,565, only 7,224 cases were so-called cleared, with an average of about 4,000 high-fear crimes committed each month and about 1,000 clearances.

I honestly feel from my experience that this right to privacy is a protective device for these so-called professional criminals, who have become so sophisticated in their techniques and their planning. Unless we are very careful in these kinds of decisions, we may be inadvertently contributing toward the easiness of the commission of crime, particularly in Hawaii. Hawaii, being a seaport state, with the visitor industry as the No. 1 industry, is a natural attraction for criminality--organized crime, white-collar crime. And this type of right to privacy, as good as it is for all of us, somehow will have an insidious effect on a very serious concern in Hawaii today--the rising tide of crime. Therefore, I strongly support the feeling of our fellow delegate from Maui.

CHAIRMAN: Thank you, Delegate Chung. The Chair recognizes Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I have to speak in opposition to the amendment. If the fears expressed by those who talked about crime were correct, then I too would be fearful of this amendment. But I cannot see how these fears are in any sense justified. First of all, the fighting of crime is a compelling state interest. Being a compelling state interest, the laws now relating to crime, including the test of probable cause for getting a search warrant, would still be applied.

Now as an example of this, I might point out that the Alaska constitution has an almost identical provision to this and the courts there have held that probable cause is a standard to use for search warrants, that the usual crime-fighting mechanisms apply. Indeed, the right to privacy was tested in the Alaska courts relating to marijuana, and the courts there found that perhaps someone could smoke marijuana in their house and that it would be a private act. But in the same decision the courts held against the compelling state interest of the state in the manufacturing of cocaine or to have heroin or any other dangerous drug or do anything like that in the privacy of your home.

Now I think that, rather than running off on what--we have to look at what this right to privacy is meant to protect. I am not as philosophical as the delegate who first spoke in favor of it, so maybe I can bring it down to where I would understand it. Mr. Chairman, we are entering an age of computerization: our names are found on all kinds of financial material and all kinds of governmental records; we find ourselves on mailing lists that we don't know how in the world we ever got on. And we find ourselves being the objectives of intrusions by many forces in society. I think that what people need to have in this urbanized time is some kind of protection against this; we need some way

to know that our own private affairs will remain ours--unless there is a compelling state interest, unless we are participating in criminal activities or have relinquished our right to remain and keep our affairs private. And for these reasons, Mr. Chairman, I would speak against this amendment.

CHAIRMAN: Thank you, Delegate Waihee. Is there further discussion on this subject? Delegate Barnes is recognized.

DELEGATE BARNES: Mr. Chairman, I rise to speak in favor of this amendment, although not strongly. I believe there should be balance in our constitutional provisions, and obviously the right to know and the right to privacy stand opposed to each other, for one reason.

Since we have just taken a decision not to include a right to know provision, then I think, before we include further language other than what's in the Constitution on the right to privacy, we should carefully scrutinize this language. Will it help us? If you look at page 7 of the standing committee report, third paragraph, we're given three examples of how this right might help. "For example, the right can be used to protect an individual from invasion of his private affairs"; if a court, for example, were to find out whether this was an invasion of private affairs, they could also go to trespass laws--the existing law preventing someone from coming on your property--or liable or slander laws for the next two examples--"public disclosure of embarrassing facts, and publicity placing the individual in a false light." In other words, if a newspaper reporter chooses to print an article about one of us delegates here, we have chosen to place ourselves in the public realm, so this isn't going to help--this right to privacy--we can't go and stop that article about us from being printed. But what we do have available are liable and slander laws and the case law existing there.

So, in my analysis I don't see that this language is going to directly help us in any way. We'll still have to turn back to the existing law. Not wanting to add extra words to the Constitution, I would speak in favor of the amendment.

CHAIRMAN: Thank you, Delegate Barnes. The Chair recognizes Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I wish to speak for the amendment, and the reason is that I believe in Section 5 of Article I there is sufficient language to protect the privacy of the citizens of the State. I believe this new amendment will be somewhat redundant and might in fact cause some unanticipated problems, as the "compelling state interest" can be interpreted adversely.

Also I think the concept is very beautiful and I--by the former Mauian by his poetic method in describing the rationale and need for such an amendment, I would be almost tempted to vote for that and buy that particular concept. However, I believe that if we are to pursue that--and I think we should--it would be better done by statute, simply following the existing language in the Constitution that the right to privacy shall not be violated, and then through statute expand on this particular style to provide us the future privacy that we're going to need.

CHAIRMAN: Thank you, Delegate Souki. The Chair recognizes Delegate Hale.

DELEGATE HALE: Mr. Chairman, I'd like to speak against this amendment. The 1968 amendment was dealing primarily in the area of wiretapping and eavesdropping and made it possible--as I understand it--for government to go to court to get permission to do this. And they had to get permission. My understanding of this right to privacy is that it embraces other things, and I think the committee report has a very full explanation on page 8: "For example, it has been held that society has no legitimate interest in the hairstyle of a person attending a public educational institution." But I can recall the days when students were sent home--boys particularly--if their hair was below their ears. I can also recall the days of the dress code, when you couldn't go to a public educational institution without wearing certain kinds of clothing.

It seems to me that we have so much regulation of our lives, that we have to look to the future as we get more and more regulation of our lives, that there certainly have to be some basic freedoms that we as individuals are going to have to protect. And

those freedoms are basically a right to live our lives the way we want to as long as we don't hurt anybody else. This is the way that I hope eventually the courts would interpret such a right to privacy provision and it properly belongs in our Constitution because we're talking about basic rights. I am against this amendment.

CHAIRMAN: Thank you, Delegate Hale. The Chair will ask first, before recognizing Delegate Hino, if there are any delegates wishing to speak for the first time. I recognize Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I rise to speak against this amendment and in favor of the privacy provision as presented by the committee. The subject matter covered by this particular provision is not covered by Article I, Section 5, of the present Constitution. Section 5 of our present Constitution speaks primarily to state action. What this particular provision is trying to do is not to protect us against the State of Hawaii--it seeks to protect us from each other.

The laws which we have had on the books for the past 200 years--the constitutional provisions that our founding fathers gave to us, many of which have been incorporated into our own State Constitution--are not only excellent but they are timeless. But when they were written, the people who wrote them, who drafted them, did not know about computers. It's primarily computers that we're concerned about, I think, and the informational services they provide to people we do not necessarily want to give our information to, that has spurred this kind of constitutional provision.

I don't know if all of you realize it, but anybody in this room who has ever sent in a life insurance application or an application of any kind in which his medical records or information regarding his medical treatment were requested--those medical records are now in a medical data bank in New Jersey. Every single one of us has our medical records in that bank, and it is available to any other insurance company--automobile, or any kind that wishes to check into it. That's true also of many of our credit ratings--information that we not only don't have access to, but unfortunately we cannot even correct because we don't even know it exists. We don't know it's been compiled, but it's there. And it's that kind of thing that I think our State has to try to protect us from.

We're not seeking protection from the State of Hawaii; we're seeking protection from the people with the computers who are gathering information on us without consulting us first and without giving us an opportunity to correct errors.

As far as criminal law is concerned, I would concur with the previous remarks of Delegate Waihee, that since the provision proposed by the bill of rights committee states that the "right of the people to privacy... shall not be infringed without the showing of a compelling state interest," there's no problem with the criminal law aspect because the search warrant--the right to ferret out crime upon an affidavit and search warrant issued from a court of competent jurisdiction--has always been a compelling state interest; I don't see any conflict between the two provisions. I urge you to vote this amendment down.

CHAIRMAN: Thank you, Delegate DiBianco. I recognize Delegate Anae.

DELEGATE ANAE: Mr. Chairman, I believe that the right to privacy provision in the committee proposal merely addresses itself to the problems that we do have today. I don't think that the right to privacy provision in the Constitution has the same stature as the Bill of Rights has today. For this reason, this amendment in the committee proposal merely brings the stature of the right to privacy up to the level of the Bill of Rights. And I think this is necessary because of things that are happening in our society today; some of these things have been voiced by the previous delegate--that we are being invaded in our homes with mail we don't desire.

I for one had my right to privacy invaded when I received a Playboy magazine in my home from an anonymous person who contributed to this. Now if you understand my background, you can understand the trauma that my wife and I felt when this mail was addressed to me. Our privacy is being invaded; people are sending material into our home that we have not asked for. We are being programmed, whether we recognize it or not. I feel very strongly with due respect to people who are concerned about criminal elements that the rights of a majority of our people are being violated.

Our Constitution has addressed itself to many reforms--reforms that give the State jurisdiction over many of the private things we have enjoyed in the past. And somehow I feel that the right to privacy is going to be neglected if we do not address ourselves to it now.

CHAIRMAN: Thank you, Delegate Anae. The Chair recognizes Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I speak in favor of this amendment. I am completely in accord with the idea expressed, of protecting everyone's right to privacy. But I see a red flag when I think about the consequences of this provision as it's apparently intended. I see it as potentially being used for suppression of information rather than protection of privacy. I see it as giving a new tool to government to be used for the detriment of the people's right to know.

I've heard the comments and listened carefully to those who spoke against the amendment. I've also just read the standing committee report, and the thing that concerns me is the argument that this new provision is supposed to cover some tort privacy. It's supposed to protect one citizen against other citizens. This is not like all other provisions in the Bill of Rights, which are designed to protect individuals against government. This is some new feature; it's designed to be something in the nature of legislation which is designed to protect one individual against another individual, in their search to determine their private rights as between each other. I'm very concerned about it.

I'm particularly concerned about this reference relating to privacy in the informational sense. For example, would this mean that you cannot gather information about any other individual, any other person? Is that a violation of the Constitution? Would this type of provision, for example, have prevented Woodward and Bernstein from gathering information that would be embarrassing to Richard Nixon? Would this type of a provision in the Constitution, if it goes beyond what's already in the Constitution which protects people against unreasonable invasions of privacy--if we're doing something beyond that, could it be used, for example, if in a lawsuit--one private party to a lawsuit is seeking information about another private party and asking to compel disclosure of his medical records? That's an ordinary part of every litigation where personal injury is involved. Would this type of provision prohibit gathering that type of information?

I get very nervous when we start tampering with the right to gather information. I'm very worried that if we're looking to cure one evil--and I agree that computer information, if it's used in a bad way, can be an evil--in trying to cure that evil, we may be creating a monster. Would it mean, for example, if one of the delegates here wants to write a book about this Convention and what it did, would he be prohibited from gathering information about what each of us said in our campaign speeches and how we acted when we actually were here during these deliberations of the Convention? Apparently some of that would be embarrassing to some of us. Is that the type of information--the type of right to privacy which is to be protected?

I would agree with the movant of this motion that the Constitution as worded, which has stood the test of time for at least 10 years in Hawaii, adequately and completely protects the right to privacy. This additional provision is one which could be used for suppression--and it's dangerous. I urge you to support this amendment.

CHAIRMAN: Thank you, Delegate Burgess. Is there further discussion? Delegate Lee is recognized.

DELEGATE MARION LEE: Mr. Chairman, I rise to speak against this amendment. I feel that this is the essence of our entire way of American life. In my own personal life, I would consider this the most important thing which I value--my privacy. I feel that I should be able to do anything and act in any way that I want within the confines of my home, as long as it does not hurt anyone else.

I definitely feel that no one has any business whatsoever in stopping me from doing whatever I wish within my home. Therefore, I would urge you to vote against this amendment.

CHAIRMAN: Thank you, Delegate Lee. The Chair recognizes Delegate Pulham.

DELEGATE PULHAM: Mr. Chairman, I probably value privacy as much as or more than anyone in this room. That may be why I'm the southernmost delegate to this Convention. However, I have not been convinced by the arguments that inclusion of this provision in the Constitution in a separate and new section does one thing for me that is not already covered. We've heard a lot of arguments, but I would doubt very seriously that inclusion of this here would have much effect on the data bank in New Jersey, which has been alluded to. That doesn't make sense to me.

Also, if these are the areas we wish to address, then under the present Constitution, by legislation, these areas can be fully explored and addressed. I, like the delegate who spoke originally, have valued those quiet moments, and I too have skinny-dipped in the pools he speaks of. But I want to tell you something: I did it because of the time and because of the place, and it was a very private and a very personal thing; I do not, therefore, feel that, by constitutional amendment, somebody is going to set aside a place up at Kaena Point or somewhere else where I can now do this, because once it is not just me and me alone, it has no value. Do you really think that you can constitutionalize privacy in that sense? No, those things probably come once in a lifetime, and there's no way we're going to bring them back by constitutional amendment.

All the rhetoric that has gone on has not shown me that this inclusion would have any value or make any addition to the Constitution. There's nothing being done here that can't be done across the street. We're not increasing the Bill of Rights. We're not doing anything in this area except cluttering up the Constitution and possibly opening up a bucket of worms, as somebody mentioned about the Alaska situation. Maybe someone has a motive for wanting this in the Constitution--I don't know. But it certainly has not been shown that there would be any value to the society of the State of Hawaii, which we all represent, by including this new and separate paragraph. So, I would ask you to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Pulham. I will recognize Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to amend the amendment in the following fashion: on line 2 after "infringed" insert the words "by the State."

DELEGATE WAIHEE: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Waihee, would you state your point of order, please.

DELEGATE WAIHEE: We can't amend an amendment which is to delete.

CHAIRMAN: The point of order was that you cannot amend an amendment whose purpose was to delete. So, Delegate Campbell, the point is well taken.

DELEGATE CAMPBELL: I guess you got me.

CHAIRMAN: The Chair would like to recognize Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I speak in opposition to this amendment. I hadn't planned to speak; however, I feel that I would be remiss if I did not address this at least briefly. The right to privacy is a real and important thing for those people I hope I represent, on the Waianae Coast. A classic example--I think my sister delegate from the Big Island will admit to--is the helicopters. The police, in their exuberance, come down on our homes looking for pakalolo, oftentimes frightening my grandchildren to the point that they wet their pants. I think this is an invasion of the privacy of my home that has long and lasting effects on my grandchildren and my home.

The right to privacy is what a constitution is all about. I think that this clause is needed to protect the little people. I think that the increase in the crime rate has been because of the increase in our population. We appear to be headed toward the eventuality of a police state because of this increase in crime. And I hate to see the people who are law-abiding have their rights infringed upon. So consequently, I speak against this amendment.

CHAIRMAN: Thank you, Delegate De Soto. The Chair recognizes Delegate Barr.

DELEGATE BARR: Mr. Chairman, I rise to speak in favor of this amendment, and I would suggest that the comments you just heard represented to be against this amendment are exactly why we need to pass this amendment. Exactly what the purpose of this amendment is has not been made clear; even though the description in the committee report is rather long, it is not precise as to what the problem is that we're trying to solve or what it is we intend to do. The delegate who just spoke talked about those helicopters; but those helicopters, using the police power of the State, will probably continue because the State will argue that there is a compelling state interest.

It has been claimed several times that the whole idea of this amendment is to protect us from each other and not from the government. It is my experience, as a matter of fact, that that agency which is most infringing upon my privacy is the government, or governments on various levels, or--if not the governments directly--institutions, financial and otherwise, that are regulated rather much by the government.

So the infringers of the privacy are not touched by this emotional claim that we want to have privacy. In fact, I call your attention to the second sentence, which I am rather distressed has not been discussed at any length. It says: "The legislature shall take affirmative steps to implement this right." In fact, the very source of the infringement on our privacy is being mandated to do something more to us. Now I'm not sure exactly what legislation we will get out of this, but I take it if they're worried about me infringing upon your privacy, they're going to have to watch me more, which will be an infringement on my privacy, or vice versa as the case may be. Maybe you're watching me. It seems to me that that is a contradiction of the very intent of this supposed right to privacy provision.

I'd like to go a step further if I might. I am especially distressed in the committee report--and this is on page 7, the third full paragraph--with that part that says: "Another area of concern that may be alleviated by this right is the issue of informational privacy or the ability of a person to control the privacy of information about himself." And we heard from the delegate on my left an eloquent defense of this because of computer information and so on, all of which doesn't seem to me relevant to the words there. But I'd like to tell you very briefly about some experiences that I have had related to information about government employees, and I note for you that I am a government employee.

In the early 1970s I was the founder and president of an organization called the Maui Justice Foundation. Our purpose was to reveal corruption in government, and we did, as a matter of fact, save the taxpayers on Maui some considerable money by stopping various illegal usages. We eventually went out of business, however, because we could not get the information that was necessary to find out how government money was spent. Now, one of the reasons for that is a lot of the corruption that takes place--or was taking place at that time, I cannot attest it's still happening since I don't have the information--but a lot of the corruption that was taking place was the illegal hiring of people for county jobs. I would get word of this from people who knew of the operation of my foundation, but obviously that hearsay information couldn't be used for anything. So I would have to go look at the government records and seek to find out the qualifications of the person who got the job, whether he took the appropriate tests and followed the appropriate procedures, whether he was placed in the appropriate categories under civil service regulations and so on. And I was systematically denied this information on the basis of the right to privacy.

Now note--we didn't have this constitutional amendment yet, and already the information was being denied on the basis of a presumed right to privacy. I submit to you that the significance of this is that about half--or actually a little more in some of the budgets at various levels of government--of the money that is spent, more than half is spent on the salaries and benefits of individual people who are working for the government. If there is corruption in the way that money is being given out and if we are denied access to that information on some presumed right to privacy, we have provided one of the most phenomenal shields for corruption that could possibly be offered, and we do it in the name of something which emotionally has such great appeal--the right to privacy.

Now I submit to you, my friends, that our problem is not each other, it is too much government; and this provision, if we leave it in, increases the problem. So we must support this amendment, and I applaud my fellow delegate from the valley below my mountain for introducing this revision.

CHAIRMAN: Thank you, Delegate Barr. The Chair recognizes Delegate Shon.

DELEGATE SHON: Just one note against the amendment to delete, and that is that government helicopters are not the only helicopters infringing upon our privacy. For those of you who are unaware of a new operation in the Waikiki area, there are helicopters carrying tourists that fly very low over the homes, truly invading the privacy of residents as well as perhaps endangering their health and welfare. They are even landing on the pillboxes of Diamond Head. So I would just like to note that government helicopters are not the only helicopters.

CHAIRMAN: Thank you, Delegate Shon. Delegate DiBianco is recognized for the second time.

DELEGATE DiBIANCO: I defer to Delegate Campbell.

DELEGATE CAMPBELL: I wouldn't want anyone to miss Delegate DiBianco. Mr. Chairman, yesterday we voted down a shield law. Today we voted down a measure which would have insured the citizen's right to know. Now there is a question before us as to whether we should further infringe the right to know. I've sat here and thought as seriously as I could about the amendment and I speak in favor of it at this time, perhaps because as I thought about it more and more deeply, I realized that, as one in the field of law who is constantly required to discover information to protect my clients, I could be very seriously handicapped by a provision like this. At first I thought it would be good to protect in this fashion but, on second and more serious thought, I realized that it could be that this measure would very, very seriously handicap professional people in the field of law who are seeking important information in order to establish their case.

I'll give you an example. In seeking information to establish support for a child, for example, when a parent absolutely refuses to divulge information as to his financial ability, I am able to subpoena--if I want to pay for the microfilming cost--the checking account records of an individual. I assume that certainly involves some kind of right of privacy that I'm invading; am I to be curtailed from doing this as a result of this measure? If so, there are a lot of children in this community who are going to be denied the support they deserve because I wasn't able to get the kind of information that would give the judge the right to establish support.

CHAIRMAN: Thank you, Delegate Campbell. The Chair recognizes Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I'd like to try to answer some of the points raised by previous speakers--in particular, my worthy friend to the right from Maui, who constantly reminds us he's from the edge of the forest. I would submit that in this particular case he can't see the forest for the trees. Anybody who offers himself to the State for state employment, I think, to some extent can mandate to waive his right to privacy regarding some of his employment information.

The point was raised by Delegate Burgess that--what will this do to our discovery rights in court cases if somebody in a personal injury case claiming to have been hurt--that the defense attorney has the right to look at that person's medical records so he can determine whether or not that person had the injury pre-existing; in other words, he already had a sore neck, he didn't get it from the accident. And I think Delegate Burgess was concerned, and rightfully so--are we going to have trouble now getting these records if we constitutionally mandate the right to privacy? But I would remind all my fellow attorneys in this room, and advise all of you who are not attorneys, that we all have a right to privacy right now in our medical records anyway, but we are held to waive that right to privacy as soon as we file suit.

I think a person would be held to waive his right to privacy for certain information when he makes his application for state employment, or he could be made to waive his application. Nobody is required to be a state employee, and I think reasonable regulation and reasonable dissemination of information could be mandated with anybody who is in fact applying for state employment. I would say, however, that I don't think the mere fact that somebody applies for state employment means that he give up all rights to privacy--I think the legislature can regulate this in a reasonable fashion.

As far as child support, child custody cases are concerned, the same holds true.

There's a compelling state interest in this State to see to it that our children are supported, whether the family they are living with has become a fractured family or not. That being the case, I think there is no problem with family court ordering the divulgence of information regarding a parent's ability to support his or her children after a divorce.

Finally, in answer to remarks by Delegate Pulham, I can only say that it is true the legislature can make laws regarding the right to privacy, but I fear that unless we have a constitutional basis for those laws, those laws will be subject to a certain amount of litigation and will be of questionable legality and propriety. We need this kind of provision in the Constitution to give us the foundation upon which we can build those reasonable regulations that are contemplated by this provision, which is part of the bill of rights committee proposal. So I would again speak against the amendment and urge you to vote it down.

CHAIRMAN: Thank you, Delegate DiBianco. The Chair recognizes Delegate Hino.

DELEGATE HINO: I rise for the second time to speak against the amendment. I would like to remind the delegates that we are here to write a constitution, not to pass laws. And this is why this proposal on the right to privacy is worded in such a manner.

Let us take a few minutes to dissect and analyze this proposal. "The right of the people to privacy is recognized. . . ." Ask yourselves, do you or do you not recognize that such a right exists? If you don't, vote against the privacy proposal. But if you think that the right of people to privacy is recognized and you agree that there is such a right, please vote at least one third of the way. And now let's go to the next third: ". . . and shall not be infringed without the showing of a compelling state interest." That merely says that because we recognize this right, because we feel that privacy is so basic and fundamental to us, nobody should take this right away without a very good reason; that this right should not be taken away for mere convenience because it will provide shortcuts to bureaucrats or others in doing their jobs. It should not be infringed without a very good reason. Now the third part: "The legislature shall take affirmative steps to implement this right." We in the bill of rights committee could have gone through the process of listing all the different ways in which the right to privacy should be protected, but we felt that this was not our job as constitutional delegates, that we should merely state broad principles and then let the legislature balance all the different kinds of rights--the Freedom of Information Act, the right of the people to know (though not put in our Constitution, it still exists), the right of attorneys to discover information, the freedom of the press. The legislature should balance all these different competing rights and then have something which would implement the right of privacy.

Now within the last 5 years, I believe--though I cannot vouch for it--I believe the legislature has passed only one bill proposing to protect privacy. And this was not done with the intent of protecting your privacy; it was done with the intent of getting more information. This bill was passed in the 1978 legislature, I believe, and was for the purpose of obtaining federal income tax information. The request came from our state tax office, to please pass this proposal, that our state tax information is private and should be revealed only under compelling state reasons or only for official reasons. The reason our state tax department had to ask for it is that we have a federal privacy act, and unless the State had such a provision, the internal revenue service would not share their information with our state tax office. And that is the only kind of affirmative action or positive step that our legislature has taken to prevent something that might infringe on privacy from happening. So this provision, this last sentence--"The legislature shall take affirmative steps to implement this right"--is asking the legislature to pay some attention to privacy.

Now we've had a chance to dissect this proposal in three parts. If you disagree with any one part, then by all means you should vote against the right to privacy and for the amendment. But please examine your hearts to see whether you really do oppose any of those three parts of the proposal.

CHAIRMAN: Thank you, Delegate Hino. The Chair recognizes Delegate Hale.

DELEGATE HALE: I speak against this amendment to delete the right to privacy from the committee proposal, and I'd like to call your attention to Standing Committee

Report No. 69. There have been concerns voiced by some members here whose opinions I respect very highly, that have made me think and reread this committee proposal report again. And I think these concerns have been laid to rest.

In the first paragraph [on page 9] it reads: "It is not the intent of your Committee to grant a license to individuals to violate the right of others but rather to grant the individual full control over his life absent the showing of a compelling state interest to protect his security and that of others. . . . For example," it points out, "in the case of dissemination of information about individuals, law enforcement officials would not be restricted in sharing information about suspected wrongdoers, or the press may be justified in writing about certain personal matters of public figures." It goes on to say that "your Committee does not envision closing off access to court records or public records already subject to 'sunshine' laws but feels that this amendment would be useful in prohibiting abuse, misuse or unwarranted revelations of highly personal information."

I recall, for instance, that somebody in an election campaign on the mainland is being accused of being a homosexual. This is a very private, personal thing; it has nothing to do with whether the person is qualified to be governor. This is the kind of information that I consider would be protected by a right to privacy. I also feel--as in the following paragraph, it says: "[T]here will always be a dynamic tension between majority rule, which is the basis of a democratic society, and the rights of individuals to do as they choose, which is the basis of freedom, and your Committee believes that this amendment recognizes the high value that individuality has in society."

Our lives are becoming more and more regulated by government. Every step we take, every place we turn, there's a regulation. Even the air we breath is now going to be regulated by certain environmental concerns, some of which are good and some of which are perhaps not so good. But I maintain that somewhere down the line we have to reassert that we are individuals, that we do have a right to do things that don't hurt other people. And I originally submitted this proposal too, and I was very happy that--maybe that will turn some of you off and turn you against it--but I would like to say that the reason I put it in--and I'm not a lawyer and I don't know all the legal ramifications, and I wish we had had more discussion on the kinds of legal ramifications that have come up here--the reason I put it in, very frankly, was that this is almost the exact wording the Alaska constitution has and it answers the question of Delegate Takitani from Maui--the right of a person to smoke marijuana in his own home. That was my reason for putting this proposal in.

I'd also like to point out on page 10: "For example, the Federal Privacy Act of 1974 is one example of legislative action supportive of this right." I would like to remind the delegates that one delegate here reminded us of the Federal Privacy Act when we passed a rule saying that we were going to have to disclose the financial affairs of our spouses and members of our families. And this was a violation of privacy, and this was the sort of thing that I think would not have taken place if we had had this in the Constitution.

CHAIRMAN: Thank you, Delegate Hale. The Chair recognizes Delegate Barnes to speak for the first time, and then Delegate Cabral.

DELEGATE BARNES: Mr. Chairman, I rise to speak for my last time on this, noting that this is the first time I've spoken against the delegate from the home of the Portuguese man-of-war--an appropriate choice of words, I think. I'd just like to say that, again, we live in a modern age where we can no longer, I believe, throw a constitutional privacy blanket over all of our problems and our concerns. I too, like the delegate from Kalihi, would like to be able to have complete privacy in my home, to be able to pursue anything that I like.

But let's look at the intrusions on the privacy of our homes that have been mentioned that would concern me the most, such as credit rating problems, computers and bulk mail problems. I suggest that these three problems, as all the other privacy problems that have come up, should be addressed individually by statute. So therefore I think that many of the problems of privacy should be addressed by specific statutes, because we live in such a complex age. Again, if you read the whole committee report, you'll see that whenever a privacy problem has come up, the lawyers and the supreme court have gone to another area of the law to find their answers. I suggest to you that this system may be the best way to continue. So, again, I speak in favor of the amendment.

CHAIRMAN: Thank you, Delegate Barnes--it was your second time. Delegate Cabral, I apologize, you're recognized to speak for your first time.

DELEGATE CABRAL: Mr. Chairman, I rise to speak in favor of the amendment to delete from the committee proposal this additional section to the Constitution. I thought I was convinced from listening to some of the debate that I would take a position on opposing the amendment in favor of the committee proposal. However, after listening to the astute delegate to my right and his words of wisdom, I started perusing again the words of the committee proposal. If it were not for certain words contained in that proposal, I would wholeheartedly support the committee proposal.

If it were at this point appropriate to make a motion to delete, I would delete from the proposal as it reads now the words "without the showing of a compelling state interest." And my reason for that is--as a rose is a rose, a ruse is a ruse. And by that I mean it appears to me that that particular language provides the government additional powers with which to invade our individual privacy. It is not, as I had imagined, the kind of proposal that would support the rights of individual privacy. I view it now as an entitlement to government to have additional powers to invade individual privacy if they can show a compelling state interest. For this reason, I speak in favor of the amendment to delete the language as proposed in the committee proposal.

CHAIRMAN: Thank you, Delegate Cabral. Delegate Kojima.

DELEGATE KOJIMA: Mr. Chairman, if, as the previous delegate has said, smoking marijuana was one of the main reasons this has been proposed, then I am in favor of deleting the committee report--that portion of that. I'm not a lawyer--we've heard many lawyers--I'm just an educator. But if I were to grow pakalolo in my backyard, or if I were to smoke pakalolo in my house, how could I explain this to my students when they know this is contrary to state laws.

The cops are having a hard enough time enforcing the state laws. Why make it harder for them and put more restrictions upon them, especially when crime today is the number 1 concern of the citizens of this State. I feel the present language in the Constitution is adequate to protect the rights of the individual. Let's not make it any more difficult for law enforcement people to do their job. Thank you.

CHAIRMAN: Thank you, Delegate Kojima. The Chair recognizes Delegate Wurdeman.

DELEGATE WURDEMAN: Thank you. I would like to speak in favor of the amendment to delete. I did look at this by section and the last sentence, which states: "The legislature shall take affirmative steps to implement this right," scares me. Because I have seen what the legislature has done in the application of general law. I also believe that Article I, Section 5, of our Constitution protects our right to privacy. Please review it.

CHAIRMAN: Thank you, Delegate Wurdeman.

DELEGATE HALE: Mr. Chairman, may we have an administrative recess?

CHAIRMAN: The Chair will consider that. We're running very close to a logical termination point; would it be possible to hear from the movant now, and perhaps we can take the vote.

DELEGATE HALE: --before the vote?

CHAIRMAN: I'll take that under advisement. Delegate Tam, you're recognized.

DELEGATE TAM: Thank you, Mr. Chairman. Again I speak in favor of the motion to delete; and I would say that--of one speaker who has characterized it that a vote to delete this right to privacy as now put forth in the committee proposal is against the right to privacy--I think that is a very unfair characterization of what this motion is. I think it's very unfair. I am not against the right to privacy. I enjoy my privacy just as much as anybody else; in fact, I feel the loss of it just as much as anybody. To give an example: before being elected to this Con Con, I could go to the store--I could go in a dirty shirt, my dirty pants, pair of slippers--and didn't have to worry, nobody knew who the heck I was. Now I can't do that. I have to dress up because people will say--I know you, and

so forth. I lost my right to privacy, and I feel it.. I like anonymity--and I mean that. It's very unfair to characterize this amendment as a means to destroy the right to privacy.

What I'm really getting at is that this proposal is very deceptively worded. As you heard, one speaker already indicated that the chief reason for introducing an amendment like this was so that marijuana could be grown, could be used, whatever else. The language is deceptive; it doesn't really speak to what is intended. We hear talk about being able to go skinny-dipping; this is already covered in the statutes. We talk about mailing lists, hairstyles.... I would point out that this report already refers to a Federal Privacy Act of 1974, and there's no reason why the legislature couldn't implement something in this regard, if there are in fact concerns about mailing lists.

In terms of what this particular provision will do, I will restate: it will not help the law-abiding citizen any more than he is being helped today. I ask how many of you have read Standing Committee Report No. 55 from 1968, wherein it indicates that the reason for putting in the phrase "invasions of privacy," in Section 5 was "to insure 'man's individuality and human dignity.'" It's a very simple phrase that was put in in 1968, and yet it is a very powerful one. It is there; it is there now. And the legislature can act on that now. So what is the reason for this particular proposal as it is right now? I'm glad that you heard the responses of some delegates as to some of the reasons they are for this, because they are precisely the reasons that I'm concerned about it. It will make law enforcement a lot harder.

For example, I wonder how many of you are aware of the amount of drug traffic that goes through the State of Hawaii. Hawaii is the drug center of the Pacific. Honolulu, Lahaina, Kona, Hilo--there is a tremendous amount of drug traffic--and I don't mean small drugs. I mean hard drugs. I'm getting a reaction somewhere so maybe somebody knows about this.

CHAIRMAN: Delegate Tam, the Chair just wants to remind you that you have one more minute.

DELEGATE TAM: In any case, this proposal as it is put forth will not increase anybody's right to privacy as far as the law-abiding. It will help the nonlaw-abiding; and one area especially is the area of drugs--hard drugs. It is tremendously difficult to enforce the laws now. Many cases are being thrown out by the judges because of invasions of privacy, unreasonable searches and seizures. If it's tough now, it's going to be tougher with the language of this particular provision. So, Mr. Chairman, as you've indicated that my time has run out, I'll just ask this: I'll not ask for a roll-call vote, I don't want a division of the house; all I'm asking is that you just vote your conscience. But if you do have any doubts about this provision, then please vote to delete it and leave it the way it is. I might be wrong, but I think it's going to open a bucket of worms.

CHAIRMAN: Thank you, Delegate Tam. Yes, Delegate Hale, do you have a point of information?

DELEGATE HALE: I have a point of personal privilege.

CHAIRMAN: State your point.

DELEGATE HALE: The last delegate referred to the fact that one delegate had said that it was introduced to legalize marijuana. That is not what I said. What I said was that I introduced it because the Alaska statute was held to say, in words like this, that it was perfectly all right to smoke marijuana in the privacy of your own home.

CHAIRMAN: Thank you, Delegate Hale. The Chair recognizes Delegate Anae.

DELEGATE ANAE: Mr. Chairman, I rise for a point of privilege.

CHAIRMAN: You may state your point.

DELEGATE ANAE: My reasons for being against the amendment are more far-reaching than marijuana. I want the record to show that. If I may, Mr. Chairman, I'd like to

state those reasons. Brigham Young University was ordered by the federal government to desegregate their dormitories. And they could not use the right to privacy permitted in the Constitution to stand up in court. And this is the reason why I am for the right to privacy.

CHAIRMAN: Thank you, Delegate Anae. Delegate DiBianco is recognized.

DELEGATE DiBIANCO: I just wanted to state a point of information for the delegation, which is that in the first circuit of this State it has already been held without--

CHAIRMAN: Delegate DiBianco, in a point of information, you should ask a question. Why don't you rephrase that in the form of a question so that--

DELEGATE DiBIANCO: I'm sorry, I have no question. I have information to--

DELEGATE BLEAN: Point of information.

CHAIRMAN: Delegate Blean is recognized on a point of information.

DELEGATE BLEAN: I would like to ask if there is any delegate who can give information as to whether the first circuit court of this State has ruled on this.

CHAIRMAN: Thank you very much. Your point of information has been made.

DELEGATE SOUKI: Point of order, Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Souki on a point of order. State your point.

DELEGATE SOUKI: I'd just like to make mention, Mr. Chairman, that Delegate Tam was given the right to make the last speech.

CHAIRMAN: Delegate Souki, your point is not correct in that, although the privilege is accorded, the rules do not provide that it is binding. So any delegate who wishes to speak afterwards upon hearing the last speaker still has the right to do so if he so wishes. So the Chair now recognizes Delegate DiBianco to give the information requested by Delegate Blean.

DELEGATE DiBIANCO: Mr. Chairman, I simply wanted to point out that at least two circuit court judges have already held, without even this constitutional provision to help them, that smoking or possessing marijuana in your own home is a protected act and cannot be made illegal.

CHAIRMAN: Thank you. Delegate Chu, you are recognized.

DELEGATE CHU: Mr. Chairman, I have not had a chance to speak, but--

CHAIRMAN: You're recognized to speak.

DELEGATE CHU: Thank you. Hearing the concerns of the other delegates with regard to criminal law is a matter of great concern to me, because I do not feel that this particular--

DELEGATE LES IHARA: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Ihara.

DELEGATE LES IHARA: Point of parliamentary inquiry. I believe the rules do state that if the movant requests to speak last, that he has a right to speak last. I don't really mind Delegate Chu speaking, but I just don't want to set a bad precedent.

CHAIRMAN: The Chair would take that under advisement. The Chair had checked with the parliamentarian earlier on this because it had come up previously and was informed by him that, while a delegate may wish to be accorded the privilege of speaking

last and may be so granted, in spite of that, after the delegate has spoken, should some other delegates wish to address the body, they may do so--and that is in the rules. Is that right, Mr. Parliamentarian? He nods in assent. So the Chair rules that Delegate Chu--

DELEGATE CROZIER: Point of order.

CHAIRMAN: State your point of order, Delegate Crozier.

DELEGATE CROZIER: Maybe the rules are correct, but wouldn't it be a matter of courtesy if the delegate asked to speak last, and all these others should have given him that courtesy and spoken before he spoke last.

CHAIRMAN: Your point is of interest and would be taken under advisement by the body. However, if I may inform the delegate, the parliamentarian had informed me that one of the main reasons in the theory of parliamentary rule-making was that the last speech of a delegate may be so provocative as to open up new areas of response.

DELEGATE HALE: I move that we rise--

CHAIRMAN: You do not have the floor, Delegate Hale. What is your point?

DELEGATE HALE: I thought a motion to rise was always in order.

CHAIRMAN: Delegate Chu has the floor to speak; unless you have a point of parliamentary inquiry or point of information, you're not recognized. Delegate McCall is recognized.

DELEGATE McCALL: Point of information then. Would it be proper then to suspend the rules and again allow the maker of the motion to have another chance to speak at the end? I think this is very unfair, Mr. Chairman, since we had an agreement--perhaps not parliamentary--

CHAIRMAN: You raise an interesting point, Delegate McCall, which I have never before encountered, but I would check with the parliamentarian while Delegate Chu is continuing to address the body. Delegate Chu, proceed with your remarks.

DELEGATE CHU: Mr. Chairman, I guess what you said--that the mover of the motion had said something so provocative--that it has really inspired me to speak in that-- I started to say that the emphasis, the fear of not being able to effectively enforce our criminal laws is totally taken out of context. The present Section 5 of Article I deals with unreasonable searches and seizures, and in that particular section all of the criminal laws are applicable under this section. This particular provision in the committee proposal simply deals with personal autonomy; it gives each individual right to their human dignity and not to be interfered with by the government--

CHAIRMAN: Delegate Chu, may I interrupt you a moment. The Chair would ask that the delegates hold down their private conversations so that we can accord that courtesy to the delegate speaking.

DELEGATE CHU: I was very happy to hear Delegate Anae's statement in that it is exactly where this provision addresses itself. It allows individuals the freedom to exercise their own customs, to exercise their own activities in this State where there are so many different religious groups and customs and cultures. It is important that each different group, each individual be allowed to exercise those particular freedoms and customs--

DELEGATE McCALL: Point of order.

CHAIRMAN: Delegate McCall, you have requested a point of order? State your point.

DELEGATE McCALL: What is the provocative statement that was included in the last statement by the original mover that was not included in the first statement of the original mover?

CHAIRMAN: I didn't understand your point of order, delegate. Would you state it again?

DELEGATE McCALL: A special dispensation was granted to Delegate Chu to speak because the mover made a provocative statement in his last statement. I contend that he made the same statement--if I understand what the protest is about--in the first 10 minutes of his talk.

CHAIRMAN: Delegate McCall, your point of order is not in order in that the rules provide that delegates may speak even though the movant has requested to speak last. However, it is the Chair's intent as a courtesy--and I've been informed by the parliamentarian that it is possible--to accord Delegate Tam one final chance to speak after all have spoken, as a courtesy. However, unless any of those --

DELEGATE STERLING: Mr. Chairman, point of parliamentary procedure.

CHAIRMAN: Delegate Sterling is recognized on a point of parliamentary procedure.

DELEGATE STERLING: It is my understanding that the main purpose of the Committee of the Whole is to open it up to discussion. We can amend, we can adopt or not; we do not cut off debate. Let me reiterate that position--I think it's in Robert's Rules of Order--that it is more open. That is the main purpose of the Committee of the Whole. I think you're conducting it properly.

CHAIRMAN: Delegate Sterling, your point is well taken. It is in fact the rule that others may speak.

DELEGATE HALE: Point of order.

CHAIRMAN: State your point of order, Delegate Hale.

DELEGATE HALE: I would like to call your attention to Rule 39, because I don't think we should be setting precedents here. "No delegate shall speak more than twice on one question, or longer than ten minutes the first, or longer than five minutes the second time, or more than once until other delegates who have not spoken shall speak if they so desire, without first obtaining leave of the Convention; and the mover of the proposition shall have the right to close the debate, provided that the person in charge of a proposal on Third Reading and final agreement shall have the right..." So it seems to me that the mover of this amendment should have the right to close the debate, and I'm just wondering whether we can get--just for the sake of making sure that we aren't establishing precedents now.

CHAIRMAN: Your point of order has been considered and has been checked with the parliamentarian with respect to its application to the Committee of the Whole. In that the parliamentarian has informed the Chair, subject to the appeal of the body, that while the movant may request to speak last, that is not in fact binding upon the body and they may continue, as the ruling with Delegate Sterling's point of order was. So that although the Chair as a courtesy will ask Delegate Tam again--and I understand and have checked this with the parliamentarian that that is possible--he may speak again. However, with respect to the rules, the Chair has so found. Delegate Anae, you're recognized on a point of order.

DELEGATE ANAE: The only reason for my standing on a point of privilege was the allusion by the movant that the only reason for passing this--

CHAIRMAN: Delegate Anae, your remarks of personal privilege at this time would not be in order as Delegate Chu has the floor.

DELEGATE DONALD CHING: Mr. Chairman, point of--

DELEGATE BLEAN: Mr. Chairman, could we have a short recess?

CHAIRMAN: The request has been made for a brief recess--

DELEGATE DONALD CHING: Mr. Chairman, I rose on a point of parliamentary

inquiry prior to the request for a recess. Mr. Chairman, if we were to appeal the ruling of the Chair and the Chair were not sustained at this point, would that in effect restore the rule that we all thought was binding on all of us, that the movant be the last speaker if he so requested?

CHAIRMAN: The parliamentarian so informs me that that's correct.

DELEGATE DONALD CHING: Mr. Chairman, then I yield to the majority leader.

CHAIRMAN: The Chair recognizes Delegate Ching to complete your--

DELEGATE DONALD CHING: I appeal the ruling of the Chair.

CHAIRMAN: Which ruling is it that you appeal?

DELEGATE DONALD CHING: The ruling that you made that if, subsequent to the movant's request that he be the last speaker, he speaks and someone else who is provoked by something that the last speaker said can respond to it--I would appeal that ruling.

DELEGATE SUTTON: Point of order.

CHAIRMAN: Delegate Sutton, state your point of order.

DELEGATE SUTTON: Mr. Chairman, I believe all motions are out of order. Only points of order are in order when someone is speaking on the floor.

CHAIRMAN: Your point is well taken. At this point there is no appeal immediately before the body, but there may be very shortly.

DELEGATE BLEAN: Mr. Chairman, a motion to recess has precedence over all this discussion.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: The purpose of this is to settle the question once and for all. The Chair was bothered by the fact that he had not, immediately preceding the appeal, made a ruling. So the Chair will at this time, upon advisement of the parliamentarian, rule that the movant does not have the absolute right to speak last, but that others may speak afterwards. This ruling has been appealed by--

DELEGATE DONALD CHING: I appeal the ruling of the Chair.

DELEGATE LES IHARA: I second it.

CHAIRMAN: The ruling of the Chair has been appealed.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale, you're not in order at this point. Would you sit down because the appeal of the ruling of the Chair has precedence. Will you please be seated? Delegate Chu, unfortunately, would you please be seated also--

DELEGATE CHU: Does not a motion for recess have precedence over--

CHAIRMAN: The parliamentarian has informed the Chair that the--

DELEGATE HALE: Point of order.

CHAIRMAN: --appeal of the ruling of the Chair has precedence.

DELEGATE HALE: Point of order.

CHAIRMAN: Delegate Hale--

DELEGATE HALE: Does not a motion to rise and report have precedence?

CHAIRMAN: Please be seated, Delegate Hale. We are now in the midst of an appeal. Until the vote is taken you are not in order. The ruling as stated again is that the movant does not have the absolute right to be the final speaker, and that others may thereafter speak if they wish to.

DELEGATE DONALD CHING: Mr. Chairman, may I speak to my motion?

CHAIRMAN: The appeal has been raised as to the ruling of the Chair.

DELEGATE HALE: Point of order, Mr. Chairman. Is there debate on an appeal?

CHAIRMAN: Delegate Hale, it is possible to debate the appeal. Please be seated. Delegate Ching is recognized to debate the appeal.

DELEGATE DONALD CHING: Mr. Chairman, my appeal from the ruling of the Chair is not a personal one. I realize the Chairman is only following parliamentary procedure as proposed by our parliamentarian. However, I think that this Convention has been operating under the presumption that if the movant wants to be the final speaker, that that privilege should be accorded him. For us to follow proper parliamentary procedure as expounded by the parliamentarian, as proposed by the Chair at the present time this would only add more confusion and the discussion would go round and round again, and we'll end up even contradicting the rules of the body. And that's the only reason I appeal the ruling of the Chair--so that we can set order to this house once again.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I would like to speak in favor of the motion to appeal the ruling. I also feel that we should settle this. I don't want to set precedents, so that something that we have been working on--and I'd like to point out that Rule 24 states: "The rules of the Convention shall be observed in the Committee of the Whole so far as they may be applicable except that" we may not adjourn and so forth. The rule that I previously mentioned, I feel, is the rule that when the maker of the motion, the "proposition"--and I assume that means the amendment, although these rules are not very clear, as I pointed out--that when the mover is given the opportunity to speak last by permission, he should be given that.

CHAIRMAN: Thank you, Delegate Hale. The Chair will now explain the reason for making the ruling, after which he suggests we take a vote before we all forget what it's all about. The Chair has ruled that the movant need not be the final speaker, even though he is accorded that courtesy, upon the advice of the parliamentarian that that in fact is the parliamentary rule. So for that reason the Chair has ruled thusly. The appeal will now be set forth so that you can vote. If you vote yes, you sustain the ruling of the Chair, which means that delegates may speak after the movant has spoken for the last time, presumably. If you vote no, it means that the movant will be accorded absolutely the last occasion to speak. All those who vote to sustain the ruling of the Chair, raise your hand. Those who oppose the ruling, raise your hand. The ruling of the Chair has been reversed. The debate is ended. The question before the body is--

DELEGATE HALE: May we have an administrative recess?

CHAIRMAN: The Chair takes your request, Delegate Hale, under advisement and denies it. We would like to proceed to the vote.

DELEGATE HALE: Mr. Chairman, I move that the Committee of the Whole rise and report to the Convention that we need more time.

DELEGATE STERLING: Point of parliamentary procedure. You cannot stop debate in the Committee of the Whole, and this is a move to stop debate, sir.

CHAIRMAN: The point of parliamentary inquiry is not sustained by the Chair in that the motion to rise is in order at all times. I didn't hear a second. Is there a second?

DELEGATE DiBIANCO: Second.

CHAIRMAN: It has been moved and seconded that we rise and report, which motion is not debatable. All those in favor of rising and reporting to the Convention that we need more time, say aye. Opposed, no. The motion is defeated. We now proceed with the vote. The Chair recognizes Delegate Villaverde.

DELEGATE VILLAVERDE: Point of order.

CHAIRMAN: State your point of order.

DELEGATE VILLAVERDE: I request that we've been interrupted in listening to the Chair and the deliberations going on on the floor by the reaction from the gallery.

CHAIRMAN: Thank you, your point is well taken. The gallery is requested to be quiet.

DELEGATE BLAKE: Mr. Chairman, point of order.

CHAIRMAN: Delegate Blake, state your point.

DELEGATE BLAKE: Mr. Chairman, I have noticed--this has to do with what we just voted on.

CHAIRMAN: Is this a point of information?

DELEGATE BLAKE: Yes. I noticed that the mover at that time spoke second very early. Mr. Chairman, I think the Chair is going to have to render a ruling on that, too. The mover at that time spoke long before we had exhausted debate. Does it mean that as soon as he speaks for the second time all debate is going to cease?

CHAIRMAN: The Chair will proceed in this manner. Based upon the ruling which was made and reversed, the Chair will take great pains to ascertain whether any other delegate wishes to speak prior to requesting that the movant speak for his second time. I will remind the delegates that if they have anything to say, they should afford themselves of the opportunity when it comes. The Chair now recognizes Delegate DiBianco.

DELEGATE DiBIANCO: Point of personal privilege. I just wanted to express my extreme discomfort at your denial of Delegate Hale's request for a recess. My understanding all summer long is that whenever any delegate asks for a recess, ordinarily that request should be honored. I don't think this delegate abuses the request, and I would ask you to reconsider.

CHAIRMAN: The Chair will proceed with a practice that I would like to follow in most cases of this sort. I would like to suggest that we not recess and ask for the sense of the body. Those who favor an administrative recess, say aye. Those opposed, no. The noes have it. We will proceed with the vote, hopefully.

DELEGATE CHU: Mr. Chairman, has there been a motion to close debate?

CHAIRMAN: No, there has not, Delegate Chu. You're rising to a point of inquiry? It has not. We have had a ruling of the Chair that was reversed, which effect is that we shall have no further debate. Therefore, the only matter before us now for action is the action upon the amendment.

DELEGATE CHU: I would object to proceeding to the question until there has been an actual formal motion voted on by two thirds of the body to close debate.

DELEGATE HALE: Point of order, Mr. Chairman.

CHAIRMAN: The Chair will answer Delegate Chu's point of order. Her point was this--that there has been no vote to close debate. However, the Chair rules that in light of the reversal of the Chair's ruling, that we have in fact done that.

DELEGATE HALE: Mr. Chairman, point of order.

CHAIRMAN: And also that the motion to close debate in the Committee of the Whole is out of order. Delegate Hale, you had a point of order?

DELEGATE DE COSTA: Mr. Chairman, point of inquiry.

CHAIRMAN: Delegate de Costa.

DELEGATE DE COSTA: If you come late to this meeting here, do you still carry the same privileges?

CHAIRMAN: Yes, I believe you do. The only matter before us now is Amendment No. 3 to Committee Proposal No. 15. Delegate Hale, did you rise to a point?

DELEGATE HALE: Yes, I rise to make a motion that we suspend the rules that we have upheld to allow further debate on this subject since many of us are not ready.

CHAIRMAN: Would you restate your motion?

DELEGATE HALE: We voted down the ruling of the Chair that was going to allow extension of the debate. The reason we voted it down was because we based it upon the rules. Now I am moving to suspend the rules so that we can allow further debate on this subject.

CHAIRMAN: The Chair rules that your motion is not in order at this time as it may only be raised in plenary session. Do you wish to appeal the ruling of the Chair, Delegate Hale?

DELEGATE HALE: Yes, I wish to appeal the ruling because--

CHAIRMAN: Delegate Hale, you have appealed already, the Chair is going to call for a vote upon your appeal. You would like to debate it?

DELEGATE HALE: I would just like to say that I called attention and the reason I voted for this was because of Rule--I can't find it now, but I pointed it out to you--the rule about a delegate who makes a motion speaking last. And you made the rule based upon the parliamentary decision that that rule did not hold. And what I am saying is that I think the majority of this body agreed that that rule did not hold because our rules--

DELEGATE CROZIER: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order, Delegate Crozier.

DELEGATE CROZIER: I apologize to Delegate Hale, but I don't think there was a second on her motion.

CHAIRMAN: There was no second? Is there now a second to Delegate Hale's appeal? The Chair hears no second, Delegate Hale, so the motion will not be entertained. We are now back to the-- Delegate Tam.

DELEGATE TAM: Am I correct that you accorded me another chance to reply in accordance with Delegate McCall?

CHAIRMAN: Your point of inquiry is to be answered in this fashion: that it was the Chair's intent to accord you a final chance to speak; however, the Chair's ruling that you did not have the right to speak last was reversed on appeal. So therefore at this time you have no--I may not recognize you to speak last. We are in fact now proceeding to the vote; upon the reversal of the Chair's ruling, we are left with only the amendment to vote on--that is, to delete paragraph 6 entirely, relating to the right to privacy. All in favor of deleting--of the amendment, signify by raising your hand. All those opposed, raise your hand. The noes have it. The Chair will now entertain-- Delegate Waihee is recognized.

DELEGATE WAIHEE: Mr. Chairman, I move that we rise and report to the Convention that we are continuing our deliberations on the subject.

DELEGATE CROZIER: Second the motion.

CHAIRMAN: It's been moved and seconded that we rise and report to the Convention that we need more time to consider Committee Proposal No. 15. All those in favor say aye. Opposed, no. The motion is carried.

At 12:07 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Saturday, September 9, 1978 • Afternoon Session

The Committee of the Whole was called to order at 1:48 p.m.

Delegate Kaapu presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The committee has before it the amendment to Committee Proposal No. 15 entitled "Bail, Excessive Punishment." This is No. 4 in your listing. The Chair recognizes Delegate Tam.

DELEGATE TAM: Thank you, Mr. Chairman. In keeping with the spirit of the Convention, I will try to be as brief as possible, but would try to recognize the rights of everyone. In any event, these are important but I will try to keep it brief. I was going to suggest that we expedite matters by just voting in favor of everything, but then someone else might say we could expedite matters just as well by voting against everything, so I'll keep that out.

Mr. Chairman, I move for adoption of the amendment to Article I, Section 9, "Bail, Excessive Punishment"; this is indicated as Amendment No. 4. It has, on my copy, the capital letter B in the upper right corner, and what it does is to delete the second sentence of Article I, Section 9.

DELEGATE WURDEMAN: I second the motion.

CHAIRMAN: Delegate Tam, does that delete the second sentence of the committee proposal--is that what you said?

DELEGATE TAM: No, it doesn't do anything to the committee proposal. The committee filed this particular proposal. I'm asking that Committee Proposal No. 15 be amended by adding a new section.

CHAIRMAN: And you moved for its adoption. It has been moved and seconded to adopt Amendment No. 4. Please proceed, Delegate Tam, with your argument.

DELEGATE TAM: Mr. Chairman, if I may just express my concerns as to what happened to this section--this section said that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted." This is the way it was originally passed back in 1950 and then ratified in 1958 or 1959, when Hawaii became a state. In the 1968 convention, this second sentence was added, to wit: "The court may dispense with bail if reasonably satisfied that the defendant or witness will appear when directed, except for a defendant charged with an offense punishable by life imprisonment."

My objection to this is that it unduly adds to this section. This section was fine as it was. It conformed to the U.S. Constitution, which just says, as the first sentence indicates: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Now, the rationale that the 1968 convention used for adding this second sentence was that--and I'm quoting from Volume I of the Proceedings of the Constitutional Convention of Hawaii Of 1968, page 234, regarding Standing Committee Report No. 55--"[T]he amendment reflects the bail procedure as presently exists in our courts today under statutes implementing the existing Section 9. The amendment simply clarifies the scope with respect to the requirement of bail and would remove doubts, if any, as to the discretionary powers of the court in the matter of bail." My point, Mr. Chairman, is that this was completely unnecessary; and not only that, in putting this section in--I think it really goes against the victims of crimes. Let me explain what I'm

saying. What this does, even though it says "may"--the "court may dispense with bail"--in other words, the court may release.... Let me give you an example: suppose there is an assault case--a rape case; the perpetrator is caught, he is brought before the judge, he is told what he has done. At this point, the question is whether the court shall impose any bail upon this person to guarantee that he will appear; also to control the person in any subsequent actions that he may have. Now, this section makes it--even though it doesn't mandate it--it makes it a very heavy burden for the court to impose any bail if the person can say to the court--Your Honor, I know I did something wrong but I'll appear when you tell me. And this is regardless of whether the person has a record, regardless of whether the person has a tendency to go out and threaten witnesses. The only standard it put in the Constitution was whether the person would appear as directed.

If I can give you a particular case that I had--again it was a rape case, and this is where I became very concerned about it. The victim was very afraid--the person had a record of assaults and rapes. He was brought to the court after the particular crime, and it was represented to the court that he would appear when directed; and as it happened in this case, as it happens in other rape cases--even though we as prosecutors protested that that was not the only standard to use, that in fact this person could go out and commit further crimes, that this person could go out and threaten the witness, and that some bail should be put upon this person--the person was in fact released on his own recognizance, without putting up a dime. You can imagine the problem that we had when the victim called the prosecutor's office and asked what had happened and we said the person was out and then we were asked--well, what was the bail? And our response was--there wasn't any. We had a heck of a time trying to explain why.

Now, Mr. Chairman, this matter is covered in chapter 804 of the Hawaii Revised Statutes. Bail was already mentioned and the court already has the discretionary power to either stipulate bail at a certain amount, whether it be \$50 or \$100, \$500, \$1,000 or whatever, or to release a person on his own recognizance. It is already in the statutes. It is not necessary in the Constitution and putting it in the Constitution makes it very difficult for a judge to impose bail no matter what the person's record is, no matter what his conduct is, as long as it is represented to him that this person will be at his next court appearance. Because of that, Mr. Chairman, I would ask that this amendment be adopted. Thank you.

CHAIRMAN: Thank you, Delegate Tam.

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto is recognized.

DELEGATE DE SOTO: I rise to speak against this amendment. I see this amendment as again taking away the few crumbs that have been given to poor people. What the movant has addressed himself to is limited to cases where felony may be suspected. I have always believed that under our system of democracy, you are innocent until proven guilty. Many of our poor people linger in jail because they cannot put up bail for misdemeanors--misdemeanor charges, I think they're called.

This amendment prejudices the poor. Even the poor have rights and, irrespective of the fact that prosecuting attorneys' offices in some counties feel they are put too hard to work, they work for the people. The one case that was given may--I dare submit--be a small case compared to how many people linger in our jails who cannot afford to pay bail. I am not advocating the release of criminals; I am advocating that, in the event there is a charge brought against a poor person, that poor person has just as much right to be released as the rich, who can afford to get themselves off--like the Patty Hearsts. It is the poor who this system prejudices itself against. I think this is despicable.

I urge this Convention to vote down this amendment on the basis that if the communities of Hawaii did not want this to appear in the Constitution, they wouldn't have ratified it on the 1959 or the 1950 ballot that was proposed by those people sitting in the Con Con. I urge all of you to look at this amendment as a declaration against the poor, just to make somebody's job easier. Mahalo.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Mahalo, Delegate De Soto. The Chair recognizes Delegate Hale.

DELEGATE HALE: I just wanted to say that I sympathize with my sister from Waianae and I also ask you to vote it down.

CHAIRMAN: That counts against you as one of your two speeches. Any further discussion? Delegate Chu.

DELEGATE CHU: Yes, Mr. Chairman. I would like to speak against this particular amendment, in that the federal statutes and federal laws have accorded this right to bail; and many cases have been decided on the basis that the only reason for bail is to guarantee the person's appearance in court but, prior to that, that person is not guilty and is presumed innocent until found guilty. The problem of the release of an individual on bail or on his own recognizance is not one of a constitutional dimension, and perhaps could be more properly addressed insofar as tightening up the discretion that the courts may have in certain situations. It's very rare that individuals who are not residents of this State are allowed to be released on their own recognizance. In other words, I'm saying that individuals who are long-term residents in the State, who have family ties, who have employment, who have ties to this community--they are likely to appear in court and the bail requirements are looser in these situations. In other words, they are allowed out on bail or perhaps on their own recognizance, and I would agree with Delegate De Soto that this would work against the poor and it would work against long-term residents of this State.

CHAIRMAN: Thank you, Delegate Chu. Is there further discussion?

DELEGATE WEATHERWAX: Mr. Chairman.

CHAIRMAN: Delegate Weatherwax.

DELEGATE WEATHERWAX: I rise to speak against the amendment also, for the reasons that were expressed previously and particularly by the argument made by the delegate from Maui, who is in the business of prosecution--I believe the statement he made concerning the hurting of victims of crimes is not necessarily proven, and I ask that you look deeply as to whether or not that is in fact a true statement.

In addition, he expressed that it placed a heavy burden on the court and I would say that if that is the case, then the scales of justice should weigh in that fashion toward the liberty of a criminal defendant.

CHAIRMAN: Thank you, Delegate Weatherwax. Any further discussion? Delegate Tam, would you--if there's no further discussion-- Delegate Campbell is recognized. The Chair will make every effort to ascertain the willingness to discuss further.

DELEGATE CAMPBELL: Mr. Chairman, I rise to speak against the amendment. I'd like to point to some statistics which appear in the Legislative Reference Bureau material on this, which indicate that the arrest rate of all criminal defendants, as a group, on robbery charges while on release is around 1 percent; and I would like to suggest that if there is a problem in this area, I think the entire system ought to be revamped and the approach is to speed up the trial process so that this will reduce the amount of time that defendants spend on pretrial release. Thank you.

CHAIRMAN: Thank you, Delegate Campbell. Any further discussion? Delegate Tam, would you care to speak last on your proposed amendment?

DELEGATE TAM: Thank you, Mr. Chairman. In the face of extremely heavy opposition, I would just make these comments. (1) In terms of prejudicing the poor, may I point out in chapter 804--this is already in the statutes. It doesn't take away any particular right, it is already there. The court already has the discretion to release a person on his own recognizance. The question is whether this matter is one of constitutional stature, such that it should be put here in Section 9. (2) I would just point out that the poor are as much the victims as any other portion of society; everybody's affected. And (3) as far as the convenience of our office with this particular provision, it doesn't act to the convenience of our office. In fact, we have to work harder if the person is kept in custody; we have to give him a hearing much sooner than we would if he were released on his own recognizance.

The reason I bring this up is not for the convenience of the prosecutor--it makes it harder on us. But the ones who are affected are the victims and the problems, the problems that occur to the victims--these are the reasons I brought this up. Because when we go before the judge, we make our plea and whatever is the court's ruling--fine, we can go back to our office, that's it for us. It's just another case. But it's for the victims who have to put up with this thereafter, every day thereafter--that's the reason I brought this up. And for that reason, Mr. Chairman, I would advocate the approval of this amendment. Thank you very much.

CHAIRMAN: Thank you, Delegate Tam. The question before the body is to amend Committee Proposal No. 15 by adding a new section which would delete the second sentence of Section 9 of Article I, which reads: "The court may dispense with bail if reasonably satisfied that the defendant or witness will appear when directed, except for a defendant charged with an offense punishable by life imprisonment." All in favor of this amendment, please raise your hand. All opposed? The noes have it and the amendment fails.

We now have before us Amendment No. 5, which amends Committee Proposal No. 15, section 3, with respect to "Rights of Accused."

DELEGATE PENEBACKER: Mr. Chairman, I would like to defer this matter to the end of the calendar.

CHAIRMAN: Thank you, Delegate Penebacker. This matter will be deferred to the end of the calendar. Next, Amendment No. 6, also to amend section 3 of Committee Proposal No. 15, entitled "Rights of Accused," is offered by Delegate Tam. The Chair will recognize Delegate Tam.

DELEGATE TAM: Mr. Chairman, I move for the adoption of Amendment No. 6 to Committee Proposal No. 15, section 3, by amending Article I, Section 11, to read as indicated.

CHAIRMAN: Is there a second?

DELEGATE SOUKI: I second it.

CHAIRMAN: It has been moved and seconded that Amendment No. 6 be adopted. Delegate Tam, you are recognized to speak for your amendment.

DELEGATE TAM: Mr. Chairman, to clarify this matter, this proposal indicated as No. 6 has a capital A in the upper right-hand corner, and your delegate, having been knocked out in two rounds, with great trepidation is now proceeding into the third.

The purpose for this amendment--well, let me explain the amendment, Mr. Chairman. As it is right now in the committee proposal, it reads the same all the way up to the next to last line, to the word "imprisonment," and what the committee did was to delete the bracketed "for more than sixty days." My amendment seeks to substitute the underscored "for more than thirty days." I bring this to the attention of the body because as I listened to the committee when it debated this particular matter--this was a proposal by another delegate, not this delegate, and that other delegate had proposed, in fact, what is now on this amendment. In other words, the delegate had proposed that the words "for more than thirty days" be substituted for "for more than sixty days." At the time the committee made its decision, it was represented to the members that it makes no difference whether the phrase "for more than thirty days" was included or the original deleted in its entirety; that's how it was represented to the committee. In other words, they wanted to implement the intent of the delegate who had put this proposal in, which said "for more than thirty days." But it was represented that the intent would be met anyhow, even if the "for more than thirty days" was deleted, that there would be no substantive change of any sort.

Now, I have attached an exhibit to the back to indicate that this was not in fact the case. And just to indicate to the committee what in fact it did do--if you will look, it describes the various classes of crimes--felonies, misdemeanors, petty misdemeanors and violations. Felonies are divided into classes A, B and C felonies, which are determined by maximums of 20 years, 10 years and 5 years; misdemeanors by a maximum of 1 year; petty misdemeanors by a maximum of 30 days--these are all possible jail terms--and violations, which have no imprisonment but fine only. And on the right, I have tried

to give you examples of the types of crimes that would fall within certain classes. For instance, in class A felonies, you would have murder, rape in the first degree, robbery in the first degree and kidnapping; and so forth on down the line, through the B felonies, C felonies, misdemeanors, petty misdemeanors and violations.

Now, this section, Section 11, as it was before any amendment had been applied, left the line of demarcation at the double line that I have put in--in other words, between misdemeanors and petty misdemeanors. That was the point at which it stopped. The proposal by the delegate for the amendment would not have moved this line up or down. It would have left the line where it was. It would have been simply a housecleaning measure to keep with the statutory language that defines petty misdemeanors at 30 days, because the prior language had been for 60 days and there's no crime right now which--unless it's an archaic crime, an old crime, that has not been redefined--which includes a sentence of 60 days. So it's either 30 days--and the next step is 1 year. In any case, the proposal would not have shifted this line up or down; there would have been no substantive change.

Taking out the line entirely--"for more than thirty days"--moves it down now to where the dotted line is, in other words between petty misdemeanors and violations. And this is whenever the State shall provide counsel for an indigent defendant. Now if that is the committee's intent and if that is the Convention's intent, then so be it. But that's not what I heard when the discussion was going on. It was the committee's understanding, as far as I know, that no substantive change would be made. With this substantive change, the State will now be mandated to provide counsel for indigent defendants for such things as littering, harassment, prostitution and most moving traffic offenses; whereas at the present time, under the present Constitution, it is not required to do so. And that would include--if we include just these moving traffic offenses, in my report, "The State of the Judiciary," in 1976-77 alone, this would have included 132,532 new cases in addition to 29,422 already existing cases, for a total caseload of 161,954. Now not all of these would have required counsel, public defense counsel, but I believe a good many would have. If that is what the Convention wants, then I suppose that's the way the Convention should leave it. But if that was not the intent of the committee, and it is not the intention of the Convention at this time, then I would go back to the intent of the original amendment, the original proposal, which was to leave in the words "for more than thirty days." Thank you very much, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Tam. The Chair recognizes Delegate Weatherwax.

DELEGATE WEATHERWAX: Mr. Chairman, with deference to our good delegate from Maui, this is not the third strike. He's had two that went down but this is not the third strike, and therefore I speak in favor of this amendment, because it was not, as he has indicated, the committee's intent to expand the types of crimes for which the public defender would be provided. I would ask that the members of the delegation be aware that in fact the committee did err in the matter that was before them and so they believe that the intention of the committee would be to put in the words "for more than thirty days," and that there should be no change based on that.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair recognizes Delegate Hale.

DELEGATE HALE: Mr. Chairman, I am a little bit confused and I'm not speaking for or against. I wish Delegate Waihee was here because--

CHAIRMAN: Delegate Hale, are you posing a--

DELEGATE HALE: Yes, I would like to pose--

CHAIRMAN: Wait, Delegate Hale, let me ask you a question. Are you posing a point of inquiry or are you--

DELEGATE HALE: Well, I'll ask it in the form of a question to the chairman of the committee.

CHAIRMAN: Okay. Well, this will not count as--

DELEGATE HALE: On page 4--

CHAIRMAN: Delegate Hale, wait. This will not count against your two chances. I'll take it as a simple question, or point of inquiry. Go ahead.

DELEGATE HALE: All right, on page 4 of Standing Committee Report No. 69, it says at the top: "The proposed amendment is necessary and advisable because of the recodification of Hawaii criminal law with the passage of the Hawaii penal code. Under the penal code, there is no crime carrying a 60-day sentence but petty misdemeanors do carry a 30-day sentence. The only lower offenses are violations which carry no jail sentence. Under present Hawaii laws, the public defender is mandated to provide legal services for indigents charged with an offense punishable by jail or imprisonment." And it goes on to talk about Hawaii Revised Statutes, 802-1. "Thus, the proposed amendment would bring the Constitution to date with current law and practice" and it would "be in keeping with the spirit of" such and such and such and such "holding that no person may be imprisoned for any offense unless he was represented by counsel." Now, I'm confused because of the fact that he says that 30 days in jail is in jail, and if this is true, I think it was the intention of the committee to provide counsel for any offense that would result in a jail sentence. And this is what I had heard Delegate Waihee say and therefore, since he's not here, perhaps the chairman of the committee could clarify what was meant in the committee report.

CHAIRMAN: Delegate Hale, your question is--

DELEGATE HALE: Yes, it seems to me this is--

CHAIRMAN: Wait, the Chair is trying to understand your question.

DELEGATE HALE: May I restate the question?

CHAIRMAN: No, no, I think I may have it. Anything please, anything but that. Wait, let me ask if the chairman of the committee has understood the question sufficiently to respond. He does. Thank you, Delegate Hale.

DELEGATE WEATHERWAX: No, I rise to say that I really don't understand the question.

CHAIRMAN: Delegate Hale, it has to do apparently with--something to do with being in jail.

DELEGATE HALE: Yes, I'm trying to say that the first paragraph of Standing Committee Report No. 69 on page 4 seems to me to completely contradict what the chairman of the committee said. And I'm asking him which is right--his opinion, or the committee report?

CHAIRMAN: Thank you, Delegate Hale. The Chair, I think, understands the question. Is there a contradiction or not?

DELEGATE WEATHERWAX: No, I believe--well, there is a contradiction, yes. But the statement I made with reference to no change is in fact to delete what was stated in the standing committee report.

CHAIRMAN: Am I to understand that what you're saying is by passing the amendment, it would correct the contradiction?

DELEGATE WEATHERWAX: That's correct.

CHAIRMAN: Delegate Hale, does that satisfy your inquiry?

DELEGATE HALE: Well, I still don't understand. Could the chairman of the committee tell us whether or not the committee report reflects the action and the intent of the committee in its proposal?

CHAIRMAN: Thank you. Delegate Weatherwax.

DELEGATE WEATHERWAX: I'll just answer it no.

CHAIRMAN: Yes, the answer is no, but I understand him to say that it will, if the amendment is passed, bring it into line, so you're correct in your earlier question.

DELEGATE HALE: Then I would like to speak against this amendment. Because I am no lawyer, and I certainly would love to hear the lawyers on this, but just as a lay person, and as a person interested in providing justice, which I think all of us are, it is my clear intention, as a member of the committee, that we did intend to provide legal counsel for any offense that was punishable by jail and if these things that are mentioned here--30 days, punishable by 30 days in jail--I think it was the intent of the committee, I think the committee report does reflect the intent of the committee, and this amendment then does not reflect the intent of the committee, and I would urge that you vote this down.

CHAIRMAN: Thank you, Delegate Hale. Is there further discussion? Delegate Chu.

DELEGATE CHU: Yes, my understanding of the Argersinger case is that--this is mentioned on page 4 of the standing committee report--it's been a long time since I've read that case but my understanding, and I think what the committee report has captured, is that any time a person is subject to a jail sentence--subject to confinement, where his liberty may be taken away from him--he is entitled to an attorney. Now I believe that Delegate Tam attempted to address that in his amendment, in that he is saying that unless there is an amendment to change this from 60 days to 30 days, then a person could conceivably, under the Hawaii Constitution, not be entitled to counsel, where he is guilty of an offense and subject to a 30-day jail imprisonment.

My problem with this particular amendment is that perhaps at some time the legislature may want to change the penal code in such a way that they may provide for certain offenses that would be subject to 10 days in jail, and in that case the Argersinger case requires that even if the person is subject to a jail sentence, even for one day, he must still have an attorney, a court-appointed attorney.

So I would then move that the period be inserted after "imprisonment" so that there is no specification as to whether it's 30 or 60 days. In other words, all offenses subject to imprisonment--excuse me, Delegate Hale.

DELEGATE HALE: Point of parliamentary inquiry.

CHAIRMAN: State your point.

DELEGATE HALE: Because this amendment is going to add the words "for more than thirty days," and the committee proposal does put the period after "imprisonment"--so if we vote down this amendment, we are then voting for the committee proposal which puts the period after "imprisonment," which is what the delegate is asking.

CHAIRMAN: Delegate Hale, your point of parliamentary inquiry is not exactly relevant here. The effect of the proposed amendment to the amendment is something which perhaps Delegate Chu can consider since what Delegate Hale says I believe is correct--that the existing language of the committee proposal does place the period after "imprisonment."

DELEGATE CHU: That's correct. I therefore speak against this amendment.

CHAIRMAN: Thank you. Further discussion? Delegate Burgess, then Delegate Lee.

DELEGATE BURGESS: Mr. Chairman, I speak against the amendment. I was president of the Legal Aid Society when the first defendant program was set up in this State, and we addressed some of the same questions that we've been discussing here; and my recollection of the Argersinger case is the same as related by the previous delegate, and I believe it's also correctly stated in the committee report. It's not a mistake, I believe it's correctly stated--that where an accused can be imprisoned for any term or deprived of his liberty, there is a duty on the State to provide an indigent accused with counsel. And if this amendment is adopted, it would mean that in Hawaii there is no requirement that the State provide counsel to an indigent accused unless it's for an offense for which he can be imprisoned for more than 30 days. That would mean that the State does not

have to provide counsel for an indigent who is accused of a petty misdemeanor since the maximum imprisonment is 30 days, which is not "more than 30 days."

I wish Delegate De Soto was here because her argument when we discussed the previous amendment would be particularly appropriate in consideration of this amendment. This amendment indeed is prejudicial to the poor. It indeed is despicable; and I would ask you to vote it down.

DELEGATE MARION LEE: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Lee.

DELEGATE MARION LEE: Mr. Chairman, I rise to speak in favor of this amendment. I had originally put in a proposal with this exact same wording; therefore, it is something I definitely concur with. Just to reaffirm my original intent at the time that I did put the proposal in--I had felt that there should be conformance with the existing practice today, which is that anything over 30 days be provided counsel, and this merely brings into line a more realistic conformance with the existing practice. I do not feel that violations for parking or littering should need any counsel; therefore, it should not be deleted entirely as the committee proposal states. Therefore, I would urge you to vote for this amendment.

CHAIRMAN: Thank you, Delegate Lee. Is there further discussion? Delegate Pulham.

DELEGATE PULHAM: Yes, Mr. Chairman, could you tell me, was the Constitution prior to this committee thing--was it constitutional? The lawyers seem to be saying it wasn't because--

CHAIRMAN: You're rising to a point of inquiry?

DELEGATE PULHAM: Point of inquiry, yes.

CHAIRMAN: Perhaps the chairman of the committee could address himself to that--that is, if he wishes to. State your question again please, Delegate Pulham.

DELEGATE PULHAM: Prior to this, we had a 60-day requirement in our Constitution; yet two lawyers have testified that such-and-such a case says that for any imprisonment you have to provide an attorney, which would indicate to me, as a layman, that if you say 60 days, that's more than 1 day and that's certainly unconstitutional. Yet it was in our Constitution. Are they saying then that we can't put 30 days in because that's unconstitutional too? This is my question. Are we doing something unconstitutional on its face? That's what they're saying, or that's what I heard.

CHAIRMAN: Would one of the previous speakers, whoever may have given that impression or has the information, would like to respond to that? Delegate Chu.

DELEGATE CHU: I'm sorry, I missed part of your question.

DELEGATE PULHAM: Okay.

CHAIRMAN: Delegate Campbell seems to have--

DELEGATE PULHAM: Yes, I think she heard the question. I hope so, because the Constitution--I'll repeat--says 60 days, the existing Constitution--anything punishable by more than 60 days, you will have counsel. Now you have stated that--I won't cite the case, I don't know it--states that any offense where there's any imprisonment at all requires a counsel. And now we're saying--he's saying--that he would like to put 30 days in. So are any of these things constitutional--60 days? 30 days? Or are we in fact being unconstitutional? That's what I want to know.

CHAIRMAN: Thank you, Delegate Pulham. Delegate Campbell, you may respond.

DELEGATE CAMPBELL: I don't think it's a question of whether we're being unconstitutional by having that language, because I don't think we're being unconstitutional by having it. I think the realities of life in the State of Hawaii are that the public defender

is now providing counsel for all individuals who are arrested and charged with a crime for which they can be either imprisoned or placed in jail, irrespective of the time they may have to spend in jail. And it was based upon this theory, and also the HRS statute cited in the report, 802-1, that the committee decided; and I concur with the previous delegate who raised the question, that it would be more accurate and consonant with our actual practice to simply have a period at the end and say that counsel will be provided for indigents in cases where they may be imprisoned or go to jail.

CHAIRMAN: Thank you, Delegate Campbell. Does that answer your question, Delegate Pulham?

DELEGATE PULHAM: Yes, Mr. Chairman, it does, and in my turn I would like to speak.

CHAIRMAN: Thank you. You may speak now if you wish. Are you--Delegate Chu, are you going to add something to the answer to the question raised--something that has not already been said? Go ahead.

DELEGATE CHU: I think it might clarify the matter. In the committee report, the citation of the Argersinger case on page 4, the last sentence of the first paragraph, in which it says: "...Argersinger v. Hamlin... (1972) holding that no person may be imprisoned for any offense unless he was represented by counsel"--what this case does, as I have said, is to provide that if a person is subject to jail for even 1 day, he must have an attorney. Now, that is federal case law, which the courts here must comply with because it is an interpretation of the federal Constitution and the federal Constitution applies to the State, and it does have supremacy over any provision in the State's Constitution.

Now, the 30 days is in here because there really is no crime that is actually punishable by less than 30 days--I mean punishable by imprisonment for less than 30 days. I think that the committee's proposal is essential because what happens is that, if a person does not have counsel, the courts are put in a very difficult position because they cannot jail someone even if they have committed a full misdemeanor and, let's say financially, they do not qualify for a public defender--the courts may not jail them unless they have an attorney, so that really creates a problem. And I think that if we go with the committee proposal that will resolve that problem.

CHAIRMAN: Delegate Chu, thank you for your information. Delegate Pulham, does that further clarify--answer the question which you raised? You are recognized now to speak.

DELEGATE PULHAM: Thank you. I'm, very shortly and simply, going to speak in favor of the amendment and I'll explain why. I'm thoroughly confused by both answers and I think that the only thing that has become very evident is that the legal profession does not particularly care what's in the Constitution; that is, they're going to do either what they want to or what somebody else says, anyway. Because that was the answer we got--60 days in the Constitution is valid but we're doing something completely opposite. So I can't see any reason why it would hurt them to have the 30 days in here. In this case 60 days was fine; 30 days brings it in line with what the state statutes are, but which are not being followed anyway. So let's just bring it in line with the statutes and go from there. Thank you.

CHAIRMAN: Thank you, Delegate Pulham. Is there further discussion?

DELEGATE BURGESS: Mr. Chairman, I would just like to say that no matter what the sentence says in the Constitution--I don't know if this will help the last delegate in understanding the legal profession's point of view or not, but I'll try. It doesn't matter what we say in our Constitution--we could say the State shall provide counsel for indigents charged with offenses punishable by 10 years--it doesn't matter because the U.S. supreme court says we have to provide counsel for indigents who are charged with a crime for which any punishment in the nature of loss of liberty or imprisonment can be imposed. If we're going to put anything in our Constitution, however, I personally think it would be better to conform to the law as it now stands, and that is that we have to provide counsel whenever a person can be imprisoned. I think it's embarrassing to put in something that--we're doing it now in 1978, in the face of knowledge that the law by which we are bound is different.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Crozier is recognized.

DELEGATE CROZIER: Yes, Mr. Chairman, I'd like to speak against this amendment because, like the delegate from the Big Island, I am confused and anytime I am confused, I have to vote no.

CHAIRMAN: Thank you, Delegate Crozier. Is there anyone else who wishes to speak on this amendment? Yes, Delegate Chun.

DELEGATE CHUN: Yes, it's my belief that probably the 60-day section in the original Constitution became unconstitutional in 1972 when Argersinger came out, so I think we should delete it to bring it in line with the federal law as it is.

CHAIRMAN: Thank you, Delegate Chun. Is there further discussion?

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale is recognized.

DELEGATE HALE: I will speak for my second time. I wonder if everybody realizes what we're doing--this is what I'm concerned with. And I'm very concerned that Delegate Waihee is not here, because he was the great exponent--

CHAIRMAN: Delegate Hale, please keep your--

DELEGATE HALE: No, I'm speaking against this amendment, Mr. Chairman, and I think what I have to say is very pertinent. Because in our committee--

DELEGATE TAKEMOTO: Mr. Chairman, point of order.

CHAIRMAN: Delegate Hale, wait for a moment--your time is being stopped while I answer the point of order. Yes, Delegate Takemoto.

DELEGATE TAKEMOTO: Yes, it is my understanding that no individual has the right to discuss what happened in a committee unless that person is the chairman himself.

DELEGATE HALE: I'd like a ruling on that. Where does that rule come from?

CHAIRMAN: Delegate Hale, the Chair is answering the point of order. Please be seated while I recognize Delegate Takemoto. Your point of order was that the delegate may not speak on behalf of the committee, is that it?

DELEGATE TAKEMOTO: Right, and I'm quoting from Robert's Rules of Order, page 441, where it says: "No one can make allusion in the assembly to what has occurred during the deliberations of the committee, however, unless it is by report of the committee or by general consent."

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: The Chair is in the process of ruling on a point of order. The point of order is well taken; however, I didn't hear Delegate Hale to be imputing to the committee any particular point of view, except to cite the committee report. Delegate Hale, I would ask that you not allude to the motives of any delegates who are absent, or anything.

DELEGATE HALE: All right, I'm reading from the report, Mr. Chairman.

CHAIRMAN: Please proceed.

DELEGATE HALE: The report does not say, in any case, what delegate said all of this or what delegate did all of this; but I think it's very important for the committee to know that it was Delegate Waihee who gave this argument to the committee, upon which we made the decision stated on page 4, and if we pass this amendment--

DELEGATE LES IHARA: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Hale, will you stop for a moment while I answer the point of order. Delegate Ihara, will you state your point of order.

DELEGATE LES IHARA: Mr. Chairman, I believe that the fact of who gave an argument is not relevant to the issue.

CHAIRMAN: Your point of order is well taken. Delegate Hale, please confine your discussion to the merits and/or demerits relating to the amendment as proposed.

DELEGATE HALE: All right. I just can hardly believe that this is going on, but at any rate those who are members of the BORSE committee will certainly know what I'm talking about. When I heard the committee chairman say that he was supporting this amendment because it was not the committee's intent to do exactly what the committee proposal says--and that is to bring this State into line with federal law and federal practice to provide counsel for indigents, and for any number of days that they have to be in jail--you know, I just can't believe it. He wrote the committee report, and it's amazing to me that he would support, as chairman, an amendment that would go against the majority report of the committee, as stated on page 4, with reasons. I'm concerned that the delegate who supported this is not here, and I wonder if by design he got the other delegate, who certainly--

CHAIRMAN: Delegate Hale, the Chair will have to rule that your line of speculation as to why any other delegate did one thing or another is to be avoided. Please proceed without doing that.

DELEGATE HALE: Thank you, Mr. Chairman. I think all of you are aware of what's going on in this Convention, but this does not--

CHAIRMAN: Delegate Hale, will you please not even assume what all of us must be aware of at this Convention. Confine yourself to your views on the issue, pro and con.

DELEGATE HALE: I am aware--as a matter of personal privilege, Mr. Chairman--I am aware myself, as a delegate, of what is going on in this Convention and I would say that if this does not conform, that this amendment then is going to make the State of Hawaii look stupid. We're going to change our Constitution to put a 30-day limit in when federal court decisions have said that we have to give this counsel to anybody, whether they're--if they're going to be in jail. And we're going to change the 60 days to 30 days, and then the practice is going to go on that we're still going to give counsel to anybody that has to go to jail, even if it's for 10 days. It was the intention of the committee, as outlined in the committee report, that we put the period after "imprisonment"--

CHAIRMAN: Delegate Hale, the previous ruling on that was that you can state for or against but to say what the committee meant would be to --

DELEGATE HALE: All right, but I'm reading what the committee report says.

CHAIRMAN: Okay, you may do that.

DELEGATE HALE: "Under...Hawaii laws, the public defender is mandated to provide legal services for indigents charged with an offense punishable by jail or imprisonment" and this is only to make sure "that no person may be imprisoned for any offense unless he was represented by counsel," which is the present practice. And we're only saying that we're trying to make the Constitution--

DELEGATE TAKEMOTO: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Takemoto, you're recognized on a point of order.

DELEGATE TAKEMOTO: Yes. On this one I think that there is a point of order. We all have copies of the committee report and we all can read it and it will already be included in the records, so I think--

CHAIRMAN: So what is your point of order as to what is being violated or not?

DELEGATE TAKEMOTO: Okay, I don't think the delegate should spend all this time just reading something which we all have the capability of doing.

CHAIRMAN: Delegate Takemoto, your point is in this case, unfortunately, not well taken, since the delegate is using her own time to read whatever she so chooses, and it may be redundant and it may cause various reactions but it is her privilege. Delegate Hale, please proceed. I might remind you though that in bits and pieces your 5 minutes is rapidly being used up.

DELEGATE HALE: Well, if my bits and pieces will not be interrupted by points of order, Mr. Chairman--

CHAIRMAN: Delegate Hale, the Chair is attempting to be as fair to you as I can under the circumstances. One minute.

DELEGATE HALE: "Thus," it says, "the proposed amendment would bring the Constitution to date with current law and practice." And by passing this amendment, we are going to keep our Constitution out of date with current law and practice in a ridiculous manner, and we are certainly, as the delegate from Waianae said--we are discriminating against poor people; the federal courts won't let us discriminate against poor people, and why this amendment has been brought up, in complete contradiction to the majority report, I cannot understand. I urge you to vote it down.

CHAIRMAN: Thank you. Is there further discussion?

DELEGATE WEATHERWAX: Mr. Chairman, could I ask for a short recess, please?

CHAIRMAN: The Chair calls a 2-minute recess.

At 2:42 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 2:51 p.m.

CHAIRMAN: The Committee of the Whole will come to order. The Chair recognizes Delegate Tam--

DELEGATE TAM: Mr. Chairman.

CHAIRMAN: --who rises to make a request.

DELEGATE TAM: Mr. Chairman, not only have I been struck down twice, but now I'm despicable, and in light of the questions raised, I would like to withdraw the amendment, with the understanding that if necessary, as mentioned, it could always be raised on Second Reading. However, I would like to make a point of clarification if I may.

CHAIRMAN: Delegate Tam, the parliamentarian has informed me that at this point, after the motion has been made and it's under debate, that the proposed amendment is now the property of the committee so it cannot be withdrawn simply at your request. I think that a motion would be in order, however.

DELEGATE TAM: Okay, I so move.

CHAIRMAN: Is there a second?

DELEGATE TAIRA: Mr. Chairman, I second the motion.

CHAIRMAN: Okay, it's been moved and seconded that the--

DELEGATE TAM: May I speak to the motion?

CHAIRMAN: Yes, you may. Proceed.

DELEGATE TAM: The motion is to withdraw--

DELEGATE CHANG: Point of privilege.

CHAIRMAN: Yes, Delegate Chang.

DELEGATE CHANG: Could you state the motion, please?

CHAIRMAN: The motion, as I understand from Delegate Tam, was to withdraw Amendment No. 6, which is before us. Okay, this is not a debatable motion. All those in favor, raise your hand. Opposed? The ayes have it.

Let's proceed on to Amendment No. 7. The Chair recognizes Delegate Tam. Amendment No. 7 is "Rights of Accused," which ends with double quotation marks. Delegate Tam, you are recognized.

DELEGATE TAM: Mr. Chairman, since this is of the same sum and substance as Amendment No. 6, I would--is this the proper--

CHAIRMAN: You may request it be withdrawn at this time.

DELEGATE TAM: Okay, I would request that the Chair withdraw this.

CHAIRMAN: Granted. Okay, let's proceed to Amendment No. 8, which relates to "Grand Jury Counsel." This is also introduced by Delegate Tam. Delegate Tam, you are recognized.

DELEGATE TAM: Thank you, Mr. Chairman. Mr. Chairman, I move for the adoption of Amendment No. 8 to Committee Proposal No. 15, to amend by deleting section 5, relating to grand jury counsel.

CHAIRMAN: Is there a second?

DELEGATE SOUKI: I second it.

CHAIRMAN: It's been moved and seconded that Amendment No. 8 be approved. Delegate Tam is recognized.

DELEGATE TAM: Yes, Mr. Chairman, I'd also like to speak to a point of personal privilege.

CHAIRMAN: State your point.

DELEGATE TAM: I'd like to speak to this just briefly because again the word despicable has been used, and I suppose that's not the first time or the last time that it will be used against this delegate. I would just like to say that, as quoted, the particular case that was being referred to, Argersinger v. Hamlin, was not accurately represented to this body; and that Argersinger v. Hamlin basically speaks to the point that a person shall not be imprisoned by a judge without the assistance of counsel, but what is being addressed in our amendment, or what is being addressed in the Constitution in Section 11, was--

DELEGATE HALE: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order, Delegate Hale.

DELEGATE HALE: What kind of personal privilege is this?

CHAIRMAN: The Chair rules that Delegate Tam is in order since he is responding to a remark that he was despicable because of certain things that were said. He is explaining the circumstances of that which has caused him discomfort and would like to have the body--

DELEGATE HALE: Point of order, Mr. Chairman. The word despicable was used before this last amendment was brought up, and the whole case of Argersinger is irrelevant to what was said about using that word.

CHAIRMAN: Delegate Hale, what you are now doing is not in order, since you're not

stating a question of parliamentary inquiry but actually arguing against my ruling on Delegate Tam's personal privilege. So, Delegate Tam, please proceed and complete your point of personal privilege.

DELEGATE TAM: Thank you, Mr. Chairman, I'll be brief. As mentioned, the matter in Section 11 concerns the classification of various offenses for which counsel shall be provided. That is the problem that the amendment sought to address. In any case, I will be available to speak with anybody who has any question on this afterwards.

CHAIRMAN: Thank you.

DELEGATE BURGESS: Mr. Chairman, point of personal privilege.

CHAIRMAN: Delegate Burgess is recognized on a point of personal privilege.

DELEGATE BURGESS: Mr. Chairman, I would like to--I feel badly about this. I'm the one who used the word despicable last. It was intended as a reference to what could be viewed as something to prejudice the rights of the poor. It certainly was not personal to the delegate, whom I hold in the very highest esteem and consider admirable and honorable.

CHAIRMAN: Thank you, Delegate Burgess. Delegate De Soto, did you want to rise to a point?

DELEGATE DE SOTO: I was not here during the recent debate, Mr. Chairman; however, I rise to a point of apology.

CHAIRMAN: Personal privilege.

DELEGATE DE SOTO: Personal privilege. If I have hurt the delegate in any way, I did not mean to. Please forgive me. I only meant that the amendment appeared to be despicable. Forgive me.

CHAIRMAN: Thank you. Delegate Tam, you are recognized to speak first on the proposed amendment.

DELEGATE TAM: Mr. Chairman, I thank the delegates for their comments. I'm reminded I'm still despicable but I will forge ahead.

CHAIRMAN: The delegate may have only one personal privilege on the word despicable. Please proceed with your argument.

DELEGATE TAM: After three battering rounds, I don't know if I should proceed any further, but we go onward. Mr. Chairman, this particular amendment seeks to delete the grand jury counsel as proposed in Committee Proposal No. 15. Committee Proposal No. 15 seeks to put in to what has been a closed meeting of lay persons, the prosecutor, a court reporter and the witnesses, an additional person--an additional person here designated as an "independent counsel."

Now again, although I seem to be stepping on motherhood throughout the day, I would like to indicate my particular reservations to this body. The problem with putting an independent counsel in, by itself, is not all that troublesome. What is, in fact, troublesome is the language and the intent of this counsel; and I would direct the delegates to page 5 of Standing Committee Report No. 69, in the second paragraph from the bottom, the last sentence: "Your Committee believes that the parameters of the role of independent counsel will be determined by the grand jury but if his role is to be effective, counsel should advise the grand jury whether it is appropriate rather than when asked."

Now I may be in error when I read this, but it seems to me that it's asking for an active, independent counsel, a counsel who will interject whether he is asked or not for his advice. I would point out to the delegates the role of counsel in this Convention, that they do not in fact take an active role. They respond when a question is asked and they try to clarify matters. But that does not seem to be the intent of this grand jury counsel. He is to be put in here as a primary and active person. Now you may be asking--

what's wrong with that, what's the problem? The problem is that it will turn the grand jury proceedings into a mini-trial, because it will now shift from what is known as an accusatory proceeding to an adversary proceeding where you have contesting sides; you will have the prosecutor on one side and you will have the independent, active grand jury counsel on the other and they will both be fighting to make their points.

Now, the problem does not go to the prosecutor, the prosecutor does not go to--well, let me explain this much to those of you who are not aware of what a grand jury is. It's a number of citizens selected at random by computer from voter lists--voter registration lists and driver lists. They are selected, as I said, at random and serve for 1 year, 16 at a time. And they review cases that are brought to them by the prosecutor, to see whether there is probable cause to proceed to trial. If there is, then the case is in fact--then the person is indicted and his case is sent to trial. If there is not probable cause that this person has committed a particular crime, then the case is rejected. The whole purpose of the grand jury is to allow citizen input, so that it's not just the prosecutor who is making the decision but in fact lay people, people who are just using their common sense. Grand jurors themselves always have the opportunity to ask questions of the witness and of the prosecutor, and this can go on for as long as they want. All of this is taken down by a court reporter and is available to the defendant and to defendant's counsel. And if the defendant is indigent, the State will pay for a transcript for the defendant. But this, as I said, is an accusatory proceeding. The witness is brought in, he is questioned by the prosecutor and the grand jurors and that is it. With an independent, active counsel, it becomes no longer an accusatory matter; it becomes as I said, a mini-trial. And I question--is this what the Convention wants?

As far as convenience to the prosecutor, it makes no difference; we have to be there anyway, we handle the case for as long as it takes. The problem is going to be to the witnesses and these are normally the victims who are brought in. And when they are brought in by the prosecutor and respond to the prosecutor and to the grand jurors, it takes a certain amount out of them. When they are there and are cross-examined--actually crossexamined by an independent counsel--this is going to be a whole different ballgame. And I ask you to consider this before we approve this.

CHAIRMAN: Thank you. The Chair recognizes Delegate Sterling.

DELEGATE STERLING: I would like to speak in favor of the amendment to delete this from the committee report. I think the key words the movant mentioned were "probable cause." This came up, as I introduced in the original resolution to retain the grand jury system, we are in effect setting up a mini-trial. And what we're doing here if this is to go through--I'm not an attorney, thank God--we're asking the foreman of the jury to make judiciary decisions. Remember yesterday Delegate Hagino made a beautiful presentation on the possibility of lay people serving as judges; we voted that down, but if we vote for this then we're asking the foreman of the jury to make legal decisions, and this in effect is a mini-court, destroying the purpose of a grand jury. Thank you.

CHAIRMAN: Thank you. The Chair recognizes Delegate De Soto, and then Delegate Chang to follow.

DELEGATE CHANG: Just a point of privilege, Mr. Chairman.

CHAIRMAN: Delegate Chang, please state your point.

DELEGATE CHANG: I'd like to remind Delegate Sterling that his mother should have taught him not to pick upon oppressed minorities.

CHAIRMAN: I didn't understand. Are you speaking for the attorneys in the body? Thank you. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to a point of information.

CHAIRMAN: State your point.

DELEGATE DE SOTO: I need to know for myself whether or not--what the procedures are with secret indictments, as they are effected, and also what is the role of the defendant in the secret indictment. I need to know that.

DELEGATE CHU: Mr. Chairman.

CHAIRMAN: Delegate Chu.

DELEGATE CHU: Mr. Chairman, I have a speech prepared for my proposal that will describe the problem. It may, in fact, resolve some of the questions because--

CHAIRMAN: Delegate Chu, I have your proposal here and I might mention to Delegate De Soto that I intend that it be taken up as the next item because it is closely related. Delegate De Soto, would you need to have the question answered before you vote on this issue? If that's the case, then I will take Delegate Chu first and then I'll ask Delegate Tam if he cares to respond only on that point, and when we get to your proposal you can go fully into it.

DELEGATE TAM: Mr. Chairman.

CHAIRMAN: Delegate Tam.

DELEGATE TAM: I will be glad to respond to the delegate's question. The role of the defendant in a grand jury proceeding is there is no role at all. The defendant is not brought in to the grand jury room, he is not cross-examined, he is not present; nor is counsel for the defendant present. The only ones to go into the grand jury room are--basically, generally the victim of the crime and any witnesses to the crime. Does that answer the delegate's question?

CHAIRMAN: Delegate De Soto, does that answer your question? Thank you, Delegate Tam. Delegate DiBianco, do you wish to add to that?

DELEGATE DiBIANCO: No, I wish to address the amendment.

CHAIRMAN: Certainly, proceed.

DELEGATE DiBIANCO: I wish to speak against this amendment. I don't think, contrary to the remarks of the movant, that to add independent counsel to the grand jury is going to change it from an accusatory to an adversary proceeding. The role of an independent counsel on the grand jury, as I understand it, would be simply to advise the grand jurors. He is not there to cross-examine the witnesses, as a defense counsel would be. He is not there, in fact, to do anything in the way of an adversary type of procedure, not there to argue the case. All he's there to do is provide information to the grand jurors. The defendant, as Delegate Tam has indicated, has absolutely no rights whatsoever when his case is taken to a grand jury. Anybody who is charged with a crime before a grand jury has to sit out in the hallway while his case is being decided. He cannot go in and give his side in the case, his attorney can't go in and give his side of the case, there's nobody there to cross-examine the prosecution witnesses. They can go in and say and do anything they want. That's the way the setup is in a grand jury proceeding--that's the way it works. It is strictly an accusatory process with no opportunity for the defendant to give his side of it; it is not an arbitrary proceeding.

One way to bring some kind of balance to this is to put an independent counsel in there, so that when the grand jurors are listening to all the prosecution witnesses and listening to the prosecutor, if they have a question they will have somebody to turn to, and they can ask this person--well, is this hearsay evidence? will this be admissible at the time of trial? is this the kind of reliable evidence--should we be returning an indictment on this evidence? is there a problem with it? And they can get some advice and some opinion from the independent counsel. He's not there to argue with the prosecutor, he's simply there to respond to questions and to give some advice.

As an attorney who has done some criminal defense work--and as a matter of fact, at one point in my practice, did nothing but criminal defense work--I had occasion to see many grand jury transcripts, and I can assure you that the average grand jury transcript is usually not more than 3 or 4 pages in length. What usually happens is the prosecutor goes in, puts the police officer on the stand, the police officer describes the crime in the most general terms; quite often the victim of the crime--the person who is making the accusation against the defendant--doesn't even show up. The police officer gives the most roundabout kind of testimony; the grand jurors don't have anybody to advise

them that it's all hearsay, nobody there to hint to them why don't you ask the man this, why don't you ask the man that, so that you can clarify a few points. The grand jurors are at a loss and therefore they return an indictment. There was a very, very good study put out by the lieutenant governor's office of this State this summer, in July or August, which they distributed to the members of the BORSE committee--and I've seen a copy-- in which they indicate that in this State over 99 percent of all cases that go to a grand jury wind up with an indictment; but I can guarantee that not 99 percent of all cases in which there is an indictment wind up in a conviction, which seems to indicate that there's an awful lot of cases that could have been cleaned out at the grand jury level if only there was somebody in there with some independence who could advise the grand jurors. The grand jurors just want to do what's right, but when all the evidence coming before them is weighted in favor of returning an indictment and there's nobody there to give them any kind of independent advice at all, I don't see how you can avoid getting these unnecessary indictments returned.

I am not advocating--nor is the bill of rights committee as I see it--advocating that we put defense attorneys in there to argue with prosecutors and impede their ability to obtain indictments; all we're asking for here is that somebody with some independence come in there so he can advise the grand jurors regarding matters of law. I think that the provision is long overdue and it's one way to save the dignity and respect of the grand jury system.

CHAIRMAN: Thank you, Delegate DiBianco. The Chair recognizes Delegate Hale.

DELEGATE HALE: Mr. Chairman, I would like to ask a question.

CHAIRMAN: Please state your question.

DELEGATE HALE: I would like to ask the chairman of the BORSE committee to give the reasoning of the committee for passing this proposal.

CHAIRMAN: Delegate Hale, in order to ask a proper question, you'd have to be very specific so the question can be answered with precision. What you're asking is for him to testify--

DELEGATE HALE: I would like to ask him as to why this proposal was put in.

CHAIRMAN: Delegate Hale, I think he has a choice whether or not to do that and he either will do so or will not do so in his turn, but thank you for raising the question.

DELEGATE HALE: Yes, but then may I raise a point of information, because I was told on another point of order that, according to Robert's Rules of Order, no one but the committee chairman could tell what went on in the committee. Is that true? If the committee chairman refuses to tell what goes on in the committee, can anyone else tell?

CHAIRMAN: Delegate Hale, you're rising to a point of parliamentary inquiry. The Chair's recollection of that point is that only the committee chairman has the role of speaking on behalf of the committee. He may or may not speak correctly relative to what happened in committee, but only he may speak on behalf of the committee--in answer to your question.

DELEGATE HALE: Well, inasmuch as this committee proposal was passed by the committee, I'm wondering now and I would like to ask you to ask the chairman of the committee whether he is willing to speak on behalf of the committee.

CHAIRMAN: The Chair realizes that whether or not any delegate rises to speak for or against the proposed amendment is at his discretion. If he cares to, he will--and he apparently does. The Chair recognizes Delegate Weatherwax.

DELEGATE WEATHERWAX: Thank you, Mr. Chairman. I was prepared to stand immediately following, because I think Delegate DiBianco did set forth the sentiment in the committee. It was Delegate DiBianco's proposal that came to the committee and he had an opportunity to testify. And also there was some rationale, in looking at all the various proposals that came before the committee--extending from abolition of the grand jury to extensive reform detailing every aspect. And of course I think it was the committee's sentiment that this was the best of the proposals that were referred and that

it would handle many of the reforms that others spoke to, or that were sought, and that an independent counsel would, in fact, be the one to provide that. So we found that this proposal was the best. And of course that's why I speak against the proposed amendment.

CHAIRMAN: Thank you, Delegate Weatherwax. Is there further discussion? Delegate Chu is recognized.

DELEGATE CHU: Mr. Chairman, I mentioned previously that I do have an amendment before the delegates that will address this particular problem, and I am advocating a reform of the grand jury. However, if we were to have a grand jury, I feel that the independent counsel is an improvement. It does, in fact, cause some difficulties in that it may cause duplication, but that's inherent in the problem of having a grand jury; and if we are to retain the grand jury as it is and require it for all ordinary offenses--which I'm advocating the abolishment of--if we are to retain it, I would speak in favor of having some kind of independent counsel. This way we can eliminate--or, hopefully, minimize--any kind of possible abuses, any possible violations of the law resulting in dismissal by the courts later on.

CHAIRMAN: Thank you. Is there further discussion? Delegate Hale.

DELEGATE HALE: Yes, I would like to speak against this amendment. I would like to say that as a lay person I found the whole grand jury problem very confusing, and I really wish we had more time to do something with it and to learn more about it. But with the reading that I did and the research--and I did a good deal of research into this, read a number of books and reports and we discussed it in the committee at quite great lengths--it appears to me that having an independent counsel is at least a step in the right direction. There are many reasons that the grand jury should not be abolished altogether; it serves a very useful function--and I think all of us are aware that it was the grand jury indictments that brought the Watergate problem to a head--and it brings many corruption in government problems to a head.

It is true that it is probably an expensive process because people who are jailed, as I understand it, have to be brought before a preliminary hearing within 48 hours, or some rather short period of time; and sometimes you go before the preliminary hearing and then you still--because it's a constitutional requirement--still have to also go before the grand jury. I guess how near the time a person is going to be charged or indicted depends on when the grand jury meets. But at least this does correct some of the abuses of the grand jury, and there evidently have been a number of abuses of the grand jury.

If we adopted this amendment as it stands, we would not only throw out the independent counsel, we would throw out the whole grand jury system; and I think the grand jury system is in the federal Constitution and I really--with all my study--cannot justify throwing the system out, even though there are some obvious things wrong with it. Perhaps Delegate Chu's amendment is a better one than this, but in the meantime I would urge you to vote against this, so that at least we keep the independent counsel for the time being, and the grand jury system. Thank you.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE STERLING: Mr. Chairman, personal privilege. I'd like it noted that I have withdrawn my support of the amendment.

CHAIRMAN: That would not be a point of personal privilege, it's--it will have to be counted as your second time to speak, Delegate Sterling. The Chair recognizes Delegate Souki, to be followed by Delegate Hagino.

DELEGATE SOUKI: Mr. Chairman, for the moment I speak for the amendment; not being a man of God, I haven't had the enlightenment to change it yet. However, the reason I'm speaking for the amendment is because, as a lay person, my understanding of the grand jury system, on which I served on a number of occasions, is that it is strictly to determine if a law is breached, not to consider the circumstantial evidence at all. And in those grand jury sessions I attended, the witness was present, the evidence was presented, the nature of the law was discussed and the members of the grand jury oriented; and then the question was--and in fact the only question was--was this law that was presented to you breached? And if through the witness present and other people presenting

the case there--the arresting officers, maybe--if they show evidence to the grand jury that in fact the law was breached, then you vote for a true bill. And you do not go into the circumstantial; as to why, that is reserved for the trial jury. And I believe this is the system that we have.

I am fearful, as was mentioned by the previous delegate, that if you have an independent counsel in there, however meritorious it is, you will be providing for a mini-trial and you would have a natural adversary problem there. No matter how you try to say that it's going to be objective and it won't be adversary, when you have two lawyers with two opposing views, you're bound to develop some adversary relationship. I'm not saying that this is good or bad. At this point I'm not very convinced that we need independent counsel at this moment.

CHAIRMAN: Thank you. The Chair has recognized Delegate Hagino.

DELEGATE HAGINO: I have a point of inquiry. An earlier speaker said that by adopting this amendment, we would be abolishing the grand jury. I don't believe that's correct. Would someone care to answer that?

CHAIRMAN: The Chair will determine if the mover would answer that.

DELEGATE TAM: Mr. Chairman, it does not. The grand jury is referred to--I think that's sufficient.

CHAIRMAN: I think that's sufficient since you answered the question--the fact that it does not abolish the grand jury--and the answer--

DELEGATE HALE: Point of information, Mr. Chairman.

CHAIRMAN: Yes, Delegate Hale.

DELEGATE HALE: It would abolish the grand jury--it would. And I would like to say that we are--

CHAIRMAN: Delegate Hale, Delegate Tam is standing to answer it. If he has not given a complete answer, then we would like to ask him to continue.

DELEGATE TAM: Yes, I would reiterate what I just said and disagree with what the delegate tried to interject. I would point out to the body Section 8 of Article I: "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury. . . ." Now this language is not at all being addressed in this amendment. This amendment only concerns whether a further amendment should be made, or a further section should be added, to the Bill of Rights. For this matter, the Section 8 reference to the grand jury is retained.

CHAIRMAN: Okay, let the Chair repeat your answer, if I understand it correctly, and that is the amendment deletes the committee proposal for such creation of a grand jury counsel and that's all it deletes, is that correct?

DELEGATE TAM: That is correct, Mr. Chairman.

CHAIRMAN: Does that answer your question, Delegate Hale? Delegate De Soto, you wish to speak on this?

DELEGATE DE SOTO: Mr. Chairman, I rise to speak against this amendment. I have, within my responsibilities and my commitments to the Waianae Coast, been involved in moral support with many young people on the Waianae Coast who have been indicted by grand juries and who have gone to trial and subsequently were not charged. I feel that the explanation by my colleague on the right is true and an accurate assessment of what goes on in our court system, which compounds the costs to everyone involved; and I submit that if an independent counsel was available so that this lay body, the grand jury members, had an opportunity to ask questions, perhaps many of our cases need not get to the expensive trial process. So therefore I feel that this amendment must be voted down. Mahalo.

CHAIRMAN: Thank you, Delegate De Soto. The Chair recognizes Delegate Alcon and Delegate Chung, in that order.

DELEGATE ALCON: Thank you very much, Mr. Chairman. I rise on a point of inquiry. I'd like to know, Mr. Chairman, whether the duty of the grand jury counsel would be about the same as the duty of a committee's legal counsel.

CHAIRMAN: Thank you. The Chair will first ask the chairman of the committee whether or not the grand jury counsel would be similar to or not identical to that of a committee counsel. Is that the question? When you say committee counsel, Delegate Alcon, do you mean such as the committee counsel we have here?

DELEGATE ALCON: We have a counsel, you know, standing by for us to ask legal questions to.

CHAIRMAN: In other words, to be asked rather than to--

DELEGATE ALCON: Right, right.

CHAIRMAN: Delegate Weatherwax.

DELEGATE WEATHERWAX: Very generally I would have to say yes, there would be some legal counsel.

CHAIRMAN: Does that answer your question? Delegate Chung is recognized.

DELEGATE CHUNG: Thank you. I'm speaking for the amendment, for the following reasons. The grand jury counsel idea may have merit but, in listening to the various speakers and from what I know about the grand jury system, it doesn't provide an accused all of his rights. In our Bill of Rights, "Rights of Accused," Section 11: "In all criminal prosecutions, the accused shall...be informed of the nature and cause of the accusation; to be confronted with the witnesses against him..." And generally speaking, in a grand jury hearing the accused isn't there, the evidences against him are hearsay, he is not there to face the witnesses. I believe the process is wrong and perhaps this is where we can rectify the grand jury negative factors. I believe if we can start from where the problem is and do some housecleaning in the administrative process of the grand jury system, where the rights of an accused are concerned, from the very outset, because I feel that when a man is accused, it is all part of the prosecution system, to be very fundamental about it. And this is where I feel the fallacy of the grand jury lies. He is not there to fight for his rights and the law of hearsay is being violated right through, if the accused is not there. And this fundamental wrong, I feel, can be corrected in some manner in the system first, rather than going through the concept of a grand jury counsel.

The history of the grand jury system started in England and I shan't go through that; as you have heard, many have been accused in the grand jury and later found to be not responsible. Perhaps if from the very beginning he could face these accusations and all the evidence against him, the case would end right there and save the State a lot of money in expenses in the legal process. I feel that this is one of the major weaknesses in our criminal justice system and this is why I'm against this. I'm for this amendment, Mr. Chairman, because I feel that we can go a step further right now to rectify the situation without having a grand jury counsel. Thank you.

CHAIRMAN: Thank you, Delegate Chung. Delegate Campbell is recognized.

DELEGATE CAMPBELL: Mr. Chairman, I speak in opposition to the amendment. I think it would add a very significant dimension to the grand jury system--and we are now speaking of a situation where the grand jury exists and assuming it will continue to exist. In our early American history, the grand jury was in reality an independent body and it stood as a protection and a buffer between the prosecutor and the accused. It was a reality because the grand jury was composed of the neighbors of the accused, and they themselves conducted the hearings and examined the witnesses and the prosecutor was not permitted in the hearings. Today the entire procedure has been altered and the prosecutor has almost assumed the posture of a legal adviser to the grand jury, and it seems to me that that does present a serious question of conflict.

The committee proposal presents an effort to ameliorate the situation by bringing into the picture an independent counsel who represents the grand jury only. He is there to instruct them and assist them, so that they can indeed act as an independent body. And for this reason I strongly urge my fellow delegates to vote down this amendment. Mahalo.

CHAIRMAN: Thank you. Is there further discussion? Delegate Barr.

DELEGATE BARR: Yes, Mr. Chairman, your delegate from the green and peaceful mountains finds this entire conversation we are having on the floor rather distressing, and I know I'm not supposed to refer to the committee but if all this occurred in the committee, I would find it distressing there to. And my reason for that is, as I understand it, the entire grand jury system is based upon one little clause in our Constitution and that's where it has its constitutional status, and that's the clause that says, "...unless on a presentment or indictment of a grand jury," and the rest of the process, to the extent that it has legal status at all, is set up in the statutes--how many people will serve on it, how we get those people, the relationship of those people to the prosecutor, etc. There may, in fact, be many very good and constructive changes that can be made in the grand jury system, and this one as a matter of fact looks like a very good and constructive change; but I don't understand what we're doing thinking about it, why we aren't depending, if it has merit, on our legislature to recognize that merit and make that change. I do not feel we should give constitutional status to this provision but rather should leave this matter--perhaps with a resolution if we really feel strongly about it--but leave this matter where it properly belongs. And therefore I speak in favor of the amendment.

CHAIRMAN: Thank you. The Chair recognizes Delegate Barnard.

DELEGATE BARNARD: Mr. Chairman, I'd like to speak against this amendment. I once served on a grand jury and I recognize that this independent counsel would be a positive step toward improving the grand jury system. But I'd like to state for the record that I believe the independent counsel would be most effective if he or she were very conservative about offering the grand jurors unsolicited advice and that the independent counsel should avoid any tendency to dominate the grand jurors' deliberations. Thank you.

CHAIRMAN: Thank you, Delegate Barnard. Is there further discussion on the amendment? Delegate Hale, you are recognized. I believe this is your second time.

DELEGATE HALE: Again I urge that you vote this amendment down. I will have to admit that I was wrong in that this amendment does not take the grand jury out of the Constitution, but what [the proposal] does is to provide some security and some fairness to the grand jury system; and although we realized there were many, many problems in connection with this system, we could not come to an agreement that we should completely abolish the grand jury. I would like to say that I don't believe an independent counsel is going to turn the grand jury into a mini-trial. The independent counsel is going to be there just for that--to give independent advice--so that the grand jury can act as the jury of an accused peer to find out what the problems really are and whether there is probable cause--and to give them independent advice.

When the prosecutor is the one going to a grand jury to get an indictment returned, and he is the only lawyer there that the grand jury can turn to for advice, it's obviously not going to be very independent advice. And that is the role we feel an independent counsel will take. I think the committee report really sets out exactly what we felt the role of the independent counsel would be. It will not correct all of the injustices of the grand jury system, and I realize it's a matter of statute but, like many other things that this Convention has done, where we find that the legislature has not acted within their areas of responsibility, we have given them mandates and directions so that they can act within those parameters. And that's exactly what we're doing here: we're telling the legislature that we want them to provide the compensation and term of office for an independent counsel for the grand jury, because in effect we feel that this will help alleviate some of the problems of the grand jury system.

The committee report goes on to point out that there are many other things wrong, and certainly we hope that the legislature will take action and will read the lieutenant governor's report on the Hawaii crime commission so that they can correct some of these inequities. But if we don't do this, and if it is true--and I'll have to admit that I did make a mistake, that we're not taking the grand jury out of the Constitution--then I'd like to point out to Delegate Chung that the things he is worried about will still go on because the grand jury will still be there, it will still be an accusatory body, it will still be in private, and it will be without an independent counsel to guide it. I urge you to vote this amendment down.

CHAIRMAN: Thank you, Delegate Hale. Is there any delegate who wishes to speak further? Delegate Chung is recognized.

DELEGATE CHUNG: Thank you very much. I shall be very brief for my second time. Again I want to support my friend from Maui--by the way, it takes a count of 10 to be knocked out, so you haven't been knocked out yet, pal. My concern is with the inconsistency of justice. We talked earlier about the right to our privacy--that a guy who is accused and his case is up for discussion in the grand jury, that his privacy is jeopardized. And he's not even there to defend himself, and neither is his attorney. This is my concern. From the very conception when a man is accused of crime--from the very beginning, he should have his rights. Yet the grand jury system is bypassing this factor, hearsay evidence. I'm concerned about the inconsistency, and again I say--if there's a problem at the base, hit it at the base, in setting up the rules, or the laws, to correct this injustice in the grand jury system, not adding more traps to catch the rats. Let's eradicate the breeding area first. Thank you.

CHAIRMAN: Thank you. Any other delegate wish to speak on this subject? If not, I'll ask Delegate Tam to speak last--Delegate Sasaki wishes to be heard.

DELEGATE SASAKI: I just have a point of information.

CHAIRMAN: Certainly, please state your point.

DELEGATE SASAKI: I'd like to get it clarified, on one of the questions I've been hearing going back and forth--on the two words "to advise" in the proposal. The reason I seem to be having some confusion is a lot of delegates are saying they don't want a preliminary trial being utilized in the grand jury and that if the counsel is to take a passive role and serve only to answer questions put forth by the grand jury--or is he in fact going to take an active role as spelled out in the committee report?

CHAIRMAN: Okay, I think there is a point of information. Let me ask the committee chairman if he would care to respond to that, to provide the answer. Did you hear the question, Delegate Weatherwax?

DELEGATE WEATHERWAX: Well, let me see if I can restate it. Your question was whether or not independent counsel was designed to take an active or passive role?

DELEGATE SASAKI: That's correct.

DELEGATE WEATHERWAX: Well, I already have problems in trying to answer a question that uses both of those words. It's like "offensive" or "defensive"--one sometimes has difficulty. It was envisioned, of course, that the grand jury would have legal questions and that there would be counseling; and I think it has also been pointed out that the independent counsel would not be taking the leading role of actually programming questions, things of this nature, but more to advise the jurors as to what their functions and roles are and to the particular extent of the legal rights of witnesses and things of this nature, so that the jurors themselves would feel more confident. But I can't say whether that's active or passive.

CHAIRMAN: Delegate Weatherwax, I believe the delegate mentioned that--

DELEGATE SASAKI: Thank you very much.

CHAIRMAN: Does that answer your question, Delegate Sasaki? Thank you. Delegate Tam, you are recognized to speak last.

DELEGATE TAM: Thank you, Mr. Chairman. The question the previous delegate asked was one of the major questions in my mind and I brought it up at the beginning, because in fact in the committee report, as I had previously indicated, it does specify that counsel "should advise the grand jury whether it is appropriate rather than when asked." Now, that was the question I had in my mind; this report would seem to say when you're going to set up the ground rules for this independent counsel, that he's supposed to jump in when he feels and not have to wait to be asked. And that is not the way our counsel acts at the present time.

Another matter, if I can respond to some of the questions, some of the points that

were raised, a grand jury--just in case some people think this is a secret thing full of--a chamber of horrors--may I just say that a grand jury is made up of citizens as are found in this room, and found anywhere on the street. And they don't sit in the grand jury room, like bumps on a log; they are instructed and empowered to ask questions at any and at all times. I get the feeling that--it's as if this matter is concocted by the prosecutor to bring down something upon an unsuspecting citizen. The whole concept was to have citizen input and to have citizens pass on what is happening, to ask questions and to vote after due deliberation. And it is only then that a true bill of indictment comes out of the grand jury and at the time that all this is being done--the deliberation, the give-and-take among the grand jurors--at the time this is being done the prosecutor is not present. Everyone other than the grand jurors has to leave the room at that time. Furthermore, transcripts are made and are available to every defendant, everyone who is indicted; and not only are these transcripts reviewed by defendant's counsel, but if defendant's counsel wants he can have the court review it and he can take it up to the supreme court if necessary, if there have been any abuses. So these transcripts are reviewed for abuses, any irregularity, any undue influence. And if anything is found, the indictment is thrown out.

Now this matter about the victim not showing up--I don't know, while it is true that sometimes victims are not present, the only way they can not be present is if they are excused by the court for good reason, and they have to have a darn good reason as to why they're not there to testify.

And regarding this matter about 99 percent of the cases that go to the grand jury ending up in indictment but not all in conviction, I caution this body, before they accept this at face value--I would point out that before the grand jury gets the case, the case is screened by the prosecutor. No prosecutor wants to take a bad case to the grand jury; those cases are dismissed before they get there. Only cases that seem to have sufficient evidence are taken to the grand jury to begin with. Thereafter, what happens at the trial does not necessarily reflect upon the work of the grand jury, which, by the way, is only responding to probable cause; they only have to find probable cause, they don't have to find beyond a reasonable doubt. The trial does not reflect on the work of the grand jury because a conviction may not be obtained for a number of reasons: a witness may disappear, he may change his mind--who knows what may happen. Another thing about the grand jury that I point out--

CHAIRMAN: Delegate Tam, I just want to remind you that you have about 30 seconds left.

DELEGATE TAM: All right. Another thing about the grand jury that I must point out is that it is in fact secret. And there's a reason for the secrecy; that is if no indictment is returned, the person's name does not get out to the public. So there is good reason for the secrecy. Mr. Chairman, I am concerned about one thing. If this is an active person, this independent counsel, then he could very well dominate the proceedings. If anyone should challenge him, he can say that he's gone through many years of law school, many years of practice, and therefore--I know better than you and if I tell you a certain thing, I have--just let me finish this point--if I tell you a certain thing is so, then it is so and you take my word for it. And the grand jurors, being lay persons, without this particular schooling, without this particular background, have no way to challenge.

These are my concerns. I would ask if the committee chairman who formulated this report could make it very clear that the independent counsel for the grand jury would in fact only respond when asked and not take an adversary role, not take an active role in this matter; then at least some of my objections would be answered.

The other matter would be whether this is in fact of constitutional stature; and if that is the case, I would ask if that is the intent of the committee.

CHAIRMAN: Thank you, Delegate Tam. The last delegate has spoken his second time and so the question before the body is Amendment No. 8 to Committee Proposal No. 15, to delete section 5 relating to grand jury counsel. All those in favor of approving the amendment raise your hand. All opposed? The amendment is defeated.

We have before us--if you will look among your remaining amendments--one that is offered by Delegate Chu, which was not before you yesterday. It is in reference to

preliminary hearings, double jeopardy and self-incrimination and should be marked Amendment No. 10.

DELEGATE PENEBACKER: Mr. Chairman, point of information.

CHAIRMAN: Delegate Penebacker.

DELEGATE PENEBACKER: When I asked that my amendment be put at the end, I was not aware there was another amendment pending. I would like at this time to ask that my amendment be considered after Delegate Tam's.

CHAIRMAN: Oh, okay, Delegate Penebacker. We actually have three amendments remaining before us, one more by Delegate Tam.

DELEGATE PENEBACKER: I'm aware of that. The reason I would like mine considered prior to Delegate Chu's is that I was not aware that hers was also pending when I made my motion to have mine deferred.

CHAIRMAN: Thank you, Delegate Penebacker. Delegate Penebacker's Amendment No. 5, which relates to the same subject matter, will be taken up at this time, then the amendment submitted by Delegate Chu, Amendment No. 10.

DELEGATE CHU: Mr. Chairman.

CHAIRMAN: Delegate Chu, do you have a question on that?

DELEGATE CHU: Well, I have no objections to having Delegate Penebacker's amendment considered at this time; however, I think his amendment does not speak to grand juries and I would not want to break the train of discussion as to grand juries, and I would like to have mine discussed now.

CHAIRMAN: Delegate Chu, you make a good point.

DELEGATE PENEBACKER: If you refer to the first portion of the delegate's amendment, it does not necessarily relate only to the grand jury. It also has to do with preliminary hearings and self-incrimination.

CHAIRMAN: Let me mention this. The first section--there are three parts to it--the first would delete the section we have just debated, but in order to justify that the delegate has proposed two reforms that she feels apparently would make for a better package. I had asked that it be put first at the request of the chairman of the committee, who felt the subject matter was closest. So we will go with yours right afterwards, Delegate Penebacker. At this time we will proceed with consideration of Amendment No. 10, submitted by Delegate Chu.

DELEGATE O'TOOLE: Mr. Chairman.

CHAIRMAN: Yes, Delegate O'Toole.

DELEGATE O'TOOLE: Point of information. I've got one more amendment here, from Delegate Tam, regarding "Insanity Defense."

CHAIRMAN: That will now be taken up last. We have in order now of intended considerations: first, Amendment No. 10, then Amendment No. 5, and last, Amendment No. 9.

DELEGATE CROZIER: Mr. Chairman.

CHAIRMAN: Yes, Delegate Crozier.

DELEGATE CROZIER: We've been working hard for quite a while. Would it be all right if we had a short recess to relax?

CHAIRMAN: Let me put it to the body. All those in favor of a brief recess, raise your hand. All opposed, like sign. The ayes have it, there will be a short recess.

At 3:52 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:07 p.m.

CHAIRMAN: Will the Committee of the Whole come to order. The Chair would like to state that within a short time determination can be made as to what our schedule will be for the rest of the afternoon. Perhaps by 5 we should know, so those of you with that question, please bear with me for the time being.

Let's proceed now to the next item on the agenda which is Amendment No. 10, on "Preliminary Hearing, Double Jeopardy, Self-Incrimination" and "Grand Jury Investigations." The Chair calls Delegate Chu to make a motion.

DELEGATE CHU: Mr. Chairman, I move for the adoption of Amendment No. 10 to Committee Proposal No. 15.

CHAIRMAN: Is there a second?

DELEGATE HALE: I second it.

CHAIRMAN: It has been moved and seconded that Amendment No. 10 be adopted. Delegate Chu, you are recognized.

DELEGATE CHU: I believe previously Delegate Barr referred to the entire grand jury procedure being caused by one or two lines in the Constitution, which state: "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury." The "capital or otherwise infamous crime" has been interpreted by the courts and has, as a matter of practice, been considered to be all felony offenses which are punishable by imprisonment for a period of more than one year. I believe that this constitutionally required grand jury procedure must be reformed to correct duplication, delay and abuse. It should function instead as an effective law enforcement tool in cases involving "extraordinary" crimes. I appreciate the committee's concern as expressed in their committee report that there are a number of ills in this present system.

The grand jury system was originally conceived as a check by ordinary citizens on the powers of the king or the prosecutor to bring criminal charges against another citizen. Through the years, however, the system has been ineffective as a prosecutorial tool, has been surrounded by a veil of secrecy and has often been justifiably called a rubber stamp for the prosecutor, thus obviating the benefits of the participation of a grand jury composed of a randomly selected group of citizens.

I believe that the best judicial enforcement of crime is one that is fast and fair and firm. The present grand jury system in Hawaii promotes none of these. Grand jury hearings and preliminary hearings are similar in their essential characteristics, and are therefore duplicative. However, the distinguishing characteristics between the two hearings make the grand jury susceptible to abuse and delay. The purpose of both is a preliminary determination, prior to trial or immediately after arrest, that probable cause exists that the accused committed the crime. Witnesses are required to be at both hearings and are subjected to the same line of questioning. True, the grand jury has protected the good name of the innocent, as Delegate Tam mentioned; however, the secrecy philosophy, with modern-day communications and media communications, is quite unrealistic. Many times we have situations where the grand jury deliberations are watched by the media and when witnesses come out they are questioned by the media, and there is certainly more than speculation as to what is going on in the grand jury proceeding.

Where a preliminary hearing is held, it is usually held immediately after the arrest. The preliminary hearing is normally public, and the accused and his attorney may--

DELEGATE PETERSON: Mr. Chairman.

CHAIRMAN: Delegate Peterson, you are recognized. State your point.

DELEGATE PETERSON: I rise on a point of personal privilege, please. I apologize

for interrupting Delegate Chu, but there are so many private conversations being carried on by delegates on the floor that I'm finding it difficult to hear.

CHAIRMAN: Your point is well taken. The delegates will show courtesy to the speaker and observe the rules of the Convention by being quiet. Delegate Chu, proceed.

DELEGATE CHU: The preliminary hearing is normally public, and the accused and his attorney may confront and question all the witnesses. The evidence is usually fresh and the witnesses usually most candid at this earlier proceeding. Because the preliminary hearing is public, it is subject to public scrutiny and safeguards against abuse. In contrast, the grand jury proceeding is not only secret but subject to the control of the prosecutor. Neither the accused nor his attorney has a right to be present; there may be a serious violation of federal case law, which requires that the accused have a right to an attorney at every "critical stage" of the proceeding, and it can very well be--the grand jury certainly is a very critical stage of the proceeding. Witnesses also may not have their attorneys present and often are intimidated into making unknowing self-incriminatory statements; witnesses who refuse to cooperate are sometimes jailed without this right to have their attorney there. The grand jury procedure has often been used, unfortunately, as a political tool, and statements sometimes made by witnesses under these circumstances are often repudiated by the witness himself or used later by adverse parties to discredit the witness, which are often serious enough to warrant dismissal of the charge. It is true that some of these abuses may be mitigated by the fact that the grand jury transcripts would be available to the accused at a later time. But these transcripts are obtained at considerable cost, often to the taxpayer. So then, why have it secret in the first place if later on the transcript reports word for word what occurred in the grand jury proceedings?

I believe that my particular amendment, which was Proposal No. 498--it is one that was, in fact, introduced by Delegate Weatherwax, I believe upon request of the crime commission--I believe that it is a very good proposal and it addresses itself to the problems: it retains the grand jury proceeding and requires a preliminary hearing in lieu of the grand jury proceeding in all ordinary felony offenses. Now I would submit that the preliminary hearing should be held soon after the arrest and a trial then scheduled immediately. As I indicated, some type of preliminary judicial determination is required by law to act as a check on the police power when a person is arrested for a crime. Currently, a preliminary hearing must be held within 48 hours if the person is in custody, or it can be longer if not in custody. If the prosecutor is unable to proceed with the preliminary hearing within 48 hours, the court must release the accused; and I believe that release often diminishes the importance and the seriousness of the offense and does not serve the public interest. At times when an indictment occurs first, the preliminary is not held; but the preliminary hearing is generally the fairest and fastest. Prosecutors generally do not like the preliminary hearing because of the presence of the defense attorney and the accused, who may cross-examine the witnesses and thereby challenge or rebut the prosecution's case.

Also, the prosecutor generally likes to maintain this institution because it is his kuleana, so to speak. A police department detective who recently appeared before the crime commission admitted during the question-and-answer period that as a matter of personal preference, if he were the accused, he would prefer the preliminary hearing over a grand jury indictment, the reason being that he could actually see and hear and confront the witnesses. There is considerable useless delay; this is the problem in having the grand jury requirement in the Constitution, because the formal proceedings may not proceed to trial until an indictment has been returned, and at the present time a preliminary hearing may not be substituted for a grand jury indictment. This is generally a useless waiting period for both the accused and the prosecutor. The prosecutor must again present the same evidence and the same witnesses before the grand jury, and during this period the accused is simply awaiting the probable indictment. Once the accused is indicted, he must often be rearrested and brought back to the court, and only then is the actual trial scheduled. I believe it is important to avoid this second procedure, this second step, because it does cause duplication and delay. The delay is the most important thing, which, I feel, should be one of public concern because, as parents understand the need for immediate punishment that is fair but firm, similarly there is value to both the criminally accused and the public in taking immediate measures.

The second portion of my amendment--

CHAIRMAN: Delegate Chu, you have 30 seconds.

DELEGATE CHU: Okay. The second portion of my amendment addresses an investigatory grand jury involving extraordinary cases and provides for investigation of possible criminal conduct when it involves political corruption and other offenses as provided by law. I believe that the committee report was sensitive to a situation where there is a youthful victim, and I believe that "as provided by law" may provide for situations where there's a sexual offense or youthful victims, where you would not want to have a public hearing. I believe it is important to strengthen the investigative powers of investigative grand juries and allow them to subpoena witnesses, which is otherwise not available to the police and prosecutors unless it is to an actual court hearing.

Again I express my support of an independent counsel for the grand jury, and I believe that this independent counsel should be given the power, not merely to advise the grand jury but in fact to himself bring the cases before the grand jury--as well as the prosecutor, in fact. This would guarantee the independence of the grand jury.

CHAIRMAN: Thank you, Delegate Chu. Does any delegate wish to speak to the amendment? Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, when we were taking testimony in our committee on this matter, we were brought testimony--I believe it was the crime commission--which recommended deletion of the grand jury benefits under the Constitution. However, there were one or two, what I believe, thorny questions which went unanswered, which still remain problems in my mind and based upon which I would tread rather carefully in this area before I would vote in favor of this provision. I am speaking, therefore, against this, although I believe that the previous delegate's comments with respect to the grand jury in substance have considerable merit.

The problems that I address are these. There are certain crimes involving children and women with respect to which it is in the best interests of families to have grand jury investigations rather than a preliminary hearing. I think anyone who either has practiced law to any great extent in the district court or goes to district court on certain days can, by sitting in that courtroom, listen to cases that are quite better than Peyton Place. To have intimate matters regarding children and women and families heard in a public forum is humiliating and embarrassing, and spiritually defeating. I believe, therefore, that the grand jury system does have a place. I feel it also has a place in the investigation of syndicate crimes, and I asked the crime commission staff this question--that if we abolished the grand jury system in our Constitution, how would we take care of these problems. Their answer was that we could go to the legislature ultimately and ask that, with respect to this type of matter, they be held in chambers. However, the question still remains that if we abolish the grand jury system, we do not know how long a hiatus there will be between the time the people ratify this provision and the legislature ultimately acts to fill the gap and take care of this protection. For this reason, I speak against the amendment, Mr. Chairman. Mahalo.

CHAIRMAN: Thank you, Delegate Campbell. Would any other delegate care to speak to this amendment? Delegate Weatherwax.

DELEGATE WEATHERWAX: Thank you. I rise to speak against this amendment also. The points have been made by Delegate Campbell and address the issue of secrecy and the need for secrecy in part of the accusatory process. The amendment here does not provide for a grand jury where secrecy would be provided for, and I believe the first portion of her amendment abolishes the grand jury and therefore would abolish perhaps the secrecy.

As Delegate Campbell has indicated, the use of chambers for such matters--as we know right now, there have been several occasions when the courts have attempted to do this with considerable public pressure from the press covering these matters. In fact, I think the grand jury as it stands right now provides for secrecy.

The committee also considered another option--to make it optional for the prosecutor--and even this it was the committee's sentiment not to go with, but rather to stay with the present provision in the Constitution. I would also point out--and this is again perhaps on a philosophical basis--that this amendment seeks to remove public participation, and

I think we need some form of public participation and the grand jury affords that. Perhaps it's an anachronism these days but I think it's still necessary.

With respect to the second portion of this amendment, dealing with the investigatory grand jury, I believe that--I am bothered personally by the language here, which seems to once again center on public officials and governmental corruption. I believe our grand jury would--if there is a crime which is committed by a public official--would be able to take this under consideration; and again the choice would be whether to go with a preliminary hearing, the prosecutor deciding against a preliminary hearing and going to the grand jury. The secrecy item comes up again because a public official is in a very sensitive position and it may be necessary that--if there are unfounded charges--that his reputation, which may be very important, be protected.

CHAIRMAN: Thank you, Delegate Weatherwax. Any further discussion? Delegate Hale, you are recognized.

DELEGATE HALE: Mr. Chairman, I seconded the motion of Delegate Chu because I do want to make sure I hear all of the sides and I wanted to hear her presentation. I don't think she presented anything to the committee when this was under consideration. However, I did put in a proposal which would have given the prosecutor a choice of going to either the preliminary hearing or the grand jury; but after further investigation--I had put that in upon request--I decided that it was too simple a solution and put too much power in the hands of the prosecuting attorney, and I withdrew my support from my own proposal. I find this a very confusing and complicated problem, and I feel that the redresses necessary in the grand jury system will have to be addressed by the legislature. I think we have done as much as we can in the Constitution by providing an independent counsel, and I think we brought up these concerns in the committee report. I'm sure the legislature now, when they go into the matter of an independent counsel, will have some guidance in addressing some of the other problems that the grand jury faces. Although I seconded this amendment, I cannot support it.

CHAIRMAN: Thank you, Delegate Hale. Is there further discussion?

DELEGATE KIMBALL: Mr. Chairman.

CHAIRMAN: Delegate Kimball is recognized.

DELEGATE KIMBALL: I'd like to speak against the amendment for two reasons. The amendment seeks to eliminate the grand jury but in essence it doesn't, because you have the second part which establishes specific types of investigations that would be conducted by a grand jury. And I believe you would have not only those enumerated in the amendment itself, but with the phrase "as otherwise provided by law," we would end up under newly created law with the same function as the grand jury now serves. Thank you.

CHAIRMAN: Thank you. Is there further discussion on this amendment? If not, the Chair will ask Delegate Chu if she wishes to speak last on this matter.

DELEGATE CHU: Yes, I'm concerned because various experts have dealt with this question and have discussed it, and I would feel very remiss if the members of this Constitutional Convention decided to reject any reform proposal on the basis that they did not understand it and that it was a difficult area for many people. The National Center for State Courts has done an extensive study, which I believe was sent to us by the judiciary. A very high judicial officer in this State has expressed concern to me about this problem and expressed his favor of this particular type of amendment.

And there may be other solutions--for example, having a grand jury hearing or proceeding take place at the time the preliminary hearing would otherwise have taken place. But the problem here would be that on the outer islands that would not be possible, in that generally the grand jury here on Oahu--the Oahu grand jury, generally meets two days a week at the most. And I believe last year there was only one meeting one day a week; there's really not enough of a caseload to justify more than one grand jury meeting more than one day a week, and it would not be possible for the grand jury to act in such a short time. And often the accused does have a right to be released, unless there is some kind of preliminary determination of his guilt--if there is some kind of judicial

check on the police--and the problems expressed by Delegate Campbell as to sexual offenses that may be held in chambers--that is true. And it is true that there was a great deal of public furor when one particular preliminary hearing was closed to the public. I believe that problem can be easily resolved by a statutory provision that would allow for individuals, or prosecutors, to file a motion before the courts just like they do with the search warrant--perhaps an *ex parte* motion, which means one that is not subject to the presence of the defendant, that is only one-sided, showing the necessity for a closed public hearing. And the standards for that showing would be very, very broad, in that any time there is a need for the protection of young witnesses or with sexual offenses, that a closed hearing would be permitted by the court. So I don't see that these kinds of problems are insurmountable. The legislature can deal with those problems. However, as long as we have this particular provision requiring that in every ordinary case there be a grand jury hearing--it is duplicative, it is delaying, and I don't feel it brings about fast and fair justice.

One further point I would like to make is that it is true that the grand jury was initially set up to allow for public participation in the criminal-charging process; it protects the innocent from unfounded charges. However, it has not actually served that function. As far as public participation is concerned, the defendant always has a right to a trial by jury--a jury of his peers, of 12 members; and I feel that that is sufficient participation, and the greater interest should be to avoid the delay and duplication. Therefore I urge all my fellow delegates to act favorably on this amendment, and if there are some questions perhaps we could entertain a deferral where more information may be obtained on this.

CHAIRMAN: Thank you, Delegate Chu. We have before us now Amendment No. 10--

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to a point of information. Am I correct in assuming that Delegate Hale is the maker of this motion?

CHAIRMAN: Delegate De Soto, I can answer that question for you. The maker is Delegate Chu. Delegate Hale did second the motion.

DELEGATE DE SOTO: Yes, but--

CHAIRMAN: She stated that she would bring it to the floor.

DELEGATE DE SOTO: Mr. Chairman, I need to hear from Delegate Hale whether she proposed this amendment initially.

CHAIRMAN: I would be glad to pass it on. Did you propose this, Delegate Hale?

DELEGATE HALE: No, not this particular amendment.

DELEGATE DE SOTO: Mahalo.

CHAIRMAN: The question before us is Amendment No. 10, on "Grand Jury Investigations" and "Preliminary Hearing, Double Jeopardy, Self-Incrimination," and deletion of section 5 in Committee Proposal No. 15. All those in favor of approving the amendment, raise your hand. Opposed, by a like sign. The amendment is defeated.

The Chair will inform the members of the Committee of the Whole that I have received information that when we complete discussion on all the amendments to Committee Proposal No. 15 we will be through for the day, and that Committee Proposal No. 16 will, in all likelihood, be taken up on Monday at a time that will be announced by the President later.

DELEGATE PETERSON: Mr. Chairman.

CHAIRMAN: Delegate Peterson, you are recognized.

DELEGATE PETERSON: I would just like to make a short response to your comment

that we will be through for the day. During the month of August, members of the bill of rights committee met for 20 continuous days, as you may know--

CHAIRMAN: Delegate Peterson, will you state your point, whatever it is that you're rising on--point of personal privilege?

DELEGATE PETERSON: Point of personal privilege. Members of the taxation and finance committee have met until 2 in the morning in order to complete deliberations, so that we could be prepared for the kind of business that we have before us. As I see the number of amendments that are on our desks for consideration, a number of which have not been considered, and although I realize there is a great desire by a number of the delegates to complete deliberations today, I think it is important that we determine whether by eliminating the session tonight we may have to go late into the night during the coming week.

CHAIRMAN: Delegate Peterson, I recognize your--

DELEGATE WAIHEE: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Waihee, what is your point.

DELEGATE WAIHEE: My point of order is that this is an improper question to ask at this time, since in any event we have to rise and report when we finish with the amendments to this article and we will be back in plenary session, at which time these questions can be addressed, rather than taking up time at this point.

CHAIRMAN: Delegate Waihee, your point of order would be well taken, were it not that Delegate Peterson was simply expressing his distress. It is true that we will go back into plenary session, where this can be taken up and discussed; the Chair brought the matter up at this time for those who constantly send me notes for some preliminary information.

The Chair now calls on Delegate Penebacker to make a motion with respect to Amendment No. 5.

DELEGATE PENEBACKER: Mr. Chairman, I would like to offer Amendment No. 5 to Committee Proposal No. 15, to amend Article I, Section 11.

CHAIRMAN: Do we have a second?

DELEGATE WURDEMAN: I second the motion.

CHAIRMAN: It has been moved and seconded that Amendment No. 5 to Committee Proposal No. 15 be approved. Delegate Penebacker, you have the floor.

DELEGATE PENEBACKER: I'd like to speak first but I don't care to speak last.

CHAIRMAN: Proceed.

DELEGATE PENEBACKER: The concept of the 12-person jury is an integral part of our judicial system. It has its origin sometime in the 13th century in England and has been with us since the colonies were established. It has been in Hawaii since the monarchy. During this time, 12-person juries have had great historical acceptance by our society and culture. Their reliability has been tested and found adequate. Therefore it makes good sense to retain this concept.

Although the complexity of our society requires us to seek efficiency, we must be careful that the search for more efficiency in our judicial system not affect its ability to insure verdicts that reflect our communities' values and prevent bias by the judge and overzealousness by the prosecutor. Reducing the number of jurors in serious criminal cases will have an adverse effect on the purpose for which a jury is required by our judicial system.

The U.S. supreme court has held that 12-person juries are not necessary in criminal cases (Williams v. Florida, 1970). But in the recent decision of Ballew v. Georgia (March 1978), the court cited with approval the conclusions of many studies which tend to show

that the size of a jury panel does affect the deliberation and verdicts rendered. While the court decided that five jurors was not sufficient under the law--and I cite the Sixth and Fourteenth Amendments to the U.S. Constitution (the Sixth Amendment provides the right to a jury trial in federal cases, while the Fourteenth Amendment applies the Sixth Amendment principles to the states)--their discussion and conclusions on those effects are significant. I will paraphrase some of the discussion in speaking on the reasons for my proposed amendment.

First, the court stated that smaller juries are less likely to foster effective group deliberation, that at some point this leads to inaccurate fact-finding and incorrect application of common sense to the facts. They also indicated that it has generally been found that there is a positive correlation between group size and both the quality of performance and group productivity. This is a basic use of juries and a necessary element of their success. Juries must reach decisions that are of high quality to retain their usefulness in our society. A 12-person jury is a positive factor in retaining that usefulness.

Second, the court stated that the accuracy of smaller jury panels is lower; that studies indicated that the risk of convicting an innocent person grows as the number of panel members decreases, and conversely that the risk of guilty persons not being convicted rises as the number of jurors participating increases. It is clear, however, that we must decide in favor of minimizing the chance of convicting innocent persons as this is one of the primary tenets of our judicial system. The guarantee of a 12-person jury in serious criminal cases would go far toward assuring the utmost deliberation.

Third, the court stated that evidence amassed since their earlier decision indicated that smaller juries create an atmosphere whereby minority opinions are less likely to be present and, where these opinions are present, they are less likely to be retained by a juror throughout the deliberation. This has a straining effect on our jury system. We must provide for an atmosphere where these minority opinions will be expressed and where peer pressure is not so great as to prevent a juror from holding a minority opinion with which others disagree.

We must also consider the effect that crimes which raise the passions and prejudices of the community will have on the deliberation process. The fewer the jurors, the more likely that these cases will be tried on the streets and in the media. We must protect against this. The 12-person jury in serious criminal cases would do much to insure that minority opinions are heard and that the detrimental effects of community outrage are tempered by calm deliberation. This insulation effect is critical.

Fourth, the court stated that evidence indicated that jury size affects the representation of ethnic and racial minorities on the juries. In Hawaii, a state of many ethnic and racial minorities, the participation of a wide cross section of our community is necessary. We must provide for the representation of an ethnic cross section of our community jury system. Participation of all minority groups is necessary if our decisions are to reflect our collective values. We must insure that Hawaii's cultural diversity is adequately reflected. The amendment will engrave this diversity in our criminal justice system.

I would now like to respond to possible limitations in this amendment. There have been two concerns voiced about this amendment since I began discussing it with others: the first is whether it would affect juries that are composed of less than 12 persons by agreement; and the second concerns the use of the word "serious" in the amendment.

First, although this amendment would constitutionally mandate 12-person juries, this mandate could be compromised by waiver of the right to a jury trial or a stipulation by the parties agreeing to a trial by a jury of less than 12 persons.

Secondly, the word "serious" was used instead of "felony" or similar words to give the legislature some discretion about the type of crimes covered. The absolute right to a 12-person jury is unnecessary in some situations because the potential penalty may be severe or create a great likelihood that justice may be miscarried. It is important to allow for economic and efficiency considerations in these situations since they might not affect a fair or impartial trial. Thus a smaller jury of lesser members might be more just.

Finally, Hawaii's statutes do not mention the right to a jury of 12 persons in criminal cases--and if you look at the Hawaii Revised Statutes, volume 1, page 93, it says: "The jury referred to is a jury of twelve." This is Attorney General Opinion No. 68-10; it is not

mandated by statute. The Hawaii Revised Statutes does not make reference to it. When I asked Attorney General Ronald Amemiya why not, he did not give me an adequate answer. This is one of the reasons I am proposing this amendment, to put it in the Constitution.

Finally, fellow delegates, I would ask you to approve this amendment to engrave the basic nature of the 12-person jury in criminal cases in our Constitution, to maintain or implement it. The amendment will help to insure that the highest quality of justice available in the United States and in the world will also be found in Hawaii. Thank you very much.

CHAIRMAN: Thank you, Delegate Penebacker. Are there any other delegates who wish to speak on this amendment?

DELEGATE TAM: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Tam.

DELEGATE TAM: Mr. Chairman, with great fear and trepidation that I may do harm to the delegate's proposal, I would speak for it. I think it's a good idea.

CHAIRMAN: Thank you. Any other delegate wish to speak on this amendment? Delegate Weatherwax.

DELEGATE WEATHERWAX: Mr. Chairman, I reluctantly rise to speak against this amendment, not because I particularly disagree with the concept but more to whether or not we should constitutionalize this matter. I find no magic in the number 12; and I think that, under the present system right now, if this were not put in the Constitution it would boil down to, at the time of trial, where an individual under the present system--which is the attorney general's opinion interpreting that the language "impartial jury" now in the Constitution deals with the 12-man jury--and that at the time of trial the individual defendant has the option to waive it or perhaps to determine what number of jurors should be available to him.

I also bring up the possibility of problems in constitutionalizing it in this fashion--and this may be a very minor problem--of what would happen perhaps--although we have alternate jurors sitting--whether, in fact, should the number 12 be diminished at the time of trial, there would be a mistrial declared automatically, and of course the whole process would begin again. That would be my only concern and I reluctantly speak against the amendment.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair recognizes Delegate Hino, to be followed by Delegate Chu.

DELEGATE HINO: Mr. Chairman, I enthusiastically support this amendment. Everything I have studied and learned under Professor Jon Van Dyke and Professor Jerry Guben at our law school compels me to stand before you today to share with you the importance of the 12-man jury in getting a fair trial. I wish I could present some figures and data which we had perused in class--I'm real sorry that I don't have it. But let me assure you that at this point I am convinced that constitutionalizing the requirement for a 12-man jury in serious cases is very necessary and very important in our Bill of Rights. Thank you.

CHAIRMAN: Thank you, Delegate Hino. The Chair recognizes Delegate Chu, then Delegate Sterling to follow.

DELEGATE CHU: Mr. Chairman, I reluctantly speak against this amendment in that, as much as I am concerned about fairness and impartiality by trial jurors, trial juries and the importance of having a cross section of people--and perhaps definitely the 12-person jury would further guarantee a cross section of the community, that would guarantee an impartial jury--however, criminal law as it is right now does require a 12-person jury and the criminal defendant has a right to a trial by jury for all offenses punishable by more than 6 months. However, there are certain cases which are only punishable by 6 months, where the criminal defendant himself does not want, or does not feel that a 12-person jury is necessary in such a small offense. Perhaps the fact that--the phrase here, "where the crime charged is serious," would rectify that problem.

I just feel that in certain situations it may be advantageous to give the accused the option to choose a 6-person jury if he feels that that is to his advantage.

CHAIRMAN: Thank you, Delegate Chu. The Chair recognizes Delegate Sterling-- excuse me, Delegate Sterling. The Chair would like to ask the delegates please to observe the courtesy of silence while the delegate is speaking. Proceed.

DELEGATE STERLING: Thank you, sir. I morally speak for the amendment. Apparently from the cases, or the incidents cited by the movant where the juries have been reduced in size, it did not have this in the Constitution; and this question has come up, particularly in the last year or so, as to a cross section of the community and the ethnic backgrounds in the community. We're anticipating possible moves against us, and I believe it is a constitutional matter and it should be in the Constitution. And that's why I'm speaking for it. Thank you.

CHAIRMAN: Thank you, Delegate Sterling. The Chair recognizes Delegate DiBianco, then Delegate Crozier.

DELEGATE DiBIANCO: I rise to speak in favor of this amendment. I just wanted to point out that historically the way the jury originally was set up, you couldn't be on the jury unless you knew something about the case, and quite often--this goes back to the 13th or 14th century--quite often that meant we had juries of as much as 100, 110 or 120 people, because you would find all the neighbors who knew something about a case, the sheriff would call them in, and they would sit in judgment in the particular case. That proved too cumbersome, and for some reason the number 12 was decided upon. There's really nothing sacred about that particular number as far as it relates to jury trials; but it is a number that we have lived with for a long time and it does seem, as Delegate Penebacker has pointed out, to get us a sufficient cross section of the community, so that when we do have a jury trial we can be assured that there will be a sufficient number of people so that all the different views of the community are represented.

Some states have had occasion in very recent years--the past 2 or 3 years--to change the number. Their own constitutions say that a criminal defendant shall have the right to a trial by jury, and the legislature says--all right, we'll give you a trial but you're not going to get 12 people, you're only going to get 6, or in misdemeanors you're only going to get 3. And I don't want to see us run the risk of having that kind of thing happen in Hawaii, because I think it makes a mockery out of a trial by jury. Certainly, at least for serious cases, we should go with the 12-man jury and we should have the protection for it in the Constitution. In civil cases, in misdemeanor cases, many attorneys, myself included, have on occasion waived the 12-man jury and gone with a 6-man jury just to speed things along. But when you're concerned with a serious felony, I think every defendant should feel safe in the knowledge that his Constitution mandates that he will have a 12-man jury, and neither our legislature, our judges, nor anybody else can tamper with it. So I speak in favor of this amendment. Thank you.

CHAIRMAN: Thank you, Delegate DiBianco. The Chair recognizes Delegate Crozier and afterwards Delegate Shon.

DELEGATE CROZIER: Yes, Mr. Chairman, I also speak for this amendment. Just to rebut what the speaker from the left side of the room said, that sometimes juries might want to be less--or the defendant and the other parties might want to have less than 12 jurors, the movant also stated that they could waive this right to 12 people. This is just guaranteeing that they can have 12 and it's their option to have less than that if they want to. Thank you.

CHAIRMAN: Thank you, Delegate Crozier. The Chair recognizes Delegate Shon, and then Delegate Chu.

DELEGATE SHON: Thank you. I also rise to speak in favor of this. I was very surprised when I found out a few years ago that all juries were not 12 members. I think that the crucial decision in the law should be whether or not there is a jury, not whether or not there are six members or five. Theoretically, if there is no guarantee that a jury is a certain number of people, it seems to me that we could get into situations where, once the threshold was reached where it would be a jury trial, it could be two people, three people, four people. I think this is an irrelevant kind of consideration. The most important

thing, I think, is whether or not there should be a jury trial, and a jury to me is a fair number of people where a fair kind of decision representing different interests can be decided upon. So I think that all juries should have 12 members.

I would also like to add that I don't believe it should be just up to the defendant as to whether or not to reduce the number of people on the jury, because it is not just a trial on behalf of the defendant. It's a trial between the community and the defendant; and the jury is a component of this procedural step in our justice system whereby we say we want a fair number of people--in this case, 12--to make a determination both on behalf of the defendant and on behalf of the community as a whole. So I don't believe it really ought to be just up to the defendant, or the attorneys, or some kind of procedural convenience, to start reducing the number of people who are required to decide, both on behalf of the community and on behalf of the defendant, how a particular case will be decided. So I urge you to support this.

CHAIRMAN: Thank you. Delegate Chu is recognized for the second time--is there any delegate who wishes to speak for the first time? Delegate Hale, then Delegate Campbell.

DELEGATE HALE: Yes, Mr. Chairman. I'd like to say I supported this in committee and when Delegate Penebacker and Delegate DiBianco get together, I think it must be good. I urge your support.

CHAIRMAN: Thank you, Delegate Hale. Delegate Campbell, you are recognized.

DELEGATE CAMPBELL: Mr. Chairman, I would like to cite Van Dyke, whose name is cited in our Legislative Reference Bureau material, and the information which appears is as follows: "[T]here is some evidence that smaller juries are less representative, less reliable (the more jurors, the less random error), and more erratic in their verdicts."* And I think the question we need to ask ourselves is whether the factors of saving time and money in this instance are worth the savings, because in the long run they will inure to the detriment of the defendants in these cases. This material also indicates that it is "questionable whether smaller juries [actually] save time and money, or at least whether the savings are significant enough to warrant the change. Smaller juries are less prone to 'hang'--or be unable to reach a unanimous verdict," it says, "but perhaps a 'hung' jury is an indication of some substantial, unresolved controversy and shows that the government has not proved its case against a criminal defendant beyond a reasonable doubt."** For these reasons, I would support this amendment and urge my fellow delegates to do the same. Thank you.

CHAIRMAN: Thank you, Delegate Campbell. Is there any delegate who wishes to speak for the first time? If not--oh, Delegate Kimball, you are recognized.

DELEGATE KIMBALL: Yes, Mr. Chairman. I'd like to speak in favor of the amendment. As previously mentioned, there are no statutory guarantees with respect to the size of a jury in a criminal trial. In addition to that, there are no statutory guarantees that the jury's decision has to be made on a unanimous basis. So therefore, I think it would behoove us to set a size--a minimum or a standard size--for juries in criminal cases, serious criminal cases. And the size set in this amendment is both logical and based on tradition. Therefore, I ask you to vote for this amendment. Thank you.

CHAIRMAN: Thank you. If there is no other delegate who wishes to speak for the first time, the Chair recognizes Delegate Chu.

DELEGATE CHU: Mr. Chairman, I would like to withdraw my former stated objections to this particular amendment and now would speak in favor of this amendment. I have been simply concerned that, in situations where in the past I have opted for a 6-person jury, that that particular right of the defendant or of the defense counsel would be obviated by this particular provision. I don't feel that that would be; I feel that the defense, the defendant, can always waive the 12-person jury and opt for a smaller one, or none at all. So I do believe the arguments in favor are a great deal more persuasive than the problems with it.

*Jon M. Van Dyke, Jury Selection Procedures (Cambridge, Mass.: Ballinger Publishing Co., 1977), pp. 196-200.

**Ibid., pp. 200-203.

CHAIRMAN: Thank you, Delegate Chu. Are there any further--yes, Delegate Barr.

DELEGATE BARR: Yes, Mr. Chairman. Your delegate from the windward side of Maui would like to lend his support to the amendment of the delegate from the windward side of Oahu, and now that the one objector has changed to favoring this amendment, I assume it will pass in a breeze.

CHAIRMAN: Thank you, Delegate Barr. Any further discussion on this amendment? If not, the Chair would like to ask whether Delegate Penebacker, who relinquished his privilege of speaking last, whether he cares to at this point. He wishes to leave well enough alone. Thank you.

The question before us now is the adoption of Amendment No. 5, which relates to Article I, Section 11, "Rights of Accused," to insert the words: "Juries, where the crime charged is serious, shall consist of twelve persons." All in favor raise your hand. All opposed raise your hand. The ayes have it--48 ayes and 28 nays. The amendment is approved.

We now appropriately arrive at the last amendment, which deals with insanity. Perhaps even more appropriately; the Chair now recognizes Delegate Tam to--

DELEGATE TAM: Thank you, Mr. Chairman. I move for the adoption of Amendment No. 9 to Committee Proposal No. 15, to add a new section to Article I of the State Constitution to read as follows: "Insanity shall not be a defense to the accused. In the event of a conviction, the mental condition of the accused shall be considered as a mitigating factor before sentence is imposed."

CHAIRMAN: Is there a second?

DELEGATE SOUKI: I second it.

CHAIRMAN: It has been moved and seconded that Amendment No. 9 be approved. Discussion? Delegate Tam is recognized.

DELEGATE TAM: Thank you, Mr. Chairman. May I say that I feel like the character in a movie we saw recently, who went through a number of rounds and, approaching the last round, looked up at all the banners and all the pictures around him and said, "At this point I don't want to win, I just want to go the distance." But onward.

Mr. Chairman, the substance of this amendment is that insanity shall not be a defense for the accused and that in "the event of a conviction, the mental condition of the accused shall be considered as a mitigating factor before sentence is imposed." I guess this is the last--since we've been attacking every other minority today, I guess this is the only one left that I haven't touched yet. And I may join them.

Mr. Chairman, the goal is to eliminate a grave injustice, the "insanity defense," and my reason is not so that we can take out vengeance on people who have any mental problems at all--not to hang people or anything of that sort. My goal is to establish some system responsibility for criminal acts; in effect, it will hold a person responsible. It may not be that the person could formulate an intentional and knowing intent to do something--for instance, the act of murder; however, the person may have been able to form a reckless intent or a negligent intent to do so. If we have a body--if somebody did something and somebody is guilty of doing it--this is not to say the person should not be given treatment if treatment is in fact necessary, but to assign responsibility.

In the past, when this particular defense developed in England several hundred years ago, the basic purpose was to escape capital punishment at a time when it was very frequent. There would be public hangings or public beheadings, and it was done very frequently, very commonly and under systems of justice that might not pass muster today. At the present time this insanity defense is used for confinement only, and I am referring to the Hawaii Penal Code, section 700, or chapter 704 of the Hawaii Revised Statutes. I wonder how many delegates in this body have read this particular section and understand what it means. For instance, I wonder if the delegates understand that if a person is declared "insane" and unable to assist in his defense, there is no trial; the person is put in a facility and the code then provides that this person can later be brought to trial. However, the code

also provides that if sufficient time passes, the case can be dismissed and the person discharged without any further finding of anything.

I wonder if people in this body understand that in the second instance--known as temporary insanity--if a person, say, went berserk, supposedly berserk, for 5 minutes and murdered somebody during that time but is okay now, he can walk out of the court a free man.

In the third instance, I wonder if delegates in this body realize that even if a person is committed to an institution after an atrocious crime--again, a murder or whatever--that the statutes provide that he can be released within 90 days. And if he is not released within 90 days, he shall be kept and can be released one year thereafter. In other words, he can't have another hearing for another year, but within that year and 90 days, he will have a second crack at being released.

I would like to relate some things that I have tried to circulate and tried to discuss with delegates, but I haven't been able to do that with all you delegates. I would like to point out a couple of cases. For instance, the case where a person accused of sexually assaulting and beating a young woman before throwing her off Waialae Iki ridge last August was acquitted on eight counts because he was declared "insane" at the time of the incident. He was characterized as a violence-prone man with a very hostile attitude toward women, a heavy user of drugs and alcohol, and that day he had drunk more than a case of beer and had taken PCP (also known as angel dust). Now he was acquitted, despite testimony from a psychiatrist at Halawa Correctional Facility that he thought this person was in fact feigning his depression at Halawa and changing his demeanor when he knew he was being observed by psychiatric officials.

A second case--a man caught in the act of raping a woman in the Queen's hospital parking lot. Two members of a team of three psychologists and psychiatrists testified during the hearing that the man was suffering from schizophrenia, such that he thought he was obeying the commands of demonic voices when he attacked the nurse. The third psychiatrist testified that he in fact knew what he was doing at the time of the incident. Thank goodness the judge believed the third psychiatrist and did not accept the testimony of the other two.

The third instance--a person who stabbed a 16-year-old girl to death in an empty Hawaii Kai garage after she resisted him although threatened with a knife. He declared that he knew what he did was wrong but that he was driven by an irresistible impulse to rape and could not stop from killing her when she resisted.

If you find this hard to accept, I also find it very, very hard to accept. And those alternatives that I just mentioned to you would apply to these people--the fact that if they were temporarily insane they could have been discharged that very day from court; and if they were committed they could have been released within 90 days, and if not they were entitled to another hearing within a year, and every year thereafter. I wonder if people in this body realize that in addition to all this, once this matter of "insanity" is raised, the prosecution has to prove beyond a reasonable doubt that the person is in fact sane. We have to prove that the people who did these things that I just talked about were in fact sane. And I wonder if the people in this body realize that the "insanity" defense at the present time is complete and absolute: there is absolutely no finding of anything wrong done by this person, absolutely none. You know, the result is this: as mentioned by another delegate, what happens when you steal a package of oranges, you steal a loaf of bread--you could go to jail; but if you kill, rape or maim, you go to a hospital with a good chance of being released.

I would like to mention two things as to why others, other than myself, feel the necessity for a change in this area. I would like to quote Judge Fukuoka, in a case where this man walked out of a bar--this was in Happy Valley in Wailuku, Maui, last year--when he walked out of a bar at night--he had had a lot to drink--and he had something in his hand. He walked by two unsuspecting persons--one person was standing with his family--and as he walked by each person, he slashed upward with something he happened to have in his hand. In one case, he ripped the person from his cheek to his eye, ripped the eye out and blinded the person. In the other case, he severed the nose of the person from his face. He was found to be "suffering from some kind of paranoid schizophrenia triggered by alcohol or marijuana." Judge Fukuoka in that case indicated, "We're in a situation we

really can't handle very well." After discussions with the attorneys in this case, Fukuoka ordered the defendant committed to the state hospital for evaluation and treatment, but he indicated that he was not satisfied with the decision. Speaking to reporters later, Judge Fukuoka said that he had a basic dissatisfaction over the question of whether a person can be completely excused or acquitted just on the basis of whether they're insane or not.

I would also--very quickly, Mr. Chairman--point out to the body a letter that I received unsolicited from Dr. Byron A. Eliashof, a psychiatrist in Honolulu, who indicates that he strongly believes that the laws in this area need to be revised. Mr. Chairman, I would ask us to get medicine out of the courtroom, in this case; it has nothing to do with legal responsibility for criminal conduct. Any kind of mental problem, real or feigned, is no license to kill. I ask this body to help restore public confidence in the law, public respect for our judicial system, and to prevent crime, by this prohibition acting as a means of trying to stop people from doing this. Thank you very much.

CHAIRMAN: Thank you, Delegate Tam. The Chair recognizes Delegate Penebacker.

DELEGATE PENEBACKER: Point of inquiry. Would the movant or the Chair give me a definition of "insane"--is that a medical definition that we're referring to, or the legal definition of the word?

CHAIRMAN: A question has been posed concerning the definition, whether it's legal or medical. Delegate Tam, would you offer your understanding of what is contained within your proposal?

DELEGATE TAM: According to section 700 and thereafter [in the Hawaii Revised Statutes], we are talking about a legal definition; we are talking about legal concepts. However, the problem occurs because medicine spills over into the legal field and quite frankly, if I may say so, it would seem that psychiatrists cannot cope with it.

CHAIRMAN: Delegate Penebacker, does that answer your question? Delegate Chong was recognized first, then Delegate Funakoshi. Delegate Chong, you have the floor.

DELEGATE CHONG: Thank you, Mr. Chairman. I speak in favor of this amendment and I speak as a mother of two law enforcement officers, as I did as a member of the BORSE committee. My concern is that my sons put their lives on the line to protect the general public--whether it is to cite an offender for a traffic violation, capturing an armed robber, or seeking escapees declared insane and sentenced to our inadequate facility, our state hospital. I am concerned for my sons' lives. I am not an attorney, but I do know that there are criminals walking the streets of Hawaii. Crime is our number 1 problem. The judicial continues to allow this. I read in the newspaper, time and time again, "innocent by reason of insanity." I'm aware there are persons who are definitely insane, mentally retarded, whatever the term is, but I'm concerned about criminals using this same term and allowed to go back on the streets and commit the same crimes over and over again. What about my two sons, what about all the law enforcement officers of the State of Hawaii? I think at this point we should support and defend the very officers we put there to help protect us. Thank you.

CHAIRMAN: Thank you, Delegate Chong. The Chair recognizes Delegate Funakoshi, to be followed by Delegate Chung.

DELEGATE FUNAKOSHI: Mr. Chairman, I rise to speak in favor of this amendment. This subject was discussed at length in the BORSE committee and concerns were voiced by a majority of the members. Discussion was continued on the last day of decision-making and, although the standing committee report does not reflect this, it was finally decided that the committee put forth a resolution. This decision passed by the 16 votes required to get it out of committee.

Mr. Chairman, our citizens are tired of criminals abusing the insanity plea. They cannot understand why the same criminals are permitted to go free to hurt another innocent victim. Granted, we would not want to completely disregard another's mental capacity, and this amendment has no intention of doing that. If convicted, the accused can still be treated at a mental institution. Under the present system, after treatment and examination he will be released, whereas if insanity is not a defense, after the accused is treated he will be sent to jail to complete his sentence.

I withdrew my bifurcated-trial proposal in support of this amendment. Remember, fellow delegates, this issue did receive the 16 votes in committee for a resolution. I urge you to vote for this very important amendment.

CHAIRMAN: Thank you, Delegate Funakoshi. The Chair recognizes Delegate Chung, to be followed by Delegate Chang if he cares to, then Delegate DiBianco. Proceed, Delegate Chung.

DELEGATE CHUNG: Thank you very much, Mr. Chairman. I support this amendment yet I have some concerns about the constitutionality, whether this could be challenged, because currently we do have, as the delegate mentioned, this M'Naghten ruling and also the law of irresistible impulse. And as far as I know, most of the defenses have been based on these two legal doctrines--or whatever we call this, what has happened in the past. I'm not sure how this will affect the application, in case it is passed, but I thoroughly agree that many criminals are hiding behind the concept of insanity as a defense to avoid incarceration in prison.

Today, with the rising usage of drugs I see a great threat to our safety. May I share with you very quickly an article which appeared in our paper by Michael Colburn, a Los Angeles psychiatrist associated with the institute of psychiatry at the University of Southern California. And in this case he's talking about the seriousness of the increased usage of drugs, particularly LSD and PCP, by the perpetrators of crimes prior to the commission of the crime and after, and using this as a defense mechanism for insanity.

We all know of the rise in drugs in Hawaii, and alcohol, and the whole purpose is to get away from the specific intent, the premeditation, the malice aforethought or deliberation, under the ruling of insanity; and I'm certain this will be seen more and more in Hawaii. I just want to close where he says that "[a]s the abuse of drugs, including alcohol, continues to mount in contemporary society, we must stop the perversion of that much-cited and often legitimate excuse before our capacity or accountability diminishes further." The use of insanity is to evade accountability.

I've been in this kind of work with many youthful offenders and oftentimes I hear this that they tell me: "Mr. Chung, I'm going to go to the state hospital, act as if I'm a nut, have a record of being in a nut house, then get out, and someday when I'm arrested or involved in some serious crime, I'm going to plead insanity, and the history of my confinement in the state hospital and my knowledge of how to act as a nut will get me off the hook." Now this is not funny, Delegate Penebacker, this is a real threat. The commission of crime among young people is very sophisticated, particularly for those youthful offenders who have been used by the bigger boys as hired killers, and so forth. And one of the ways for them to save their necks is to plead insanity. Therefore, I think this amendment by our delegate from Maui is an excellent one for us to consider and I advocate its passage very much.

CHAIRMAN: Thank you, Delegate Chung. The Chair recognizes Delegate Chang, then Delegate DiBianco.

DELEGATE CHANG: Mr. Chairman, I'll defer to other speakers and rise later.

CHAIRMAN: Delegate Weatherwax.

DELEGATE WEATHERWAX: I don't know why I particularly take precedence, but I guess it's because I'm the chairman of the committee and everyone would be interested in the committee's feeling. I stand to speak against the proposed amendment, and I think the perfect example of why--and also the committee's rationale--is based on the statements made by previous speakers. Delegate Chung stated that he was confused about the ramifications, Delegate Funakoshi spoke about a resolution that had passed the committee; and I would advise you that the reason the committee decided on a resolution was exactly that. There was insufficient information, there was really an insufficient basis on which to put this in the Constitution. I firmly believe it is a legislative matter, that I think--and there was also another speaker who--I believe the movant asked about how many of us have read the recently passed penal code. It's for that type of reason, I believe, that this is a legislative matter. This has never surfaced before the legislature before--I believe my statement is correct--and I think that the resolution process decided by the committee is best in handling this matter.

There are major concerns as to whether or not the mens rea requirement, or the penal responsibility requirement, could be considered as being removed. So in fact what is happening is that you clutter up, or you confuse, the present penal law, so thus it would not solve the crime problems which have been presented to us here. This may be a hindrance more than a help. And for those reasons I would speak against adoption of this amendment.

CHAIRMAN: Delegate Weatherwax, before you finish, would you translate the mens rea. I see some delegates--

DELEGATE WEATHERWAX: Mens rea would be equal to the term of penal responsibility, or the sufficient state of mind necessary to be found before a particular crime is found.

CHAIRMAN: Thank you. Delegate Chang is recognized if he cares to speak.

DELEGATE CHANG: Mr. Chairman, I continue to defer. I'd like to hear all arguments.

DELEGATE CAMPBELL: Mr. Chairman, point of information. Would the chairman of the committee yield to a question? I'd like to ask a question.

CHAIRMAN: Please state your question.

DELEGATE CAMPBELL: I would like to know the status of the resolution. I think that would help the Convention itself.

CHAIRMAN: Would the chairman care to yield to that?

DELEGATE WEATHERWAX: The chairman had intended on calling the BORSE committee for one final meeting to handle two matters which are still pending. One is a resolution by Delegate Goodenow, and the other is this particular resolution here.

CHAIRMAN: Does that answer your question, Delegate Campbell?

DELEGATE CAMPBELL: My other question is when will the resolution itself come to the body--to the Committee of the Whole or the Convention itself? Can the chairman answer that question?

DELEGATE WEATHERWAX: I believe it was intended to come to the Convention in its entirety when perhaps other resolutions are being considered. Not to the Committee of the Whole, but to the Convention.

CHAIRMAN: Thank you. Delegate DiBianco is recognized.

DELEGATE DiBIANCO: Thank you very much. I rise to speak against this amendment. It seems to me that what we're doing here, in order to get even or get back at those few defendants who have abused the insanity defense, is that we're going to mistreat everybody who uses the insanity defense whether or not it's justified. In short, we're going to be throwing out the baby with the bathwater. I don't think it's necessary to use such a heavy-handed approach in this particular instance. There are people who are insane, some temporarily, many of them for long periods of time. They need treatment and I don't think they should be forced to go through a trial and conviction when in point of fact they do not satisfy the elements of criminal responsibility. In order to find somebody guilty of a crime, the prosecution has to prove two things: first that the person committed a guilty act, and second that he had a guilty mind. That guilty mind could be an act of an intention, intentional act or reckless act or negligent act, it depends on the particular crime involved. But to say that people will be found guilty of a crime regardless of what their mental state was, simply upon proof of their activities, is, I think, an extreme measure. For example, if I walk into somebody else's house in the dark of night by sheer accident--I don't intend to steal anything there--but we don't have any requirement in our law that there be proof of a guilty mind, only a guilty act, the mere fact that I'm in somebody else's house might get me a conviction for burglary because I would not be allowed to defend myself by saying--gee, it's just a little mistake, I'm in the wrong house, I went down the wrong street.

Presumably the same thing would hold true now with insanity defenses. Somebody walks into a house late at night--he doesn't know what he's doing because he's insane--

and we are still going to convict him even though he has no knowledge of the fact that he's in somebody else's house, no intent to steal, because he can't have an intent to steal because he is mentally ill. Still we're going to convict him because we don't have an insanity defense any more. We're only fulfilling one of the two elements of criminal responsibility. I would point out that the U.S. supreme court, on previous occasions, has held that people cannot be convicted of crimes if, for example, they were so under the influence of alcohol or drugs that they didn't know what they were doing--and that isn't necessarily an insanity defense and would not necessarily be touched by this particular amendment. So many of Delegate Tam's concerns would still remain, even if you did support his amendment.

I think a better thing would be to beef up prosecutors' offices, provide them with better psychiatric testimony so that they can uncover the frauds, uncover the fakes and see to it that the insanity defense is not abused. But I would point out also that the fact that you read about people getting off for certain crimes on the basis of insanity is usually because it's so rare that it winds up being reported in the newspapers--it's so unusual. I think the only other thing I might mention in contradiction to what's been said by supporters of the amendment is simply this one minor point. It is not true that the prosecution has to prove that all defendants are sane, and I'm sure Delegate Tam didn't mean to leave you with that impression. The way the criminal law works, everybody is presumed to be sane until such time as a defendant puts on enough evidence to raise a showing of probability that in fact he is insane; at that point the prosecution may be put to the burden of proof of disputing that evidence with psychiatric evidence of its own, tending to prove that in fact the man is sane. I didn't want you to have the feeling that everybody who goes into court has the insanity defense available to them. The first burden of proof, the proof that the person is insane, is upon the defendant. Because of that, very, very few defendants ever raise the defense of insanity. It is a rare defense; it is rarely used and therefore rarely abused. I don't say that it is never abused, but I think there are better ways to take care of it than to take away the defense entirely.

The bad thing about bringing these matters up and letting lawyers speak on them is that lawyers always have their own war stories they have to tell, and I have one I'd like to tell you. In this very building a couple of years ago when I was representing a criminal defendant in a federal case, there was a question as to whether or not that defendant was fit to stand trial. I was court-appointed counsel and I was asked to represent him at the last minute. I didn't quite understand why, although I learned very quickly, because the man was in fact totally pupule. He asked me just prior to trial if he could go to the rest-room. I said all right, the marshal said all right, we took off his handcuffs, he went into the men's room upstairs on the third floor--the small one that leads down the hallway above this convention center--locked the door behind him and knocked out all of his teeth on the water faucet. And presumably if this defense were not available, all we could have done under the circumstances would have been to clean him up, put him in a straitjacket, put him in his chair and have his trial. In point of fact, the man was babbling, his teeth were falling out of his gums, and it was absurd to think that that man would have to stand trial under any circumstances. He was totally mentally ill and as soon as the judge got one look at him, we put him in a straitjacket and we sent him to Kaneohe. I don't know whether he's there to this day or not, but I do know that the man had a serious mental illness and I don't think that kind of person should be standing trial. I don't think he should be found guilty of anything. He's just too sick.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Shon is recognized.

DELEGATE SHON: Yes, I must speak as a layman against this. I feel I'm really groping in the dark in terms of this, because I admit that the statute the mover referred to I have not read in its entirety, and for that reason I'm reluctant to totally eliminate it. I don't know that "insanity" could not be better defined or better applied, or temporary insanity. I think there's a lot of things in the statute that I simply am not aware of and what we are being asked today, I think, is to eliminate an entire part of that statute which we have not read. Perhaps by Second Reading, after I have had a chance to look at it or hear more arguments, I might be more willing to consider this; but I feel, as I've spoken before on other issues, that if we're just totally in the dark, we should be very careful. So I urge you to vote against this.

CHAIRMAN: Thank you, Delegate Shon. Delegate Chu is recognized, to be followed by Delegate Alcon.

DELEGATE ALCON: I have a point of inquiry, Mr. Chairman.

CHAIRMAN: Certainly, please state your point.

DELEGATE ALCON: Are we talking about legal insanity or mental insanity?

CHAIRMAN: That question, I believe, was earlier answered by Delegate Tam. If he cares to add--but correct me if I repeat it wrong--it's legal insanity that he had described. However, he said that it does border into medical areas. Is that correct? Please state the answer then, as you gave it, Delegate Tam.

DELEGATE TAM: Mr. Chairman, to answer the delegate's question--we're talking about defining legal insanity, and whether we can do anything about the definition of legal insanity.

CHAIRMAN: Just legal insanity.

DELEGATE TAM: That's right.

CHAIRMAN: Delegate Chu.

DELEGATE CHU: Mr. Chairman, I would like to speak against this amendment. I feel that this is quite radical surgery to our criminal laws and this Constitutional Convention is not the appropriate body to deal with this. I recognize that crime is an evergrowing problem in our State and I am totally in favor of and sympathetic to this concern of the general public, and I am also very sympathetic to our brave police officers who really do have a very, very tough job. However, I feel that legally the *mens rea* that Delegate Weatherwax referred to--which means that the state of mind of the person is an essential element that must be proved by the prosecutor. It's not that I'm so attached to this particular legal principle that allows this defense for criminal defendants, but I feel that we must be sympathetic to the criminal defendant because these people really need help. I've been very active in the mental health area and in the area of bettering our state hospital, and there's no question that what they need is treatment.

Now, the use of the word "innocent," or "acquitted by reason of insanity," is really legal terminology, and as far as common usage is concerned, it's probably a misnomer because the person is not released, he is merely declared to be innocent, declared to be legally not responsible for the act. And that's only legal because the courts have the power and the authority to deal with that person, to place the person in the state hospital; and chapter 700, which Delegate Tam refers to, has very elaborate procedures, where the person would be placed there and his case is reviewed yearly--that was a recent amendment to the insanity defense section, his case is reviewed yearly--and if the person's illness does not improve he must remain in there. Delegate Tam referred to various cases in which the person, or the accused, has been found innocent by reason of insanity. That is true; however, I would ask what happened to them? Were they released onto the streets, or were they taken to the state hospital? I have known of many situations in which it is actually harder for a person to be released from the state hospital than it is for that person to be paroled. Often a person can be paroled after 3, 4, 5 or 6 years, depending on the seriousness of the offense; however, a person who is sent to the state hospital--if his situation does not improve or does not change--he is in fact in there for life, or even longer, even though they do have this 1-year review--if they do not improve. So I feel the subject of the treatment of the mentally insane as being an entirely different subject. It is not something that warrants abolishing the insanity defense. I feel that the laws should be revised in fact, and the state hospital should be more adequate in its treatment and in its services. But I do not feel that this particular amendment would take care of that. I feel we are attempting to act as a legislature; and I think the legislature can better define the insanity defense, perhaps better define what constitutes insanity, so that there would not be these abuses. But I do not believe that abolishing the insanity defense in the Constitution will resolve any problems.

CHAIRMAN: Thank you, Delegate Chu. The Chair recognizes Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment, mainly because, as expressed by the chairman of the BORSE committee, I'm not really sure where all this leads. I find some attraction to it and its possible implications, but I feel very uncomfortable putting this kind of language in the Constitution because I don't know exactly what it would do to our criminal laws.

What I am afraid of and what I have expressed, in addition to the concerns expressed by other counsel, what I have expressed to the movant of this motion is that I feel that this amendment, rather than clarifying the situation or strengthening our criminal code, might have the opposite effect. In reality, we might be making it possible for these types of individuals to be released to society earlier. It could be interpreted, for instance--one thing we do know is that we cannot convict a person of a crime if he does not meet all the elements of the crime, if he does not have the necessary *mens rea*, or what they call the state of mind. So one thing you do know is, for the person on Waiālae Iki ridge who stabbed somebody and you took him in for trial, even if you removed this defense, you couldn't try him for murder. What you would be trying him for is a lesser crime, to which he would have a mental state of mind such that you could possibly convict him; and having charged him for a lesser crime, he would obviously serve a lesser sentence. Now, what may happen is that while the maximum sentence for the lesser crime looks like a long one, what will probably happen is that it'll be a lot easier for the person to get out on parole. All he'd have to do is behave himself and serve his minimum sentence and he'd be back on the streets. There wouldn't be the same kind of necessary control dealing with his medical condition. As expressed by the previous speaker, it might be easier to get on parole than it is to get out of the mental institution. And I'm afraid that by going into this kind of area wholesale like this, we may actually be worsening the situation that we seek to cure.

What we need to do, I believe, is to look more at the confinement laws right now dealing with the mentally insane, or at the legal definitions, not just to wipe out a defense like this and have the person being treated as a regular criminal and convicted for lesser crimes, and in a sense maybe increasing the current situation.

CHAIRMAN: Thank you, Delegate Waihee. The Chair recognizes Delegate Chang.

DELEGATE CHANG: Thank you, Mr. Chairman. I rise to speak against the proposed amendment. Before going into the substance of my remarks, I'd just like to establish what modest credentials I may have to be able to discuss this subject.

While a student at law school, I served as a law clerk in the office of the attorney general, and one of my primary tasks in that office was to devise amendments to section 704-411 of the Hawaii Penal Code, which deals with the disposition of those who have been acquitted because of physical or mental incapacity, because just a few months before, a person had allegedly committed a crime in Hawaii Kai involving a young girl--like the example that Delegate Tam raised--and the State desired to devise a response to that incident and the huge public outcry that followed.

Secondly, when I completed my law school training and was studying for the bar, and awaiting the results of the bar, I decided to take a job with the State which would not require my efforts during daytime hours. So I served as a corrections officer with the State of Hawaii, and worked at the institution that Delegate Chung referred to as having had his services for so many years. And as a corrections officer, I was not a social worker or a planner but a security and confinement man, so I can well relate to the concerns that Delegate Chong has expressed.

Finally, upon learning that I passed the bar, I felt I was qualified, after having served in the security and confinement arena, to apply for a job as a correctional planner with the State; and I served in that capacity until my election as a delegate to the Constitutional Convention. So I have been working with the implementation of the correctional master plan for a couple of years now.

Let me go back to my experience at the office of the attorney general. As I related, the State's concern was very great at that time that some kind of response be devised to the public outcry, and so I had to go back into the theoretical aspects of dealing with the criminally insane and the interaction of the penal code with regard to that phenomenon known as insanity. I found that there was a great deal of controversy in the medical field as to just what was involved in the concept of insanity. And to this day I don't think that that issue has been resolved. Nevertheless, the drafters of the Hawaii Penal Code had taken it upon themselves to try and devise a modern-day judicial, or legal, response to that social phenomenon known as insanity, and it took them 8 long years to draft the penal code. And so in my recommendations to the office of the attorney general, I noted that it was no simple matter for the State to suggest to the legislature that any changes be made in this field, considering that medical experts could not agree and that the drafters of the

penal code had taken 8 years to agree to some kind of legal response. But nevertheless we made an attempt anyway; we drafted amendments and submitted them to the legislature. But that question has still not been resolved, because of the very problems that the chairman of the bill of rights committee and Delegate Waihee related. There are a number of unknowns that the delegates of this good body have not yet even begun to investigate and certainly are not prepared to form any conclusions about, and these unknowns, I feel--I agree with Delegate Chu--are best left to the legislature. I am a candidate for the state house of representatives. I am running on a very--what we might call--a heavy platform of crime control measures, and this is one of the areas I intend to address at the legislature; I do not consider it a very light thing, and I think it is best left to the legislature to consider and, whatever time it takes, to come up with an appropriate response to the problems of crime and justice in our society.

Now as to the probability that that good body will come up with a response, let me just inform this body of a couple of other things that are happening in the criminal justice area. For one, there have been a couple of national and international conferences in Honolulu to address the problems which relate to the criminally insane, and from these conferences there has emerged a draft of a master plan for the criminally insane, which will be presented to the state legislature for consideration. As part of these developments, the state hospital has developed a closed intensive security unit and this unit and the caring for and disposition of persons who are committed to the state hospital's care subsequent to acquittal will be modified to conform with whatever plan the legislature devises. So in light of all of these developments, in light of all the unknown areas which this body has not and cannot address, I would like to support the position of those who would advocate that this amendment not be adopted, and I would also like to reiterate Delegate Waihee's concern that this particular amendment raises factors which may complicate the matter more than help it. I don't think a good majority of delegates here have any idea what "mitigating factor" means and what effect that particular sentence would have in devising a criminal sentence. So I would ask all the delegates to consider wisely. Thank you.

CHAIRMAN: Thank you, Delegate Chang.

DELEGATE HOKAMA: Point of information, Mr. Chairman.

CHAIRMAN: State your point, Delegate Hokama.

DELEGATE HOKAMA: Thank you. Before I reach my final decision on this issue--if anyone could answer this--I was wondering whether the victim, regardless of whether or not the criminal has been properly designated as insane, would have any more or any less compensation for such an insanity designation.

CHAIRMAN: Thank you. Is that a question that the movant would care to address, or the chairman of BORSE? Delegate Tam, could you add anything to that?

DELEGATE TAM: All I can say is that the victim, in either case, is generally out of luck.

CHAIRMAN: Delegate Hokama, you're referring to the criminal compensation board, in terms of awards that may be available to the victim--is that what you're speaking of? Are you familiar with that, Delegate Tam? Is any delegate able to answer the question?

DELEGATE TAM: Yes, Mr. Chairman. In either case the victim may apply to the Criminal Injuries Compensation Commission, but in a lot of cases either the victim is not alive anymore or beyond compensation for what has happened.

CHAIRMAN: I think the purpose of the question, if I may restate it, is that, whether or not the causer of the injury were convicted or not convicted by virtue of insanity, does that have any bearing upon the award to be made?

DELEGATE TAM: No, no.

CHAIRMAN: It does not?

DELEGATE TAM: No, not to my knowledge, Mr. Chairman.

CHAIRMAN: Well, that's the best we can do apparently, at the moment. Is there further discussion? Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise reluctantly to speak in opposition to this amendment, on the basis that we cannot really, in an efficacious way, confront or deal with this problem in a document like the Constitution of our State, and on the basis further that our committee voted very strongly in favor of transmitting to the legislature a resolution which would contain our concerns, with the hope that those members would address the problem and somehow come to a solution in a body that is much more capable of addressing itself to this. But I would be extremely remiss if I didn't state that I initially spoke out very strongly in favor of this proposal in the committee, and the reason is that I believe this amendment addresses a very deep and a very serious malady in our society, in connection with which all the people of our community are very, very much concerned, and that is the inclination on the part of the individual citizens, generally, to simply shunt off their individual responsibilities for the acts which they do; and somehow all the rest of society seems to condone it or excuse it on one basis or another. And this problem is exactly what we see here in connection with the amendment before us. I think it is very, very important for all of us to reevaluate our thinking in this respect and I would certainly want to participate in any deliberations in the legislature on this matter. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Campbell. Is there further discussion on this amendment? Yes, Delegate Barnes.

DELEGATE BARNES: Yes, again just to show you what this committee went through, this is about the sixth time I've changed my mind on this issue; so I can only hope that all of you--in spite of the hour and everything, in spite of the other places you'd like to be--are going through the mental agony that those of us on the committee are going through for the second time. I agree with the previous speakers that we aren't qualified to deal with the ramifications of this issue. If this was to pass, one of the consequences would be--if the insanity defense was abolished--would be that all the rehabilitation of any such criminals would be cast into the prison system; and the whole mental health hospital system would be essentially taken out of the rehabilitation business. And so, there we are left at the bottom line with the decision, with this problem that faces us and perhaps the two choices that we have. Which one of the two choices will give us the better chance of having some action on this problem?

The first choice is, we can pass the buck by resolution to the legislature, and I tend not to like that idea at this point because many people have come up to me and said--well, you know what happens with a resolution when it goes to the legislature. And we've heard a previous speaker say that there's a master plan for the criminally insane. Well, we've had criminally insane people around for hundreds of years, and where was this master plan--why is it taking so long for this master plan to come into being? And so therefore I choose the second means, which is to pass the buck to the people and state that this problem is significantly important enough to be considered for the Constitution. And let's each of us go through this mental agony one more time, give it a last shot and put it on the ballot, and let the people deal with this problem too. And then maybe they'll become a little bit more aware of the problems facing the prison system and the mental health people in our State. Thank you.

CHAIRMAN: Thank you. The Chair recognizes Delegate Penebacker.

DELEGATE PENEBACKER: Being a man of very few words, I'd just like to say that I rise to support the amendment. If any of you saw the movie One Flew Over the Cuckoo's Nest, you know why.

CHAIRMAN: Thank you, Delegate Penebacker. The Chair recognizes Delegate Souki, followed by Delegate Ihara.

DELEGATE SOUKI: I speak to support the amendment with some reluctance and because I fully realize the kind of pain the BORSE committee went through trying to deliberate this; and in the wisdom of many hours of deliberation, they came to what they thought was a fair decision--and provided for a resolution to the state legislature. However, like the eloquent speaker, the delegate from Honolulu, said yesterday, if you have a pimple and you cannot cure it, and you don't know what to do with it, his mother advised him to frame it. And this seems to be the same case.

Let me go further. As far as the master plan is concerned, I'm also a planner of

a sort and I'm also very well aware of many master plans that have been passed by the State, and approved, and nothing has come out of it for various reasons. So please, this membership here, torture your minds a little bit more. Don't be beguiled that the master plan is going to resolve this problem at all; if this problem is going to be resolved, it's going to be resolved by us, even by making drastic surgery like this here. As previous delegates have mentioned, let the public decide, not us. As with previous decisions that we have made, what is statutory and what is not--a lot of decisions have been made by this body here that may not be altogether constitutional. However, as a body we resolve it as being constitutional and let the public decide. So it is here, too; the argument of whether it is statutory or not, I think, is specious at this point.

CHAIRMAN: Thank you. The Chair recognizes Delegate Ihara.

DELEGATE DENNIS IHARA: Mr. Chairman, I rise to speak for this amendment. Every good boxer needs a second, so I stand as a second for Delegate Tam. Since everybody's talking about war stories, I hope you will indulge me and let me share my thoughts here. I speak as a former social worker who was working on street gang projects. Also, at the present time I am an attorney, but I am also a part-time plainclothes security officer and I come in face-to-face contact with a lot of these "kooks," as we call them. And, believe me, they take advantage of this insanity plea. Many times they intentionally act crazy at the beginning so that they can use it as an excuse; then later on under further questioning they come clean and lay out the whole story and their specific intent.

This argument about mens rea, or guilty mind, I feel, should not be a factor here because this amendment considers the mental condition and says in fact that it will be a "mitigating factor" before a sentence is imposed. Because I'm a delegate from a high crime area of Kalihi, I'd be remiss if I didn't have any opinion on this; and I feel the same as was echoed by previous speakers, that we should put this forth to the people.

CHAIRMAN: Thank you, Delegate Ihara. The Chair recognizes Delegate Ontai.

DELEGATE ONTAI: I speak for the motion. I feel that the insanity plea has been used too often in the past few years, or many years, for the good of the public. We all have skeletons in our closets, and it's my turn to tell you about my skeleton. I had a relative, a close relative, who was a few years ago serving a term at Oahu prison--or was about to serve. He decided he was insane for that day. And later on he tells the story, how he got away with it. He was no more insane than all of us sitting here today. He was sane, he just played insane, and he got away good. He was a good actor.

Anyway, for the past few years society has done everything to hamstring the courts and the judges in taking care of the criminals. This amendment before us, I feel, does no harm to society, because it is probably one of the few tools we are now going to give back to the courts to help bring about justice. I say this because the final judgment in this amendment here is left to the judge. We trust our judges; most of the cases in court are tried by judges, and not by jury. If we can do that--trust our judges, their discretion and their judgment--this amendment here does leave it up to the judge.

CHAIRMAN: Thank you, Delegate Ontai. Is there any other delegate who wishes to discuss this matter? In which case, I call upon Delegate--

DELEGATE LAURA CHING: Mr. Chairman.

CHAIRMAN: Oh, Delegate Ching is recognized.

DELEGATE LAURA CHING: I'd like to join my colleague from my district, 16A, and support Delegate Tam in this amendment. While we are debating this issue right now, there are crimes being committed, and it has been proven that people who have been declared insane have committed similar or other crimes and more often than not are repeat offenders. For that reason I'm going to vote for this amendment. Thank you.

CHAIRMAN: Thank you. Delegate Tam, would you like to speak last? If there are no further speakers, proceed.

DELEGATE TAM: Thank you, Mr. Chairman. I thank all the delegates here for staying as long as they have and for giving me their time. I know you want to get somewhere else very quickly and I'll try to accommodate. I beg your indulgence for this last time.

In response to some of the matters that were brought up--to go by way of resolution, and various things that were mentioned in a campaign, and maybe something will be done in a master plan--all I can do is quote a delegate whom I have very much aloha for in this regard, that a resolution is like something on a piece of toilet paper. If we're going to do it if there is injustice and if something must be done, then I ask that we do something about it now, and not prolong it. We have acted on other measures before, and I ask that we act at this time.

In terms of taking this to the legislature, may I point out that--I asked my researcher to do some preliminary research on this--this has come up a number of times before the legislature. I have indications that back in 1976 it was brought up in the house of representatives, maybe not in this fashion but it was brought up in terms of the problems in this area, and may I say that the law reflects that nothing has been done since then.

Also, in terms of is this a rare occurrence--the statistics compiled by one legislator indicate that in 1976, 208 panels were convened at the request of the courts to cover various defendants. I would assume that that's about 208 defendants. So this is not a rarity.

In regard to this matter of treatment, this proposal does not in any way try to say that people who need treatment, and need it in hospitals, will not get that treatment. They can get it. The enabling legislation that the legislature could create pursuant to this statute could take care of that, so we're not trying to be inhuman in any way about this.

About the hypotheticals that have been brought up--the mention of being under the influence of drugs or alcohol has been made--I see no reason why people who are under the influence of drugs or alcohol should be excused, if they induced it themselves.

The question is, why should this be a constitutional amendment. I would put forth to this body that if we don't have a constitutional amendment and the legislature should do something about it and in fact say, abolish the insanity defense, it could very well be ruled unconstitutional because there is no support for it in our Constitution.

Mr. Chairman, some other matters have been raised--that, for instance, it might be easier to get out under an abolished system than under the present system--I would just refer delegates to section 706-662 of our Hawaii Penal Code, which indicates that extended terms can be given where a defendant is dangerous, mentally abnormal and it "is necessary for protection of the public." So even though the term is not as great as it could be under murder, if the person should be convicted of manslaughter his term could be extended if certain criteria were met.

Mr. Chairman, I would just like to put before the body two things. First, from Will Rogers back on January 25, 1928, when he indicated that the American murder procedure is about as follows: "Foul enough to commit the crime, dumb enough to get caught, smart enough to prove you were crazy when you committed it and fortunate enough not to hang for it." I would also like to say that there have been a number of hypotheticals playing on our sympathy, about people who may have some mental problems. I would like to give these last cold, hard facts: I received an unsolicited call from a person, a Mr. Daniel Bartholomew, and I'd like to share some of his thoughts with you, because he was a psychiatric paramedic at Samuel Mahelona hospital on Kauai and at the Hawaii state hospital on Oahu for 4 years. At these two institutions, he spent these 4 years in the psychiatric wards and he in fact observed what went on in there. He says that although he cannot deny there are people in the wards sometimes who in fact need help, that "there are many who have used the insanity plea to avoid long prison terms with hopes of being released from the institutions holding them with a minimum of inconvenience to themselves. It is not uncommon to hear statements from the patients such as"--

CHAIRMAN: Delegate Tam, you're about a minute over now. Since you are the last speaker, I was hoping you would wind it up.

DELEGATE TAM: I have one more paragraph, please. "'They can't put me in jail, I'm crazy.' In one case a patient who has escaped from the hospital a number of times and commits criminal acts while free, is repeatedly returned to the hospital only to brag about his escapades to other patients, with full confidence that he will not be prosecuted due to his established psychiatric record. I know for a fact that many patients feel that it is only a matter of time depending on the psychiatrist's opinion and that judges release defendants [based] on the latter, when they will get out usually long before any prison term

that might have been placed on them if they had been convicted. It is difficult to relate the arrogance, cleverness and disrespect that many patients exhibit in manipulating our judicial system through insanity pleas, without actually watching them day to day. In general I feel that our present insanity plea procedure undermines the judicial system and inhibits the due process of law. I do not feel that it is fair to our society to permit the nonpunishment of some, under the guise of insanity pleas, for laws by which we must all abide. It is a dangerous situation, which I feel could be remedied through convictions and prison terms while still making available treatment for those who are mentally or emotionally unstable."

He is much more eloquent than I could be. I would just ask--in our Constitution we understand that we have certain rights to life, liberty and the pursuit of happiness, but that with them go corresponding responsibilities and obligations. I just ask that we apply this standard. I ask for this, not for myself, I ask for the families of the victims of these crimes that they may not have died in vain. I thank you and because of the importance of this, I would ask the indulgence of the Chair for a roll-call vote on this.

CHAIRMAN: Thank you, Delegate Tam. A roll-call vote has been requested. Do I hear 10 seconds? The Chair does not count 10 seconds. The question--there are 10 seconds and we will have roll call. The question before the body is Amendment No. 9 to Committee Proposal No. 15, relating to the insanity defense.

DELEGATE DE SOTO: Mr. Chairman. I rise to a point of privilege.

CHAIRMAN: State your point.

DELEGATE DE SOTO: Mr. Chairman, I don't know how to vote on this matter. I have heard testimony with respect to how the legal side looks at it. I have not heard testimony from any qualified criminal psychologist, and I'm really deathly afraid of what we will do here with respect to throwing the baby out with the bathwater. So may I request permission to refrain from voting?

CHAIRMAN: Delegate De Soto, the personal privilege to express your distress, of course, is in order, but the question of whether the Chair has power to--the parliamentarian has informed me that you may abstain from voting; and I would say what they do in the city council is that you can go to the bathroom right now and there's no problem. I think we'll have to leave that to your own conscience, Delegate De Soto. We're ready for the vote on the question of the insanity defense. Mr. Clerk, would you call the roll.

Roll call being in order, the motion failed to carry by a vote of 25 ayes, 49 noes and 28 excused; with Delegates Alcon, Anae, Barnes, Laura Ching, Chong, Dyer, Fujimoto, Funakoshi, Goodenow, Hokama, Dennis Ihara, Lacy, Miller, Odanaka, Ontai, Penebacker, Peterson, Sasaki, Silva, Souki, Takahashi, Takitani, Tam, Uyehara and Wurdeman voting aye; Delegates Barnard, Barr, Burgess, Campbell, Chang, Calvin Ching, Haunani Ching, Chu, Chun, Crozier, de Costa, DiBianco, Fernandes Salling, Fukunaga, Fushikoshi, Hagino, Hamilton, Hanaike, Harris, Hayashida, Hino, Hirata, Hironaka, Hoe, Hornick, Les Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaito, Kimball, Kono, Ledward, Marion Lee, Liu, Nakamura, Nishimoto, Okamura, O'Toole, Paty, Shinno, Shon, Stegmaier, Takemoto, Villaverde, Waihee, Weatherwax and Chairman Kaapu voting no; and Delegates Andrews, Blake, Blean, Cabral, Donald Ching, Chung, De Soto, Eastvold, Ellis, Hale, Hashimoto, Teruo Ihara, Kojima, Rachel Lee, Lewis, Marumoto, McCall, Nozaki, Pulham, Sakima, Sterling, Stone, Sutton, Taira, Takehara, Tamayori, Yamashita and Yoshimura being excused.

CHAIRMAN: The amendment is defeated. The Chair will now entertain a motion to rise and report.

DELEGATE KIMBALL: Mr. Chairman.

CHAIRMAN: Delegate Kimball.

DELEGATE KIMBALL: I rise on a point of personal privilege.

CHAIRMAN: State your point.

DELEGATE KIMBALL: I'd like to declare to Delegate Tam that he won the last round

and brought before this body one of the most thought-provoking debates to come up and that he did go the distance. Thank you.

CHAIRMAN: Thank you, Delegate Kimball. Delegate Weatherwax is recognized.

DELEGATE WEATHERWAX: Mr. Chairman, I move that this Committee of the Whole rise and report that we have completed our deliberations on Committee Proposal No. 15 and that we recommend its adoption with one amendment.

CHAIRMAN: All in favor say aye. Opposed, no. The motion is carried.

At 6:18 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on SUFFRAGE AND ELECTIONS

Committee Proposal No. 16

(Article II)

Chairman: DELEGATE KEKOA KAAPU

Monday, September 11, 1978 • Morning Session

The Committee of the Whole was called to order at 9:26 a.m.

Delegate Kekoa Kaapu presided as Chairman.

CHAIRMAN: The Committee of the Whole will come to order. The Convention has referred Committee Proposal No. 16 to this Committee of the Whole for consideration. In addition to the committee proposal, we have a number of proposed amendments to consider. We will arrange the proposed amendments in the following sequence. First, the amendment introduced by Delegate Dyer relating to resignation from public office would be Amendment No. 1. Amendment No. 2 is a proposed amendment introduced by Delegate Campbell, which deletes section 2 of the committee proposal and redesignates the other sections. Next, the amendment introduced by Delegates Odanaka and Villaverde, entitled "Registration, Voting," will be No. 3. The next amendment is proposed by Delegate Miller and relates to the dates of the primary, general and special elections; that is Amendment No. 4. Amendment No. 5 is offered by Delegate Lee and relates to registration and voting--

DELEGATE RACHEL LEE: Mr. Chairman, I would prefer to have Delegate Campbell's amendment precede mine.

CHAIRMAN: If there is no objection, Delegate Campbell's amendment on the same subject will be No. 5 and Delegate Lee's will be No. 6. Amendment No. 7 will be that offered by Delegate Dyer deleting section 3 of Committee Proposal No. 16. The next amendment, No. 8, will be an amendment offered by Delegate Barr which deletes section 4 of the committee proposal. Amendment No. 9 will be the initiative proposal offered by Delegate Hale--

DELEGATE HALE: Mr. Chairman, may this one be last, please?

CHAIRMAN: We have many. I have an order here in--

DELEGATE HALE: The reason is that this is only for constitutional initiative and I think it should properly be discussed after we discuss legislative initiative.

CHAIRMAN: The Chair recognizes the chairman of the committee, Delegate Weatherwax.

DELEGATE WEATHERWAX: Mr. Chairman, I would ask that the constitutional initiative matter be taken up first. There is, in addition to Delegate Hale's, Delegate Eastvold's. I believe this matter will be worked out prior to our actually getting into the consideration and changes if necessary could be worked out at a later time rather than taking this time at present. So I would ask that you go according to the Chair's request, and at a separate time just prior to getting to that, we'd ask that your requirements be made known.

DELEGATE HALE: Yes but, Mr. Chairman, I object--because why should we discuss

constitutional initiative? It's not the main question before the committee and I really think that delegates should have a choice as to when we want to make our amendments known. I was not asked about this.

CHAIRMAN: Thank you for your suggestion, Delegate Hale. The Chair will take it under advisement, however, in consultation with the committee chairman. The rationale used by the Chair was to place things in ascending order of difficulty, so the heavier questions relating to statutory initiative were placed last because it was felt by the Chair that these would require the greatest amount of debate, and for that reason the constitutional matters were placed first at the request of the committee chairman. Now, that is the Chair's decision.

DELEGATE HALE: But on what basis do we make our amendments--on the basis of our committee chairman's request?

CHAIRMAN: You certainly may appeal the ruling of the Chair to place this in that order. Do you wish to do so?

DELEGATE HALE: No, Mr. Chairman, I will withdraw my amendment now and I will put it up at the time I want it to be put up. And it already has been printed. Thank you.

CHAIRMAN: The Chair recognizes Delegate Chong.

DELEGATE CHONG: Mr. Chairman, may I request then, at this time, that according to Delegate Weatherwax's comment, that we just lay this aside until later?

CHAIRMAN: To which are you referring?

DELEGATE CHONG: The initiative amendment.

CHAIRMAN: Actually, the two that we are referring to now are those which relate to constitutional initiative. However, I will be coming in a moment to the initiative having to do with proposals of statutory changes. Maybe we can discuss this at that time. Delegate Hale has requested that her amendment be withdrawn, so that we now--

DELEGATE HALE: Mr. Chairman, I reserve the right to resubmit it at the proper time.

CHAIRMAN: The Chair will so acknowledge your action at that time and subject to, of course, the approval of the body. We now have in its place Delegate Eastvold's--

DELEGATE HALE: Mr. Chairman, point of order.

CHAIRMAN: State your point of order.

DELEGATE HALE: Yes, my point is there's nothing in our rules that gives the chairman of the committee or the Chairman of the Committee of the Whole the right to say when an amendment is to be submitted. If I submit an amendment and it's in writing and I get a second to my amendment, as far as I can see, I have the right to put it in any time I want to.

CHAIRMAN: Thank you, Delegate Hale. The Chair will--

DELEGATE ALCON: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order.

DELEGATE ALCON: If the Chair makes a ruling and if a delegate is unhappy about it, he can appeal the ruling.

CHAIRMAN: Your point is well taken.

DELEGATE CROZIER: Point of order, Mr. Chairman.

CHAIRMAN: Could you wait for a second? The Chair has not ruled on a point of

order that was raised by Delegate Hale. The Chair erred in taking other points of order prior to the ruling. Delegate Hale, it's the Chair's finding that you may indeed offer your amendment any time you see fit. The Chair, for the convenience of the body, has stated when the amendment should be taken up if it were to be as the Chair proposes--subject, of course, to the approval of the body. So at your request I now remove yours from this order and you may attempt to have it taken up any time, subject to the approval of the body, of course.

DELEGATE CROZIER: Mr. Chairman, point of order. You keep using "subject to the approval of the body." That makes me nervous. Are you saying that when the delegate wants to put in the amendment, the body has to vote to allow her to put it in? I don't think that's right.

CHAIRMAN: Your point of order is well taken. However, the order is simply a suggestion of the Chair which, if acceptable to the body, we will follow. If there is any disagreement with the order proposed, then of course it's subject to a majority vote of this body. The delegate has the right to offer an amendment, we cannot deny her that. But the order in which these are taken up, of course, will be subject to the body's approval. Is there an appeal to that? The Chair recognizes Delegate Chong.

DELEGATE CHONG: Thank you, Mr. Chairman. May I ask of Delegate Hale if perhaps she would care to defer rather than withdraw. Would that solve the problem?

CHAIRMAN: Thank you, Delegate Chong. She has, in fact, done that by asking that it be taken out of this order. There is no motion necessary and the Chair will simply keep her proposal unnumbered on the desk and she can offer it at any time she sees fit.

DELEGATE LIU: Mr. Chairman.

CHAIRMAN: Delegate Liu.

DELEGATE LIU: May we have a very short recess?

CHAIRMAN: The Chair calls a very short recess.

At 9:42 a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:43 a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. I believe the matter has been resolved, for the time being at least, in that we will not number further than where we left off at No. 8. All the initiative matters will be taken up after a recess, during which time those who have amendments to offer will get together and confer, and we will arrive at a mutually acceptable order of presentation. So we can put aside temporarily those concerns with the initiative amendments. And the Chair will call upon--at this point after reminding everyone of our desire to offer--

DELEGATE ALCON: Point of inquiry, Mr. Chairman.

CHAIRMAN: Delegate Alcon, you are recognized.

DELEGATE ALCON: Is No. 9 withdrawn or just set aside?

CHAIRMAN: It's set aside for the time being and will be renumbered along with all the initiative amendments. Shall we now turn to our agenda here and have the chairman of the committee give us a brief summary of the committee's action in terms of the committee report and proposal. Delegate Weatherwax is recognized.

DELEGATE WEATHERWAX: Thank you, Mr. Chairman. I want to take this opportunity to thank the committee members for all the time they contributed in the many weekend deliberations that were held and the many hours of public hearings and public testimony.

Normally I would refer you to Standing Committee Report No. 72 for the rationale of the committee and not go into this extensively because I don't want to engage in any debate; except that there are some members of the committee who felt strongly that they could not sign the committee report--and I will get into that very shortly.

Let me cover generally what Committee Proposal No. 16 deals with. There is a new provision with reference to forced resignations, where any public official who intends to run for an office which happens to overlap his present office would be required to resign. The next important item would be in reference to the primary election. As you are aware, in the present Constitution Article II has nothing on primary elections. This would put in language as to when the primary election is to be held. Presently there is a 30-day span between the primary election and the general election. The committee decided that they would place a minimum 45-day limit--and I emphasize the 45-day minimum because it does not preclude the legislature from using a greater amount than 45 days. So if you will look at the language in the proposal, it specifies a minimum of 45 days. Also, with reference to the nominating procedure--which is what the primary election is in the party--there was the question of whether this should be a closed, open or blanket primary; and it was the consensus of the committee that the closed primary, which is the system we presently have, is what is desired.

The next new section deals with public campaign financing; it directs the legislature to begin a public financing fund for the purpose of assisting candidates in partial public financing along the lines of a matching fund concept, which was one of the concepts discussed in the committee. It also talks about a spending limitation--and again these concepts should be kept separate. For instance, the spending limitation would be on the candidate, and under present constitutional law this is permissible, under the case of Buckley v. Valeo, when in fact public financing is provided. So if the candidate accepts public financing, a spending limitation may be imposed on him. The committee proposal, however, does take it a step further and suggests that spending limitations be included for all candidates running for office. There is some question as to the constitutionality of this. However, I believe it was the intention of the committee that a reexamination of the Buckley v. Valeo case should be undertaken to determine whether in fact it is constitutional or unconstitutional. And this would be a beginning step toward that.

The third concept, which I would ask that you keep clearly in mind, is that of contribution limitation--and this would mean a donor giving contribution to a candidate, which is separate from a candidate's spending limitation. The contribution limitation does not set any amounts; it directs the legislature to set an amount of limitation on donors, and there is no particular specification. But the committee had before it the federal election laws and the Federal Election Commission and, with respect to contribution limitations, that has been specifically held constitutional in the Buckley v. Valeo case; and just for your information I believe there's a \$1,000 donor limitation. And there are various other provisions, which perhaps we will discuss at a later time.

The direct democracy concepts of initiative, referendum and recall--all three were considered by the committee and the committee did not reach a consensus, meaning that there were not 16 votes (which would be a majority of the 30-member committee) to pass a proposal to the Convention for consideration. For that reason there are no initiative, referendum or recall proposals before you--or part of the committee proposal. Now these sentiments were--what I would like to state is what I made reference to earlier--that some members of the committee disagree. You have before you, I believe, a minority report setting forth the disagreement. There was a specific letter that was sent to the chairman advising that the delegate was not able to sign the committee report and had several reasons for it. First of all, she stated that, with reference to the provision on resignation from public office, that in fact the wording was not particularly considered; what had transpired in the committee was that the concept was voted on and, due to the rush of time, the actual wording did not come before the body. However, each member had an opportunity, since the language was contained in the committee proposal and in the standing committee report, to examine it at that time and to express any reservations, either in signing the committee report or by letter--as the particular delegate has done in this case. She feels that the committee report is slanted and that it was the committee counsel who slanted the report. She believes it is slanted in fact as to initiative, referendum and recall, in that there was not a full discussion with reference to that in the committee report. I bring these to you for consideration because of the delegate's concern, and of course I concur that there was a rush. I do not particularly concur, but I do not wish to debate the matter and I think that a debate in this Committee of the Whole should be avoided, with reference to the standing committee report and I would hope that we can get on with the committee proposal and discuss those matters.

CHAIRMAN: Is there further discussion of the committee proposal, of the committee report, before we take up the amendments?

DELEGATE HALE: Yes, Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Hale.

DELEGATE HALE: I appreciate the chairman's report. The chairman has indicated my opinion of him by his verbal report, and my opinion of him was very high during the whole Convention. I think he has been one of the fairest and one of the best chairmen of any committee that I have seen. My beef was with the way the committee report was written; and it is true that we did get a chance to read it, but by the time I could get up to my office and write down my concerns, I found that the committee report had already gone for printing. Therefore, I did write the letter.

The only other thing I would like to say that was in my letter was that what does concern me is that the three direct democracy issues are discussed as though they were all considered at one time and that one depends on another--initiative, referendum and recall. We heard a lot of discussion in this Convention and in the newspapers about IR&R, and I'd like to point out to the members of the Convention that we did in committee, and I hope we will in Committee of the Whole, discuss each concept separately and decide it on its merits, and not tie the three concepts together. There are pros and cons for each, and some apply to all three and some do not.

I'd also like to point out one other thing that was not in my letter, that there is no discussion in the committee report on the committee proposal to add "None of the Above" to the ballot, and this was discussed at length. In fact, it even involved kind of a parliamentary problem. The vote was 13 to 10 for including "None of the Above," which is a majority of the people who voted, but unfortunately everybody was not there on that day and the opportunity to rediscuss this was not given at the time it was originally requested.

On the whole, however, I want to reiterate the fact that this committee was a very fair committee and everybody had a chance to offer input. And I do congratulate, and have a very high regard for, the committee chairman. Thank you.

CHAIRMAN: Thank you, Delegate Hale. If there is no further discussion--yes, Delegate Barnes is recognized.

DELEGATE BARNES: Yes, thank you. I'd just like to remind everyone once again that there are three reports that are numbered minority reports 13, 14 and 15. I certainly hope everybody has them on their desks and has a chance to look at them. We don't want to restate them now, of course, but I just refer particularly to Minority Report No. 15. There was a 14 to 13 vote in committee in favor of referendum so that is a plurality report.

CHAIRMAN: If there's no further discussion, we will take up Amendment No. 1, which is to amend Committee Proposal No. 16 by adding language to the committee proposal. The Chair recognizes Delegate Dyer.

DELEGATE DYER: Mr. Chairman, I move for the adoption of Amendment No. 1 to amend section 2 of the committee proposal.

DELEGATE LIU: I second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Amendment No. 1. Discussion? Delegate Dyer.

DELEGATE DYER: Mr. Chairman, first let me explain what this amendment does. If favorably considered by this body, it would require an elected public official to resign from office should he or she change his or her political party at any time prior to 45 working days before the deadline for voters to change their party designation for the primary election in the last year of his or her term. For example, a state representative elected in November 1978 could not change party affiliation until May 1980. The purpose of the amendment should be clear; over the years we have witnessed officials of both major parties abuse the party system by switching parties soon after being elected to office, or changing their party preferences at the time they file nomination papers long after the deadline for voters to switch their registration.

In both cases, I cannot help but feel that the people are the losers. When one is voting

for a candidate, the party is no secret. In fact, it is part of the passive contract that comes into existence between the successful candidate and those responsible for his or her election. To change parties thereafter is a unilateral breaking of that contract. For those who maintain or change their party preference in anticipation of being able to vote for certain candidates in the primary, it is nothing short of an outrage to find out a month later that certain candidates will run as members of the opposite party. This amendment would prevent the ridiculous situation whereby a candidate, because of a party change after the switching deadline, cannot vote for himself. It makes a mockery of our party system and brings nothing but disillusionment toward politics and politicians. We've seen this comedy played in mayoral races, council races and in the house of representatives. However, such humor is at best of a bittersweet nature.

Today the right of elected officials to change parties is under no control. This is at the expense of the integrity of our political system. This amendment would serve as a reasonable deterrent to political misbehavior, which at times may be justified but which should at all times be questioned.

CHAIRMAN: Thank you, Delegate Dyer. Is there further discussion?

DELEGATE WEATHERWAX: Mr. Chairman, I rise to speak against this amendment.

CHAIRMAN: Yes, Delegate Weatherwax is recognized.

DELEGATE WEATHERWAX: My primary objection, first of all, is a procedural one--that this was never submitted to the committee as a proposal, nor was it considered by the committee for the committee proposal. So this is an entirely new concept which is surfacing in the Committee of the Whole and the deliberations of the committee--there have been no deliberations by the committee. That's the primary purpose.

But just off the top of my head in looking at this, I'm wondering if there are constitutional problems involved. I raise the question of whether there is an infringement of freedom of association, which would be part of the First Amendment rights. I cannot give a definitive answer, not having the benefit of legal research on this particular issue. But I believe it's a very pointed amendment, and it deals with what I would consider not a constitutional problem. So on that basis I would urge the members of this delegation to set this amendment aside.

CHAIRMAN: Thank you. Is there further discussion?

DELEGATE LIU: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Liu.

DELEGATE LIU: I rise to speak in favor of this amendment. Whereas the chairman of the bill of rights, suffrage and elections committee rightly points out that the idea was not discussed in committee, I think other ideas have come before the Committee of the Whole rather new, from other sources. I can think of one particular amendment that dealt with doing away with committees in the legislature and having the Committee of the Whole take over there. I do not feel that that argument in itself is a valid one against this amendment.

As to its constitutionality, I personally see no real problems of infringement upon First Amendment rights. Again, it's a question of whether or not there is sufficient time for one to consider and to make the choice involved of whether he or she would want to stay in that party or not. For reasons I think perhaps brought home to all of us in the last two or three elections in this State, the problem of candidates switching parties is one, as Delegate Dyer pointed out, that really hurts the party system and hurts politics in general. And I think it is a constitutional matter, because legislators who might benefit from the looseness of the present situation, I think, would be very slow, if ever really willing, to close that loophole and change the situation for the better of the State.

CHAIRMAN: Thank you, Delegate Liu. The Chair recognizes Delegate Ching, to be followed by Delegate Alcon.

DELEGATE DONALD CHING: Mr. Chairman, although I sympathize with the political

party affected this last time around, and I don't condone the action of the candidate--the officeholder--to which this amendment is directed, I think that it would be rather dangerous for us sitting here in this Convention--especially since we meet only once every 10 years--to try to put into the Constitution amendments that would take care of every conceivable situation as it arises. I realize that what happened this last time really caught the party off base and I think it's an action that most of us would not condone. But I think the answer to this problem, again like a lot of other things, is voter reaction the next time the election comes around. I think history will bear out the facts--present company excluded perhaps--that every time a person switches, there is a certain amount of momentum lost and maybe his integrity is challenged from time to time. I think that that is where it rightfully belongs--let the people decide as to whether this is the type of public official they would like to elect, a person who gives up one party philosophy for another for the sake of his expediency.

I'd hate to see our Constitution cluttered up with all kinds of possibilities, just to take care of any political candidate who decides to do one thing or another. Otherwise, we would have several chapters in this area, rather than just one short paragraph.

CHAIRMAN: Thank you, Delegate Ching. The Chair recognizes Delegate Alcon, to be followed by Delegate Chong.

DELEGATE ALCON: Thank you, Mr. Chairman. I speak against this amendment because of the fact that the Democratic party and the Republican party are organizations; they are organizations with bylaws and constitutions. And like members in any other organization, if they want to switch memberships I think they should be allowed to do so. And this problem of switching should be addressed by the parties in their constitutions and bylaws.

CHAIRMAN: Thank you, Delegate Alcon. Delegate Chong is recognized, followed by Delegate Miller.

DELEGATE CHONG: Thank you, Mr. Chairman. I must speak in favor of this amendment on the basis of ethics. There's a right way and a wrong way of doing anything, and what this amendment does is mandate that changes in party affiliations be done the right way. It has to be mandated, obviously, since abuses in this procedure continue. The comment I hear time and time again--"this is not a constitutional matter, this is cluttering up the Constitution"--is used on the basis of what the issue is: if we're in favor of this particular issue, we put it in the Constitution; if we're against this particular issue, then it's "cluttering up the Constitution."

All I ask, regardless of party affiliation, be it Republican, be it Democrat, be it Independents for Godly Government, be it--what's the other? (that's how much I know about politics)-- However, I feel that definitely, just as you have to change your party affiliation a certain time before election, it should be just as well for the candidate.

CHAIRMAN: Thank you, Delegate Chong. The Chair recognizes Delegate Miller, followed by Delegate Marumoto.

DELEGATE MILLER: Mr. Chairman, I rise for a point of information.

CHAIRMAN: Please state your point.

DELEGATE MILLER: I should like to speak against the first half of the amendment, which is on resignation from public office--"Any elected public officer shall resign from that office before being eligible as a candidate for another public office"--

CHAIRMAN: May I respond to that, Delegate Miller. That is not before the body at this time insofar as the only amendment being offered is related to political party change. So we don't have the matter before us, and the only time that could be done under our procedure here would be to offer an amendment to the committee proposal at Second Reading.

DELEGATE MILLER: Thank you.

CHAIRMAN: Delegate Marumoto is recognized.

DELEGATE MARUMOTO: Thank you, Mr. Chairman. This amendment, which I speak in favor of, is not pointed toward any single official or any recent incident; it's not directed toward any political party at all. It addresses a general wrong. Right now the situation is such that an elected official can run from a different party and, in effect--even though he can't vote for himself and cannot register in his new party--he can do so after the general public must have designated to the government that they are going to vote in a certain column. I think this year the switching deadline for registered voters was around July 2nd, so 5 months before the general election, the public had to declare which party they would be voting in. Well, a little over a month after that, any elected official could file for office in the party of his choice. So this gives the elected official greater leeway than the public, and I think it's very unfair.

The original proposed amendment you see before you--the part that is in the committee report, the first half--does not touch house candidates. The amendment introduced by Delegate Dyer includes the house of representatives. The reason the first part does not deal with the house is that you'll never find an overlapping term that house members would encounter when they ran for a new office. I think some people would be very upset if they realized that their representatives switch parties and that they had supported a particular candidate because of his party, only to find that if something happened to that representative, the governor would have to appoint someone from the representative's new party. This is an aggravation which I feel is unfair to the voters who supported the candidate because of his party.

I don't blame the people who have switched, one way or the other. I feel they have all had good reasons. Delegate Dyer's amendment does not punish people for switching, it allows switching, by a specified day, so people know what they'll be voting for. I think it's a very good amendment because you can then see which party your candidate is running for and you could switch parties yourself accordingly. I don't feel that this amendment is unconstitutional or infringes upon the rights of any candidate or elected public official, because I feel that if you're making the public declare 5 months before the election, then certainly you could ask your candidate to announce his position 45 days before that. Please consider this amendment. I think it's a very good one and I think it will benefit the voting public of Hawaii. Thank you very much.

CHAIRMAN: Thank you, Delegate Marumoto. The Chair recognizes Delegate Villaverde, followed by Delegate O'Toole and then Delegate Sterling.

DELEGATE VILLAVERDE: Thank you. I speak against this amendment, although reluctantly--I hate to say aloha to my roommate in just a few days by voting against this particular amendment--but I speak in general terms insofar as a party system is concerned.

I'm sure we're all aware that, although there is a majority party--and there may be other parties involved--and also a minority party which is affected by this particular provision, that the political system in the State of Hawaii is not necessarily the party maintaining the leadership but, I feel, the people themselves who participate, not only as registered members of the body but also as registered voters who intend and who seek to vote for certain candidates and certain parties. But to allow this as a constitutional amendment will preference only certain situations, and certain people in this case who intend--because of probable frustration or a probable change in philosophy in the particular party, whether it be a majority or a minority party--who desire to change. And to penalize that particular candidate also--to do so is again not in the realm of, maybe fair play; but I think the most important area is this--that the people who vote and who become very discontented with a particular candidate--whether he be from the majority or minority party--who switches, the people would know best. If the people decide not to vote for the particular candidate, they would not vote for him because of his stinkeroo type of switcheroo position. I think the people are really intelligent enough to express their desires in the polls. But to--as some say, to clutter or not to clutter--I say this will add to the clutter of our Constitution.

CHAIRMAN: Thank you, Delegate Villaverde. The Chair recognizes Delegate O'Toole, followed by Delegate Sterling.

DELEGATE O'TOOLE: Mr. Chairman, I also have to reluctantly speak against this amendment. I think what we're doing here is trying to put a Band-Aid on a problem. I think the real problem is the fact that, I think we all would admit, that we don't really

have a two-party system in the State of Hawaii anymore. To solve this particular problem, I think what we have to do is--it's an internal problem--we have to have the parties, especially the party that is affected here, move in and try to attract good talent to run in elections and to make sure that they don't switch. By attracting the good talent, I think some of these problems being addressed in this amendment will automatically be taken care of.

Also, I think this particular amendment is more specific because of situations that have occurred in the last couple of years. As the chairman of the BORSE committee has stated, this was not brought up previously. Therefore, in conclusion I would have to state that I think this is an internal party matter and should be solved within the party structure.

CHAIRMAN: Thank you, Delegate O'Toole. The Chair recognizes Delegate Sterling, followed by Delegate Taira.

DELEGATE STERLING: I rise to speak in favor of the amendment. I think we have to vote for it. If we address ourselves to Committee Proposal No. 16, third section, on campaign fund and spending, it reads: "The legislature shall establish a campaign fund to be used for partial public financing of campaigns for public offices...." How are you going to set up this fund if you don't know who's running and what party they're running for? You can't have switches after the funds have been established. I think we have to vote for it in light of Committee Proposal No. 16.

CHAIRMAN: Thank you. Delegate Taira is recognized.

DELEGATE TAIRA: Thank you, Mr. Chairman. I rise to speak against this amendment. Of course, I believe in all the reasons advanced up to now for being against this amendment, but there's one more thing I'd like to call to the attention of this body. Our Constitution is, after all, a nonpartisan document and I've been looking through the Constitution, that we have before us today, and there is no mention in any part of the Constitution--I may have missed it, but to the best of my examination--I cannot find any reference to the term "political party." They talk about political rights and so on, but there is no mention of the term "political party."

If we adopt this amendment, we would then be putting into our State Constitution reference to political party or parties, and I believe that this is something that should be left out of our Constitution.

CHAIRMAN: Thank you, Delegate Taira. The Chair recognizes Delegate Pulham.

DELEGATE PULHAM: Thank you. On first examination I would also have liked to vote for this particular amendment; however, I don't think I can quite handle this as a constitutional matter either. I think the problem is partly that it doesn't belong there, partly that it does address partisan politics. And I also have every confidence in this body that later on we are going to pass something relating to an open primary, which I think will address and alleviate this particular problem enumerated here. Once we do this there won't really be the problem, because then the voters will have the option of voting for or against an individual regardless of what he does with his party preference. So I think that the wisdom of this body will take care of this.

CHAIRMAN: Thank you, Delegate Pulham. The Chair recognizes Delegate Kojima, followed by Delegate de Costa and Delegate DiBianco.

DELEGATE KOJIMA: I speak for the amendment. I speak for the amendment because of what Delegates Pulham and Taira have brought up. Even though political parties are not mentioned in this Constitution, the BORSE committee did recommend continuance of the closed primary, and a closed primary points out--it has a strong belief that political parties should be there. It's an implied kind of thing--they should be there--and political parties should be maintained and strengthened.

It is unfair to the voters, true, that at the very last minute they be told who to vote for or to decide where the candidate they favored has gone, or has run away. And to correct this wrong--the legislature will never do it, the political parties themselves will never do it because they're always looking for candidates and members--and so even though it may tend to clutter the Constitution a little bit more, it seems to be the only place where this injustice can be corrected. So I speak for the amendment.

CHAIRMAN: Thank you, Delegate Kojima. The Chair recognizes Delegate de Costa.

DELEGATE DE COSTA: Yes, Mr. Chairman. I'd like to speak against this motion. I would hate like hell to be one who'd have to tell somebody what restaurant they got to eat in even if the food is lousy.

CHAIRMAN: Thank you, Delegate de Costa. Delegate DiBianco is recognized, followed by Delegate Hokama.

DELEGATE DiBIANCO: Thank you. I just wanted to speak to the amendment and in contradiction to a previous speaker who said that the Constitution, as it is presently formulated, is in fact a nonpartisan document. I think a constitution that provides that general obligation bonds will be issued with a simple majority vote rather than two-thirds, which provides in this very committee proposal we're dealing with this morning that all elected officials must resign from office prior to running for another office--and we all know which elected official that's aimed at--a constitution that provides for a retirement system that favors a present party faction, a constitution that provides for a strong centralized executive that favors the present party faction can by no stretch of the imagination be called a nonpartisan document.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Takitani, you're recognized.

DELEGATE TAKITANI: Mr. Chairman, I think this Convention is really screwing up my head because, for the second time in a week, I'm going to speak against an amendment and vote for it.

I think what's happening to the Republican party is very healthy for the State of Hawaii. The party is nearing obsolescence and I look forward to the day when they all become Democrats, and then maybe we can split right in half and become a two-party system again.

CHAIRMAN: Thank you, Delegate Takitani. Is there further discussion on this amendment? Yes, Delegate Chung is recognized.

DELEGATE CHUNG: I wish to speak against the amendment. It has its merits; however, as one of the delegates mentioned, it's a Band-Aid approach to a deeper underlying problem in a political organization. I don't think it's proper in our Constitution. I've lived when the Democratic party was supremely ruling Hawaii, long before the time of Roosevelt and even after his time, over 50 years, where the party ruled our political, economic and social life in Hawaii. And we've gone through a change and this is a change that I think is healthy. I'm not saying that the Democratic rule is absolutely perfect, but that's part of politics. And to rectify any kind of concern--which I feel that this particular amendment is aimed at one particular incident that happened recently--I don't think we should address this matter in our Constitution.

CHAIRMAN: Thank you, Delegate Chung. Is there further discussion on this amendment? If not, the Chair would like to invite the movant to speak last, if she cares to. There being no further discussion, the question before us is Amendment No. 1 to Committee Proposal No. 16, to add words relating to public officers' changing of political parties. All those in favor of the amendment, raise your hand. Those against, raise your hand. The noes have it. We will proceed to Amendment No. 2 offered by Delegate Campbell. Delegate Campbell is recognized.

DELEGATE CAMPBELL: Mr. Chairman, I move for adoption of Amendment No. 2.

CHAIRMAN: Is there a second?

DELEGATE DiBIANCO: I second it.

CHAIRMAN: It has been moved and seconded that Amendment No. 2 be approved. Delegate Campbell, you are recognized.

DELEGATE CAMPBELL: Mr. Chairman, I rise to speak in favor of this amendment. First of all, as mentioned by the chairman of our committee, the language and wording that is used in this particular section of the proposal was neither deliberated upon nor discussed

in the committee, and therefore it does not, in fact, reflect the committee's words. And I believe it is subject to warranted criticism.

First, this provision may well be unconstitutional. Please note that it covers elected public officials. It excludes none; therefore, it could cover state officers seeking offices on the federal level--for example, a representative or a senator who may be seeking to run for the United States Congress. Yet we all know that it is well-settled law that the Constitution and the laws of the United States determine what shall be the qualifications for federal offices, and the federal law has no such provisions. Federal law certainly supersedes state law, and therefore our State Constitution cannot in any way detract from this.

Further, this language could also apply to elected county officials. As a result, we are getting ready to make what I believe may be a precedent-shattering change in our Constitution with respect to counties, and this at a time when we are espousing the importance of home rule. Never before have we established such directives which relate to the election of county officers. This would be the first time we have ever placed anything in our Constitution which limits the power of our county governments to determine and set the qualifications of their own elected representatives, and I query whether we should be doing this.

Also, I believe it is unconscionable for us as delegates to place this on the ballot as a regulation of other elected officials and then conveniently exclude ourselves from its provisions. This is precisely the kind of thing which will erode the confidence of the people in what we are doing here in this Convention. If there is a distinction between us and other elected public officials whom we would be forcing to resign, it is a distinction without a difference.

Also, I believe this proposal flies in the face of a very basic concept of democratic elections; and that concept is that when you have the best-qualified candidates running for office, the people are given the maximum opportunity for effective government, and the people are normally given the right to decide for themselves whether or not they want an incumbent in a lower office to have a higher office. Yet this proposal denies the people this right; that is, the people may just have decided that John Doe has proven himself so effective as a state senator or a legislator that now is the time for them to back him for higher office. To force that incumbent to resign from his present office and not permit the people such a choice is hardly consonant with the basic concept of our democratic elective process.

Further, I believe this proposal takes away, or impairs, the vote of a citizen which he has cast for a particular candidate to fill the full term of his office, by forcing him to resign before his term has expired although he has never committed an illegal act which makes him unfit for office. This proposal has been justified on the basis that it is a breach of public trust for an elected official to run for an office which becomes available before his term has expired. And I take very strong issue with this position because I believe it is up to the voters, not for us, to determine whether or not an incumbent should fill out his full term. In this respect, I believe we are usurping the right of the people. Leaving it up to the people is the best kind of arrangement that we can have; I believe it is far superior to having us tamper with the Constitution in this way, wherein we get emotions and personalities involved in our way of thinking.

Further, I believe that penalizing the person who seeks higher office simply because that office becomes available before his term expires is a very distorted approach. It seems to me that when a person chooses to run for a higher office, he or she should be applauded, not condemned or penalized, because this gives that individual an opportunity to better serve the people than he could in the office he is leaving. It is not necessarily that he is loathe to fulfill his existing responsibilities, but more that he may want to expand them insofar as serving the people is concerned.

Finally, some of those who favor the measure in the proposal assert that the public is at a disadvantage when an incumbent decides to run for an office which has become available before his term expires, because that individual begins to campaign and this detracts from his work. Is there really a difference in this respect between such an incumbent and an incumbent who has to run for reelection after his term expires? Hardly, because the latter has to gear up his campaign while his term is ongoing, and that is exactly what

he or she usually does; and everyone in the legislature knows this is going on because just about everyone is similarly situated. If he doesn't do this, he'll have a mighty hard time getting reelected because he'll have to wait to campaign until after his term is up, which of course is coterminous with today's election.

Based upon all these considerations, Mr. Chairman, I urge my fellow delegates to support this amendment.

CHAIRMAN: Thank you, Delegate Campbell. The Chair recognizes Delegate Sutton, followed by Delegate Chong.

DELEGATE SUTTON: I rise on a point of information.

CHAIRMAN: State your point.

DELEGATE SUTTON: The language states one thing and the report states intent. I see lobbying written as a mandate and I would like to ask the Chair if the Chair would ask someone else the question, particularly the chairman of the committee. Must, say, a legislator or a public official in the future--say, 10 years from now--resign from office, as stated by law, not by intent, to be able to become a constitutional convention delegate? and, further into that question, must a delegate resign after that to be able to run for elected office? As I read it, it seems that way. The intent, as written in the testimony inside the report, says otherwise; but intent and law are two different things in my mind. If he could address those questions--?

CHAIRMAN: Perhaps the chairman of the committee would yield to an answer to that.

DELEGATE WEATHERWAX: Let me attempt to answer that--I'm not sure if I'm clear on the question. I believe, first of all, the language discusses "overlapping," or offices that would overlap; in the case of the constitutional convention, more than likely that would not occur. And I believe your question was with reference to someone who had an intention as compared to a compliance with the filing. For that reason I'm not clear on your question. An individual may continue to have an intent, but if in fact he is running for an office for which the term overlaps--or would begin--and if he is elected to that, in that case he would have to resign in compliance with this mandate. However, whether the term would be concurrent--not concurrent but would begin--in the case of the legislature, for instance, the house of representatives, in that instance there would not be a requirement for resignation.

CHAIRMAN: Delegate Sutton, does that answer your question? Delegate Chong is recognized.

DELEGATE CHONG: Thank you, Mr. Chairman. I speak in favor of this amendment. I would also disagree with the committee report's language pertaining to this section; there may have been one or two comments to that effect, but there were just as many comments against that particular reasoning.

However, to get back to the amendment, there are elections held every 2 years with terms of office running 2 to 4 years, depending upon the office. Because of this, there are definitely overlaps in some offices. To mandate that an elected public official resign from his present office before seeking a higher office is (1) not a constitutional matter--so we shouldn't clutter up the Constitution, it can be dealt with statutorily; (2) denying the voter his or her privilege to elect that person to whichever seat the candidate seeks. The electorate is the governing body to which this final result should lay; it's their privilege and right to decide if their elected public official should hold a higher office if he so seeks it. Many times a public official seeks the higher office and many times the constituents have decided they prefer their elected official to serve them in his present capacity, and they'll continue to vote for him in that office. Many times the public official is elected to a higher office, again by the voters who decided favorably, and it is their right to do so. It is the right and privilege of the voters; it's their choice, not the choice of 102 delegates to the Constitutional Convention whose office expires after 3 or 4 months every 10 years. Thank you.

CHAIRMAN: Thank you, Delegate Chong. The Chair recognizes Delegate Tamayori.

DELEGATE TAMAYORI: Mr. Chairman, I rise to speak against this amendment. I speak against this amendment because I feel there have been a substantial number of

abuses of this loophole to warrant our attention. When an elected official seeks another office, it is almost impossible for him or her to fulfill the responsibilities of the office currently held. The time requirement for mounting a political campaign alone would tax the energies of even the most durable public official. This is particularly true in the larger races, where voter contact itself is a major undertaking. Deletion of this provision condones this kind of dereliction of responsibility and I urge you to vote against this amendment.

CHAIRMAN: Thank you, Delegate Tamayori. Delegate Miller is recognized.

DELEGATE MILLER: Thank you, Mr. Chairman. I am speaking in favor of the amendment. I am opposed to resignation for four basic reasons: first, it has the sound of *ad hominem* legislation about it; second, it affects relatively fewer elective offices; third, it would benefit the incumbents; four, it would discourage potentially good candidates from seeking higher offices.

Let me briefly explain about *ad hominem* legislation, which is simply legislation directed against one person. This particular proposal has appeared a number of times in the state legislature, but it has always failed to get the support necessary for passage because it was directed against one person, an incumbent mayor who had his sights on higher office. As I said, only a few offices are really involved, primarily those of state senators and mayors, or congressmen seeking higher office, usually against an incumbent. Incumbents usually win--around 80 percent of the time, anyway. Now we are seeking to add to the burden of the challenger by forcing him to resign his lower office when seeking a higher one, and perhaps forcing a qualified public servant out of public life should he leave.

One more point against having persons resign before they can run for higher office. Suppose Hawaii had an outstanding governor, so outstanding that he was presidential material. Should he have to resign if he wants to test the presidential waters in an early primary? Running from so-called safe seats may sound like it is undemocratic somehow, but in reality it creates the climate for even more competition in the political arena. If the voters do not like a candidate running for a higher office from a lesser one, they will let him know their displeasure in the voting booth. Such political decisions should be the responsibility of the voters, not the Con Con. Therefore, I urge you to vote to delete this proposed amendment.

CHAIRMAN: Thank you, Delegate Miller. The Chair recognizes Delegate Shon, to be followed by Delegate Crozier.

DELEGATE SHON: Yes, I must somehow reluctantly speak in favor of the amendment. I would feel much more comfortable if the proposed language had some phrase like "as provided by law." But there are two concerns that I have with this. The first is that, as I read the language, neighborhood boards would be included and, as I also understand it, this was not a factor that was seriously discussed or considered in the committee.

The second concern is with administrative officers who would be affected, because if an administrative officer, such as the mayor, were to be sufficiently ambitious and did in fact resign, then we would be left without a head of that administration for the remainder of the term. Now it's somewhat different in terms of the legislature, which is not covered here; but if it did apply to legislators, since the session is only about 60 days, the impact would not be that great. But since the administration is a day-to-day implementation of our laws, I would feel a little uncomfortable knowing that for the remainder of a particular term we would have to switch horses in midstream.

Therefore, I would ask you to seriously consider that, at least between now and Second Reading, we look for language to provide some flexibility in this--perhaps with the legislature to further define what we're talking about--because I think there have been a number of issues and questions raised with this, as I said, in regard to neighborhood boards, in regard to the status of an administration that would be left without its head if that particular mayor, for example, were to be sufficiently ambitious as to in fact resign from office. So I speak in favor of the amendment at this time.

CHAIRMAN: Thank you, Delegate Shon. The Chair recognizes Delegate Crozier, to be followed by Delegate Hale.

DELEGATE CROZIER: Yes, Mr. Chairman, I'll have to speak against this amendment, primarily because of the second to the last speaker on my left, who used the word ad hominem legislation. This thing is not directed at one person. If she paid attention to the history of Hawaii, she would have known that in almost every election, there is somebody not--

CHAIRMAN: Delegate Crozier, the Chair would suggest that you not attribute to the delegate either lack of, or whatever--

DELEGATE CROZIER: Okay, I apologize. But being a student of history, I've seen where there are a lot of candidates for different offices who had their jobs secure and they've run for higher offices, so it's not directed at only one person.

Also, the comment that if the governor would want to run for president he'd have to give up that position--when you run for president, that's a federal type of office so this would not cover that. And also, if he did want to run for president and this did cover it, I sure would like him to resign because he'd never be home, he'd be running all over the other 49 states.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Hale is recognized.

DELEGATE HALE: Thank you, Mr. Chairman. I feel a little bit like Delegate Takitani--I'm going to vote for this but really I am for the concept of resignation. But I'm going to vote for deleting this for several reasons.

First of all, I do believe that a person holding an office should not use that office as a stepping-stone to another, and that's why I fought hard for this in the committee. But the language and the wording of this proposal were never agreed upon in committee and it's one of my complaints against the committee proposal and the committee report. I also think this should not apply to county offices because there we are mandating counties and the counties can take care of this in their own charters, as Hawaii county does.

I would also like to say that I believe it should apply to Con Con candidates. I do not believe that elected officials should hold two offices, including being in the legislature or on county councils and in the Con Con. They are getting salaries from the same source--the State or the county, or the people at any rate--for two different offices.

But I would like to read you the Hawaii county charter--this is what I would like to see. So I would hope that we could vote for this particular amendment and delete this from the committee proposal, and perhaps between now and Second Reading, as Delegate Shon has suggested, come up with some language that would solve the problem. Section 13-27 in the Hawaii county charter, "County Election," says in part--next to the last sentence: "Should any person holding an elective county office file nomination papers for another elective office during an off-county election or special election, his office shall thereupon become vacant." In other words, the minute they file for nomination for another office that is not coterminous with their term in Hawaii county, then their office is vacant and we hold a special election for that seat. And I feel that this is good; the people of the County of Hawaii have seen this happen when Councilman John Farias got appointed as chairman of the department of agriculture--we had a special election--and when our Honorable Herbert Matayoshi ran for mayor, he resigned from his council seat before he ran. And this is the kind of thing I would like to see happen. But I don't believe this language does it, and therefore I'm going to vote for the amendment to get it out of the proposal and hope we can start fresh.

CHAIRMAN: Thank you, Delegate Hale. The Chair recognizes Delegate DiBianco.

DELEGATE DiBIANCO: I have a point of parliamentary inquiry.

CHAIRMAN: State your point.

DELEGATE DiBIANCO: I'd like to know--if in fact what some of the members of the committee are saying is true, and the language of this particular section has not been agreed upon by the committee members--why this particular proposal is on the floor at the present time. According to Robert's Rules of Order, is it not correct that this should have been voted on by the committee?

CHAIRMAN: The Chair recognizes--I think it would be a point of inquiry at this time--and would like to direct that to the chairman of the committee, if he cares to respond.

DELEGATE WEATHERWAX: Well, as I had indicated earlier--perhaps the good delegate was not listening, perhaps he may have further inquiry as to whether or not the signing of the committee report and the committee proposal by each of the members of the committee was sufficient. I think we had this little mental exercise once before, and the same delegate raised that issue as to whether or not, in fact, there was an actual procedure of hands raised. The answer to that is no, there was no procedure of hands raised as to wording. However, the very wording that is before you was presented to each of the committee members and each of them did in fact sign that and with, we believe, sufficient concurrence. So it would be properly before the Committee of the Whole. I would again try to avoid debate on that particular issue but rather to get back to the merits of the case, and to have a determination there.

CHAIRMAN: So your answer, Delegate Weatherwax, is that it does in fact reflect the views of the committee as indicated by the signatures.

DELEGATE WEATHERWAX: That's correct.

CHAIRMAN: Does that answer your point of inquiry, Delegate DiBianco?

DELEGATE DiBIANCO: No, it doesn't, because Robert's Rules of Order says that that can only apply if it was impossible to call the committee together for a meeting. This procedure is available--I understand that, and I appreciate the chairman's previous remarks--but Robert's Rules says there must be a committee meeting first--

CHAIRMAN: You have now a parliamentary inquiry as to whether this matter, this committee proposal with that section, is properly before this body--is that your inquiry?

DELEGATE DiBIANCO: That's correct. I feel some dismay that a BORSE member was standing up and expressing concern over language they haven't even talked about.

CHAIRMAN: The Chair understands your point and we'll make a ruling on that; but based upon the information available to the Chair at this time, the matter must be presumed to be properly before this body. Of course, you may appeal my ruling. Do you so appeal?

DELEGATE DiBIANCO: No, I just want an explanation as to your ruling. I don't understand the rationale.

CHAIRMAN: Based upon the information the Chair has available to it, making the best effort he can, will rule that it is properly before us. So if there be no appeal, we proceed. Is there further debate? Delegate Villaverde.

DELEGATE VILLAVERDE: Thank you, Mr. Chairman. As you know, we've rarely been together throughout the Convention--that is, the delegate who spoke previous to me from the Big Island. And if you notice, the committee report lists me as concurring with the entire committee report; I did not even signature my concurrence "with reservations" or "I do not concur." But in spite of that, the sentences regarding "resigning since if he loses"--I'm speaking to the committee report, the paragraph that says that "he is resigning since if he loses the election, he does not have an office to return to," and also he "is not abusing his elected office by using it as a safe haven," and so forth--I'd like to address myself to these particular phrases and statements.

In committee I also spoke for this concept regarding resignation from public office. I feel very strongly, although I cannot put my finger on it and prove the area of abuse in offices of the incumbency when a person seeks higher office. This is a personal gut feeling as far as I'm concerned, but I feel that a person seeking higher office should resign. I hate to be suspicious that he is using the office to seek higher office in the area of administrative staffing, in the area of using governmental time--governmental public time--as well as using public facilities. And I don't like to see that happen, and maybe it is happening--I can't say, really. And also in the area of using it as a "safe haven," I feel that, if a person has made up his mind to seek higher office--he is tired of the lower office, he has had enough of the lower office, and he has made a decision to run for higher office, with the contention that if he's a good candidate--say a governor running for the presidential primary, or running in a situation where he wants to be picked as one of the

nominees--and leaving that particular office would not necessarily mean that the office, the lower office, will be without guidance or without a functioning staff, or the State be without a governor--I feel that he should, within a period of time, still resign from that particular office so as to give the public at least that feeling of a clean operation, a clean slate--or cleanliness, as you might say--that will not raise doubts in the public's mind, that he is not using public funds, not using public time, if you may say that. And I feel that the delegates here should keep in mind that we should vote for this particular concept and come up with another, I would say, reenforced statement, which would be constitutional--or would be in our Constitution later on.

CHAIRMAN: Thank you, Delegate Villaverde. The Chair recognizes Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I speak in favor of the amendment for two reasons. First, I think the language leaves a lot to be desired in clarity. I would like to ask the members of the delegation to look at the language and read it and try to understand it. I think if you do, it says something very different from what we've heard so far today. It says that any elected official "shall resign from that office before being eligible as a candidate for another public office. . . ." It doesn't say he has to resign if he's seeking that other public office, it doesn't say he has to resign only when he files nomination papers; it simply says he has to resign before being eligible. As I read that, if any person in any public office--for example, to be governor you have to be 35 years of age before you can be eligible to run for the office of governor. Now if that wording means what it seems to mean, it would mean that any elected public officer has to resign before he becomes 35 years of age if he ever wants to seek the office of governor. So I think the points that were made earlier, about this language never having really been considered by the committee or voted upon, are very well taken; and if this is intended to cover the situation where somebody who is seeking election to a higher office has to resign, then I believe it should be appropriately amended to state exactly that, and it does not state that at this time.

The second reason I speak in favor of the amendment is more important, and that is that I would raise the same question, the same argument, which was raised so ably by many of our distinguished delegates on the last amendment--and that is, the question of whether this is a constitutional issue. I think we all deplore the use of any public office to assist in election to a higher office, or indeed even to improve an incumbent's position to be reelected to the same office. I think all citizens share the feeling of uneasiness when a person in office is using that position to gain a large advantage over a newcomer; it looks bad for Con Con delegates to do it--to help their position in running for office in the house or the senate--and it looks bad for any public officer to use that position to gain undue advantage. But I believe, and I would respectfully submit, that the solution to that is properly addressed in the legislature and should not be attempted in our Constitution. Our Constitution is a basic document which deals with the institutions--the fundamental, basic institutions--of government and the limitations of government, and I believe that this is getting into an area where we should not be.

CHAIRMAN: Thank you, Delegate Burgess. Is there any delegate who wishes to speak for the first time? The Chair recognizes Delegate Barnes, to be followed by Delegates Kojima and Weatherwax.

DELEGATE BARNES: Yes, I speak in favor of this amendment. I don't want to add to the confusion, but I have a slightly different version of how the committee operated. I feel that the committee operated fairly, in this way: we voted on the concept in the committee, and like these other delegates I supported the concept in committee. However, as I see before me the language on "any elected public officer," I'm now very concerned about problems with neighborhood boards, Con Con, house types of overlapping, and I would therefore think that now the legislature should take up this specific wording. I speak in favor of the amendment.

CHAIRMAN: Thank you, Delegate Barnes. Delegate Kojima.

DELEGATE KOJIMA: I speak against this amendment to delete a portion of the committee report. I see no difficulty with the language--I'm no lawyer but even I can understand this language. When a candidate puts himself up for office, he makes a commitment to that office and for that period of time. In return, the voters vote for the candidate to that office and for that period of time. I feel the candidates then--or the elected officials--should meet their commitment. I do not believe that the political animal should have his cake and eat it too, at the expense of the electorate.

CHAIRMAN: Thank you, Delegate Kojima. Is there any delegate who wishes to speak for the first time? If not, the Chair recognizes Delegate Weatherwax, then Delegate Miller. Delegate de Costa, you have not yet spoken on this issue, have you? Please proceed then.

DELEGATE DE COSTA: Yes, I'd like to speak against this motion because in the committee--I don't know how come they're saying they didn't hear about this, we voted on it and everything, and now they say--if they don't understand, I'm confused too because I know what we voted for.

DELEGATE WURDEMAN: Point of information.

CHAIRMAN: Delegate Wurdeman is recognized for a point of information.

DELEGATE WURDEMAN: I'm a little confused on the standing committee report, because I'm not sure what they are referring to when they speak about voting. Is it in fact that a majority of the members were there and voting?

CHAIRMAN: Delegate Wurdeman, you're asking whether or not, at the time this was voted upon in the committee, that they had a quorum?

DELEGATE WURDEMAN: Yes, so that would be on a point of inquiry.

CHAIRMAN: Yes, point of inquiry--

DELEGATE PENEBACKER: Mr. Chairman.

CHAIRMAN: Delegate Penebacker, you rise to some point?

DELEGATE PENEBACKER: Yes, to answer the point of inquiry.

CHAIRMAN: Certainly, proceed.

DELEGATE PENEBACKER: I was the maker of the proposal in committee and, if my memory holds correct, it was 22 for this proposal and 6 opposing in committee.

CHAIRMAN: Thank you, Delegate Penebacker.

DELEGATE HALE: Point of information.

CHAIRMAN: Delegate Hale, do you have a further answer to that?

DELEGATE HALE: Yes, I think that Delegate Penebacker is right, but we voted on the concept, we did not vote on this specific wording. And I think Delegate Penebacker should make that clear.

CHAIRMAN: Thank you, Delegate Hale. I think that that point was made by someone earlier.

DELEGATE WURDEMAN: May I ask another question?

CHAIRMAN: Yes, Delegate Wurdeman.

DELEGATE WURDEMAN: If we're voting on the concept and not on this particular wording, then shouldn't we send this back to the committee?

CHAIRMAN: You're now, Delegate Wurdeman, not asking a question but debating the matter as to its form by suggesting that it's imperfect. Earlier the Chair ruled--in answer to a parliamentary inquiry and based upon the committee chairman's explanation that the proposal did receive the signatures of a majority after the concept was voted on--the Chair of the Committee of the Whole did rule that it was properly before us. So the question of whether it should be returned to committee would properly be a point in the discussion in connection with this amendment, if you'd care to take the time now and discuss it. Would you like to be recognized to debate this issue?

DELEGATE WURDEMAN: I am in favor of the amendment--

CHAIRMAN: Then you are debating it. Thank you.

DELEGATE WURDEMAN: --and at this time I would like to rebut some of the comments that were made. In particular, political campaigns mounted may not be as extensive as the delegate on my left suggested, because of the current support that a candidate may have or an elected official who is in office. We should also allow the voter the opportunity to select among the best candidates who are available. Whether or not his performance is affected cannot be reassured or given any kind of value judgment by this Convention. In selecting an officer for a particular office, for a particular time--and if the candidate does make this type of selection, it may be because when he is selecting running for the office he is in at that particular time--may mean no other alternative was available to him. And I think for that particular reason I would like to rebut the comments of another delegate, on my left side; I think that we may be infringing on any opportunity that an elected official may have in selecting another office or running for it.

CHAIRMAN: Thank you, Delegate Wurdeman. Is there any other delegate who wishes to speak for the first time? Delegate Ihara is recognized.

DELEGATE LES IHARA: Mr. Chairman, I'd like to speak against the proposed amendment to delete the section on resignation from public office. I have two reasons I am speaking against the amendment. One is that I feel strongly that a public officer should serve in just one public office and when a public officer announces or is running for another public office, he is in essence asking the people to vote for him and to support that candidate in serving another office, and I think the public officer is playing between two offices.

The second point is my concern about having a candidacy overlapping public service. I'm very concerned about a public officer being susceptible to some political pressures as to campaigns, and for those reasons I would speak against the amendment.

CHAIRMAN: Thank you, Delegate Ihara. The Chair recognizes Delegate Souki, followed by Delegate Pulham.

DELEGATE SOUKI: Mr. Chairman, reluctantly I speak for the amendment for this reason--because I really believe that this is a statutory matter, and I feel this Convention must be the reservoir for a lot of the matters that could not be handled legislatively and that we must come up here, in this relatively short time, and make final determinations. And I don't believe, in this short time that we have, that we have enough time to fight the issues, the language, and come out with the final right type of determinations that we should. Therefore, I speak for the amendment.

CHAIRMAN: Thank you, Delegate Souki. Delegate Pulham is recognized.

DELEGATE PULHAM: Thank you, Mr. Chairman. I'm going to speak very briefly and I'm going to speak against the amendment, primarily because the section under consideration apparently seems to be a necessary move on the part of this Convention. I would certainly reconsider had the amendment contained something which either increased the effectiveness of this particular section, clarified it or went on, but to delete a necessary part of the committee proposal--simply to then leave it out--does not seem to me to be the route of this Convention; and if at Second Reading someone can come up with an amendment which does this in effect, then I think we would probably all be disposed to take a very long, hard look at it. So the point is, right now it's necessary, and this something which we have is certainly better than the nothing which is being offered. Therefore I cannot support the amendment.

CHAIRMAN: The Chair erred earlier in not recognizing Delegate Weatherwax since he has not spoken on his own behalf. Delegate Weatherwax is recognized.

DELEGATE WEATHERWAX: Thank you, Mr. Chairman. Just a few clarifying remarks--hopefully, clarifying and not confusing. I think, with reference to language, there's always some difficulty; we've heard here from individuals who feel that the language is clear and sufficient for them, and in other instances, from perhaps one who is more legalistic-minded, who can foresee all sorts of problems. But this seems to be a conflict we always deal with when we're trying to write something very broad and yet to handle some precise problems. So I would think that the language in and of itself would not be a barrier here, except to look if the language here sufficiently meets the desires of the concept which was voted on in committee--and, as indicated, the vote was something like 22 to 6 in favor of the concept.

Again, I've made allusion to those who would have perhaps legalistic minds and would look for all the loopholes; in the language, there were questions raised as to whether this would in fact be unconstitutional because of an overlap of federal offices and county offices. I think the language still is broad enough for the concept and yet can be clarified, perhaps at a later time or by the courts, for an exact determination.

The last thing is that there was some discussion about whether this forced resignation would discourage good candidates. I feel that it would work just the opposite perhaps; and an indication of this would be a state senator who in fact took it upon himself to resign before he ran for a federal office. I think that's an indication of a candidate facing the situation, who makes a choice and realizes that trying to serve two masters is a very difficult thing.

The last thing again--the very last thing--would be that we're very concerned with images of candidates, and I think this would aid a candidate when he does in fact resign before seeking another office which would overlap and--well, that would be it.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair recognizes Delegate Chong.

DELEGATE CHONG: Thank you, Mr. Chairman. I rise again to speak in favor of this amendment. I believe this section was designed specifically to take care of one problem. This problem will not be a problem, however, after the primary election in October. Therefore, what we will be doing is inserting a shortsighted section to a document that will be law for at least another 10 years.

CHAIRMAN: Thank you, Delegate Chong. The Chair recognizes Delegate Miller.

DELEGATE MILLER: Mr. Chairman, I rise again to speak in favor of the amendment. Every elected official who runs for reelection has the potential for abuse of his office. No one expects the incumbent to resign. For example, the governor is spending a great deal of his time running this year. The mayor is spending a great deal of his time running for governor. This amendment states one should resign and the other shouldn't. I ask you--is this fair and equitable?

CHAIRMAN: Thank you, Delegate Miller. The Chair recognizes Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I rise to speak in favor of the amendment. I must confess to being truly appalled by the argument that I have just heard by the chairman of the committee. It's one of the strangest, most bizarre arguments I've ever heard, the effect of which is--I'm not sure if the language is clear or not but we'll let the courts decide. That, coming from an attorney, to me is astounding; it's tantamount to saying that we will build a house, and I don't know whether it will stand or not but we'll just wait till the first breeze comes along. We are trying to write a Constitution here.

DELEGATE KOJIMA: Point of order.

CHAIRMAN: Delegate Kojima.

DELEGATE KOJIMA: I think he's casting aspersions on the dignity and the--on the whole committee, because of the language. I think these remarks could be made some other place, not here.

CHAIRMAN: Thank you, Delegate Kojima. The Chair will rule on the point of order--that the point of order is well taken; however, Delegate DiBianco, if you would take that--the spirit of that--under consideration in your subject and remarks--

DELEGATE DiBIANCO: I certainly will. I'm sure the members of the committee know the esteem that I hold for them. I would simply wind up my remarks by saying that if we are going to write and offer to the people of the State of Hawaii constitutional amendments, I think we should have a little firmer footing than simply throwing something out to the public that we can't stand behind and saying we are sure this is constitutional, that if it is accepted by the public, it would not conflict with any term, or any other term or condition, of our own Constitution or of the federal Constitution. Just to toss something to the electorate, I think, is dangerous indeed.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, I rise to speak against the amendment to delete. I think that much has been said in the discussion about this being designed to affect one particular race. I beg to differ with that, because every time this amendment has come up, whether it's before a constitutional convention or in the halls of the legislature, this red herring has been dragged into the discussion.

Actually it will not affect the present election--I think all of us are aware of that. If anything, it might affect the coming elections, at which time when the incumbent mayor is running for reelection, there'll be some incumbent senators who will be taking him on, and it might affect the pretenders to the throne adversely. The argument has been raised that this is a statutory matter; but one of the arguments that was raised against a bill such as this, or a bill that was designed to do the same thing, during the hearings in the legislature, was that there was a question as to whether the legislature had the right to do this, according to our State Constitution. So I think that if we do go along with the committee proposal, this will be clarified once and for all. I realize that there are federal laws to the contrary and it cannot affect a federal office, and I don't think that this proposed committee amendment will touch the federal office that is being sought.

Let me raise another argument against it being a statutory matter. I just want to point out to all the members of the delegation if they are not aware of this, that we have a bicameral legislature and an amendment such as this would affect 25 senators who may have designs on higher office. I have watched some of these senators as they plan for the coming election. In the spring of the year, election year, they are holdover senators and not up for reelection; I have watched some of these people plan to run for statewide office and, believe me, it really detracts from their being as effective and as good representatives of the people as they should be, because they have designs on another office which encompasses a larger geographic area. Some of them have even taken trips to the neighbor islands while we're in session, to set up campaign committees and such. Much has been said about the two people who have resigned to run for office, and I think it was very commendable that they did it: in one case, there was a charter provision where he had to resign, and in this case he was successful; the other case, a colleague of mine in the senate running for U.S. Congress--I'm very sorry to say that he was not successful--and I think part of the reason is he might have resigned a little beforehand. He'd then have had the forum of the session in which he could have served without being in conflict and still could have resigned in plenty of time to run for congressional office.

As far as the image arguments are concerned, I think that this is a real problem; it casts doubt on the deliberations of a body when two or three of the body have announced that they plan to seek other statewide office. And I think for that reason if nothing else--and it affects 25 senators, 4 mayors, possibly a lieutenant governor who might be seeking another office--I think that this proposal is a long time overdue and I think the Convention would be right to put it in the books.

CHAIRMAN: Thank you, Delegate Ching. Any further discussion? Delegate Cabral.

DELEGATE CABRAL: Mr. Chairman, I rise to speak in favor of the amendment to delete, primarily because of the language used therein of the committee proposal. I personally favor the concept of requiring officeholders to resign before seeking higher office, but I can't help but feel that this is another ruse that has been cleverly put together to serve the ulterior motives of a certain group. And I feel because the language itself is so suspect and questionable, that this committee proposal should be deleted in its entirety. Therefore, I will vote to support this amendment.

CHAIRMAN: Thank you, Delegate Cabral.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Delegate Hale is recognized for the second time.

DELEGATE HALE: Mr. Chairman, I speak for the second and last time for this amendment and my reasons are not the same as many others have advocated here. I am for the concept and I voted for the concept and I will vote for the concept again. But I do not believe that the concept in the State Constitution should apply to county officers; I think the counties should take care of this problem in their charters, and this then would take, I think, one of the main reasons for doing this if this did affect them.

But the other interesting thing to me is that I just heard the delegate in the back row give one of the best arguments I've ever heard for a unicameral legislature--but that's not before the body. But the fact is that if this takes place in a bicameral legislature, it's just too bad. I urge the delegates to delete this and then if we want to rethink how we can better get the concept across, in a way that's satisfactory to everybody, perhaps the committee on bill of rights could meet again and come forth with another suggestion.

CHAIRMAN: If there's no further discussion, the Chair will recognize the movant to speak last. Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise again in support of this amendment and I just want to say two things in summation. First of all, I urge each of you not to usurp the public's right to consent or to disallow any incumbent who desires to run for higher office. I believe it is a right that the public has--that the voter has--and I trust the public. I do not think that we, as a very narrow group, should have the right to take this from the public.

And lastly I'd like to ask each of you to search your minds as to just exactly how you think the public will perceive us and in what light they will look at us if we, as delegates to the Constitutional Convention, tell the public--do as I say, not as I do.

CHAIRMAN: Thank you, Delegate Campbell. The question before the body now is the approval of Amendment No. 2, which would delete section 2 of the committee proposal. All in favor of the amendment, raise your hands. All opposed? Thank you, the noes have it.

DELEGATE CAMPBELL: Mr. Chairman, I call for a division of the house, please.

CHAIRMAN: Division of the house has been called for. The Chair will recognize that. All in favor of the amendment, please rise. You may be seated. All opposed, please rise. Thank you, you may be seated. Mr. Clerk, will you announce the count.

CLERK: Yes, Mr. Chairman. There were 33 ayes and 52 noes.

CHAIRMAN: The vote was 33 ayes, 52 noes. The amendment is defeated. Now we will take up Amendment No. 3, relating to registration and voting, and "None of the Above." The Chair recognizes Delegate Odanaka.

DELEGATE ODANAKA: Mr. Chairman, I would like to move that this committee adopt Amendment No. 3 to Committee Proposal No. 16, to add "None of the Above" to election ballots in the State.

DELEGATE BURGESS: I second the motion.

CHAIRMAN: It has been moved and seconded that Amendment No. 3 be adopted. The Chair recognizes Delegate Odanaka.

DELEGATE ODANAKA: I would like to speak in favor of this amendment. This amendment would add "None of the Above" below the names of candidates for any office in the State. Though "None of the Above" would have no official weight in determining the outcome of elections, the amendment would mandate that the number of votes for "None of the Above" be listed with all official election results.

I support passage of this amendment because, first, this addition to the ballot provides for better interpretation of election results. It would have an effect similar to that achieved by adding "None" or "Undecided" to a public opinion survey. Without the added clarity of these extra choices, any such survey would be considered scientifically invalid. As it is now, when a candidate counts his votes, there are a number of ways he can interpret them; besides those that support him, they include votes against another candidate, votes from those who don't care and those voting for the "lesser of two evils." The vote cannot be accurately interpreted because the accumulation of confounding ideas and factors surrounding the votes are not considered in the balloting process. All persons involved in the balloting process will benefit from such added clarity.

With "None of the Above" added to the ballot, all the votes for any one candidate may at last be interpreted positively as support. Candidates will be able to fairly gauge their

strength in their districts. The added clarity may even help the political parties determine whether their candidates are being supported or rejected by party members and determine which platform is faring best. This could conceivably strengthen the two-party system.

I would like to refer to the chart that each of you got from the clerk's office. Overall, you will notice that "None of these Candidates" is used sparingly--rarely more than 6 percent of the voters use it. This gives a good indication it is not used frivolously. Also note that people don't use "None" when they don't want to vote in a race; in the race where Gunderson ran unopposed for a seat on the state supreme court, about 36,000 people didn't vote at all. Also, even when there are a large number of "None" votes, as in the primary race for the Republican congressional nomination, there are still many no votes (13,724). So the people who vote "None" and those who don't vote are saying different things; one may be expressing apathy by not voting, while the other is stating dissatisfaction with his choices by voting "None."

Looking particularly at the voting of Republicans, we can see a pattern that would otherwise not have been visible if people just did not vote--dissatisfaction. Again in the race for the Republican nomination for the congressional election, "None" got a whopping 47 percent of the total vote, which was about 34,000. In the general, the Republican nominee in that race, Earhart, got only 24,000 votes. Of the 34,000 Republicans who voted in the primary, at least 10,000--it can be assumed--voted for non-Republican candidates in the general election. Keeping these figures in mind, we can see that the American Independent Party candidate in the same congressional race got about 12,000 votes--about 9,000 more votes than American Independents collected in any other race. Could these substantial votes for the very conservative Independent party have come from those dissatisfied Republicans? Looking at the Republican presidential race, there is further evidence that when they feel a candidate will accurately represent them, many of the same voters who voted "None" in one race will support that candidate. Republicans seemed generally satisfied with their choice of Reagan and Ford--only 4.8 percent voted "None." I submit that "None of the Above" is not a tactic used just by crybabies; once again, it is used by mature, rational voters to express their opinions in a forum where they can be sure they will be heard.

In lobbying for this proposal, I have heard one skeptical and negative-thinking person argue that "None of the Above" will hurt newcomers because they are the ones who benefit from votes cast primarily against the incumbent. I would not be surprised if this is of great concern to a large number of delegates. I cannot deny that there are newcomers this year who will pick up a few votes simply because the people are not happy with the incumbent. But can anyone deny that incumbents will pick up a number of votes because voters are not happy with the newcomers? Dissatisfaction runs both ways.

I would add that because of the random way that votes are cast against an incumbent in a multimember district, or where there are many candidates, no candidate will win an election simply because of negative voting. To win any election, a newcomer has the burden of proof that he is indeed a better candidate; this would not change with "None of the Above" added--this is the best strategy now. But with "None of the Above," candidates would be ill-advised to stress only the negative aspects of another candidate, because all they would encourage would be votes for "None of the Above" and not for themselves. Because the negative votes in an election might be better centralized under "None" in the results, a potential newcomer will be able to easily see the weakness in an incumbent's position and be encouraged to try and take advantage of that and sell himself as a positive alternative. This argument is based on the assumption that people carry only a nebulous idea of who they will vote for into the polls. If they have a generally negative feeling about the incumbent, they will choose a newcomer at random. It is this problem with the system--where people do have only vague ideas of the candidates--that "None of the Above" might address by forcing candidates not to rely on anything but their own positive qualities in seeking office. All I see are the positive aspects of this proposal.

Finally, we should keep in mind that candidates are chosen or choose to be on the ballot for many reasons, including the party's choices, attractiveness or power of the office and even the pay. There will be times, no doubt, when voters honestly feel that none of the candidates will represent them well, as they do not share the voters' orientation. These people have a choice now of either voting for someone unacceptable or not voting at all. I submit that this is no choice. "None of the Above" will give these people a voice. Besides drawing these people back to the polls, it may let elected officials know that there are a number of people in the community who do vote and may vote him out of office should a more suitable candidate come along. Perhaps some of these officials will make themselves a little more suitable.

I'd like to close and say that I think the added clarity and attractiveness that this amendment would bring to the electoral process make it worthy of placement in the Constitution and I strongly suggest that you consider adopting it. Thank you.

CHAIRMAN: Thank you, Delegate Odanaka. The Chair recognizes Delegate Villaverde.

DELEGATE VILLAVERDE: Thank you. I've been on opposite ends from this delegate, Delegate Odanaka, I think throughout the Convention. And I also voted against--but in fact I'm for this particular amendment, and I'd like to speak on it. This is sort of unprecedented--could be, in the State of Hawaii. But in this Convention we have done unprecedented things and a lot of unprecedented things are going to be offered to voters.

I would like to put forth some experience here as I was also a candidate many years ago, twice, and I felt that I was at a disadvantage; but in spite of that I campaigned on the philosophy that people should know what I was trying to run for. And we delegates here have also run in that capacity, in spite of earlier philosophies that you shouldn't campaign on issues. But we all did campaign on issues. On this particular matter of "None of the Above," I noticed also in this campaign we have many candidates and incumbents as well and--not to discredit the incumbents who do not campaign in this matter, but maybe to awaken those candidates who campaigned in other ways, other than the charismatic method--that is: You know, I'm an incumbent so to speak, so I know best, so elect me--versus: Here's a newcomer and a newcomer has to campaign like heck and sometimes he has to spur a lot of feathers and also say--well, my positions are--and some people might say also that he's trying to create waves with the incumbent.

Now we also will have time in between elections, primary and general--if the public will accept it, and I'd like to imagine and foresee this 45 days--candidates showing up the defenses, showing up the offenses, and particularly campaign harder, get to the people and tell the people, the voters--look, these are my issues, of which we delegates have done this. Now, this "None of the Above" in the primary would, I think, improve voter apathy--voter participation. It will show up the defenses and offenses, like I mentioned earlier, of these candidates--new candidates--as well as make the charismatic type of candidate think that for a change I should let the people know what I stand for, not just for the years that I've served in the legislature, or whatever office. I think this is a good idea. It took me the last 3 weeks to ponder this "None of the Above," to ponder this very youthful delegate who was my opposition throughout this Convention. And speaking to her again--you know, her enthusiasm--I couldn't help but say that I'd like to go to bat for her. And there are statistics over here that give us, you know, why voter apathy and I feel that each delegate here should ponder this, look at this thing in the time that we're going to debate it, for the next 2 or 3 hours maybe, but think about it and how we could help. We can have four candidates who the public was discontented with and you can knock four candidates out. And you can also in that area force them by voting "None of the Above" in the primary, to get them to work harder. And this is how I see this.

CHAIRMAN: Thank you, Delegate Villaverde. The Chair recognizes Delegate Shon.

DELEGATE SHON: Your "skeptical and negative-thinking person" rises to speak against this. I would ask you to consider that this is not a frivolous or innocuous amendment and I'm very appreciative that it has been brought to this body, because I think it focuses on a key tenet of the whole democratic system, and that is--why do we go to vote? Do we go to vote for public opinion polls or do we go to vote to choose people to serve us? I would ask you to consider what are the assumptions of including "None of the Above" on a ballot.

The first appears to be that most voters really are well informed on the issues and the candidates. I must admit that I am a little skeptical of this. First of all, I look at the opportunities for voters to be very well informed on all the issues and all the candidates: first is sign-waving--that does not create a well-informed electorate; the second is brochures, with family pictures, gimmicky phrases--I do not regard that as necessarily the vehicle for a well-informed electorate on every issue and every candidate; and perhaps, if we're lucky, a short-lived conversation at the door if you happen to live in a district where the candidate does and can go door to door. The Sunday supplement which the community had the advantage of reading before this Constitutional Convention is not available for our general elections, and I would submit that there is little evidence that the overwhelming majority of voters really have the opportunity to be very well informed on who their candidates are and what they think on all the issues.

The second assumption, I believe, is that the impact of this will fall equally on all candidates. I doubt it. I think that this will be a definite advantage to incumbents. First of all, incumbents have more money to print and distribute information on themselves and on their positions; to the extent that an incumbent has resources far and above a new candidate--this leads us to say we must look only at specifics and assume that the voters are going to know all our positions and everything--to that extent, I think, this does give an advantage to an incumbent.

Secondly, and this is perhaps the most important concern that I have, incumbents begin with a solid, hard-core group of supporters. This is true in every race and it is the task of the newer candidates to approach the dissatisfied voter, the marginal voter, the voter who may or may not vote, to win their support. I believe that inclusion of "None of the Above" will encourage some of the voters, perhaps many of the voters, which the new candidate is competing for, to say--well, I don't really know that much about the newcomer, I don't really know that much about the incumbent, I have a general dissatisfaction with the way things are going, they're all a bunch of crooks, "None of the Above." It will encourage voters to vote their frustration rather than their judgment. I think that the key to our system is the responsibility of those who are going to vote to go to the polls and to be forced to make a judgment--this person over that person, this person's character over that person's character, this person's opinions over that person's opinions. I think that "None of the Above" is a blanket approach to expressing frustration. It is very seductive to label all candidates for an office as unworthy. It is very tempting to say--boy, there's really not anything that I really like about any of these candidates, there's something wrong with all of them, I'll vote "None of the Above." But remember, the incumbent has a hard-core group of supporters who will always go out and vote for him. It's the newcomer who is trying to attract attention.

Even worse, my fellow delegates, I think that once it becomes well known that the voter has an easy out, that the voter can go to the polls and not even pay attention to the campaigning that is going on around him before the election, what incentive will there be for one to examine the literature of a newcomer, for one to question the candidates? If one begins with a basic dissatisfaction and the basic knowledge that he won't have to go out and choose the person to represent him, then I think we'll have a much less informed electorate and a less responsible electorate. I believe that evaluation of the people and issues depends upon that responsibility, the recognition in every citizen that makes him say--yes, in a few days I am going to have to make a choice. Maybe I'd better save a few of these brochures. Maybe when that candidate comes, I'd better ask him a question about what I'm interested in, because I'm not going to have the option of calling them all unworthy. I must choose between possibly the best of--or the worst of--the evils. But that is what the democratic system is--the choosing of people.

I believe that it is the clear responsibility of every voter to reflect on how he will vote, to make the choice. I believe that "None of the Above" will institutionalize negativism, an irresponsibility and a passivity on the part of the voters. I think it is an alternative that we are increasingly faced with in an overconsumptive TV generation, that we're all victims of: don't pay attention, take the easy solution, choose the simple attitude, don't worry about making the hard decision, the hard judgment, no need to read the literature, no need to question the candidates. I believe that this is an alternative that will benefit incumbents and I believe we should seriously consider the general direction that our society is going toward--passivity, oversimplification, toward the lack of any need to read and reflect, and the lack of any need to adequately judge one candidate or another. I think for the larger races--where you have television commercials and all that--it's very difficult to move into the area of reasoned, careful judgment. But especially for the smaller races, where the contact of the voter with the not well financed newcomer is very minimal, where there is voter dissatisfaction--that general feeling that something is wrong in the capitol or at city hall--it is so tempting to reach out and say they are all unworthy, "None of the Above," all politicians are crooks. I grew up in a family where that attitude was there; I do not believe it is something that should be encouraged, I do not believe that we should regard the election ballot as something of a scientific poll on the issues. It is a choice of servants, of public servants, and we must lay that responsibility as directly as we can on each and every citizen. And for that reason, with all due respect to the author of this, I ask you to reject this amendment.

CHAIRMAN: Thank you, Delegate Shon. The Chair recognizes Delegate Weatherwax, then Delegate Crozier and Delegate Takehara.

DELEGATE WEATHERWAX: Thank you, Mr. Chairman. I'll be very brief but I just want to give my full concurrence with the last speaker, and I speak against the amendment. I would ask that each of you--from your own experiences during the campaign, and in dealing with individuals--that the last speaker was in fact being realistic and not negativistic.

CHAIRMAN: Thank you, Delegate Weatherwax. Delegate Crozier is recognized.

DELEGATE CROZIER: Yes, Mr. Chairman. I'd like to speak for the amendment. First of all, to answer one of the statements made a little while ago, the reason people vote is because it's a vote of confidence for their public officials; they vote that they have confidence their public officials will be knowledgeable and responsible for the concerns of the constituents. I see some other points that will be helped. Right now some of the candidates--when people vote, they either vote for or against someone--the candidates are not sure if the vote was cast for the other guy because the other guy was better than him or just because the people didn't like him. Now with this option, it would be open, they'd know exactly where they stood.

And another thing a lot of people don't realize is if this thing went through--after they vote for "None of the Above"--this would make it a lot easier for the winner and the loser to locate that swing vote. So when they could go back there and talk story with these people, they wouldn't just be saying that group over there is for the other guy. They would find out that they were not for the other guy--they just hate me. So now they can go back there and ho'omalimali a little bit.

CHAIRMAN: Thank you, Delegate Crozier. The Chair recognizes Delegate Takehara, followed by Delegate Silva.

DELEGATE TAKEHARA: Mr. Chairman I wish to speak against this amendment. After thinking about and evaluating the merits and demerits of this amendment, I think I can express my objections by saying this is a very sad and negative and confusing approach to our democratic process. I think I can express this to you by asking you to place yourselves in the shoes of the electorate as they enter the privacy of the voting booth, and also to be with me in the fourth senatorial district, where in this coming race we have five candidates, all very well seasoned, well qualified, responsive to their electorate and recognized as outstanding statesmen. Right now in our district there are many, many heavy discussions about the need for all of them in our legislative system. Now taking this race into consideration, the five candidates would be listed alphabetically with the "None of the Above" as a sixth choice. A possible thought that might enter our minds as we go into the voting booth is, I wish I could check all, but that's not reasonable like "None of the Above," or, I think I'll vote for the three incumbents and leave it to the rest of the electorate to decide who--at this point I cannot make a decision as to who the other two should be, both equally qualified. But if I check "None of the Above," that would seem like I'm negating the votes I gave to the other three on the ballot. If I don't vote for any of them and leave it all blank, do I check "None of the Above," when really I want to leave the choices to the rest of the electorate? I can't decide, they're all so good. Or maybe I failed to do my homework thoroughly enough and I cannot really decide who to vote for. Or possibly I didn't do my duty and failed my responsibility to actively look for a candidate that I truly felt was the best of all. And for these reasons, I again object to having these interpretations made in my private conscience, thoughts and actions in the privacy of the voting booth.

CHAIRMAN: Thank you, Delegate Takehara. Delegate Odanaka, did you rise to a point of order?

DELEGATE ODANAKA: Point of information.

CHAIRMAN: State your point.

DELEGATE ODANAKA: I'd like to inform the delegates that--

CHAIRMAN: No, Delegate Odanaka, you cannot use a point of information to inform somebody or to ask a question unless you have a point of order.

DELEGATE ODANAKA: Point of order. I'd like to inform the delegates that if this amendment should pass this body, this would--

CHAIRMAN: Delegate Odanaka, I think that the effect of the passage of it is not a proper point of order. I think you should save that type of information to a debate situation.

DELEGATE ODANAKA: --this would not affect the upcoming races in 1978.

CHAIRMAN: Well, I understand what you're saying but that's not in order at this time.

DELEGATE TAKEHARA: Point of information, Mr. Chairman. That was just cited as an example of what possibly could come in 1980, 1982 and so forth.

CHAIRMAN: Your answer is appreciated. Delegate Silva is recognized, followed by Delegate Hale.

DELEGATE SILVA: Thank you very much, Mr. Chairman--from beauty to the beast. I am definitely against this because I think it's a negative attitude to put forth to the citizens of the State of Hawaii. I think they already have this negative system within them--like they could just drop the ballot in and not vote on "None of the Above" in that form. And I think that we should create positive attitudes for the people, to get them back into getting involved in voting for people they want to vote for--but not by putting negative things on the ballot so that they'll have a more negative attitude than they do now.

CHAIRMAN: Thank you, Delegate Silva. Delegate Hale is recognized.

DELEGATE HALE: Thank you, Mr. Chairman. I would like to speak for this amendment. I think it's a very exciting, creative idea and the fact that it comes from our youngest delegate, I think, forebodes well to the future of the State of Hawaii, if these kinds of ideas will be generated here and during the next 10 years and hopefully in the next 10 years.

I don't think that we are really talking about the voter who goes to the polls, in this concept of "None of the Above"; we're really talking about the voter who's turned off and who doesn't go to the polls, and who doesn't make any choice, and who doesn't participate in the political process. And I think we of all people should be aware of this problem in our State, when only 35 percent of the people bothered to go to the polls to choose delegates to a convention that was going to make recommendations on their basic document. People are turned off. We don't know all the reasons why. This is certainly one constructive, creative idea to try to find out what the reasons are. Perhaps one of the reasons is that--not taking any specific example of any specific district or election district--but perhaps, as in the case here of Nevada, where you had two Republicans and 47.3 percent of the people voted "None of the Above"--neither candidate was acceptable. And today more than ever, when the cost of running is so expensive and when the pressures that a person is subjected to are so great--to put themselves forth on the line to be voted upon, people hesitate to do it because they're not sure. The assumption is that the incumbent has the advantage, maybe he does and maybe he doesn't--he or she. But we don't really know. Certainly this would indicate a trend, and this would indicate to people where in the future there might be a possibility for a new candidate to step in, because the choice had to be made between Peter and Paul but the people didn't want either one of them.

I would also like to say that this may encourage new faces in the political arena. It may force candidates to make themselves better known and to make their positions better known, particularly those incumbents who go along with the present procedure in our legislative body not to vote on things that are controversial so that the people don't really know where they stand, bottling things up in committee and so forth. I agree it is very difficult for people to know where candidates--whether they are incumbents or whether they are newcomers--where they really stand on many issues. I think that voters are not well informed and it's partly the voters' fault. There are ways to find out about people--if nothing else, call them up and talk to them. Find out where your candidates stand on various issues that you are interested in. But the people this is directed at are primarily those people who don't go to the polls at all, who have no way of registering their frustrations--and the frustrations are great in the political arena all over our country. And if we don't find out about these frustrations and make some attempt to give some depth to these frustrations through a legitimate process, we're going to find that maybe there will be illegitimate means taken, as in many countries throughout the world to overcome governments that do not really represent the will of the people.

I would also like to say that if they do vote this frustration, it is good; it's giving

vent, it's letting people know that the candidates who are putting themselves up are not candidates who have the respect of people. It is then important for incumbents to make their positions known on issues and for newcomers to go out and to work in the community so that people will know them through their participation in community activities. I'd say that if, as an example given, there were five candidates in one race and they were all good, that would encourage a tendency in people for one candidate to vote only once, not four times, not none for "None of the Above," and that too is not a very democratic way of solving our problems. Nor does it give the voters any outlet for real frustrations, because there may be people, even in that district, who don't think that any five of them could do a good job in representing them.

I feel that we are really not talking about the people who go to the polls, that we do have an obligation to. I also point out that maybe we all have a conflict of interest and maybe we shouldn't even vote on this; we should just let the people vote on this, inasmuch as only 35 percent of the people came out to vote for the delegates sitting here. And if they had had a chance to vote for "None of the Above," maybe 65 percent of the people would have come out and voted "None of the Above," and then all the things we're talking about we would know would not be things that people are for. I urge you to give this serious consideration. I think it's a real constructive, creative idea and possibly Delegate Odanaka could join Delegate Crozier's Panasonic Club.

CHAIRMAN: Thank you, Delegate Hale. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I speak in favor of this fresh, new, attractive, innovative idea brought to us, like many new ideas, by a fresh, new, attractive face in our presence. I think it has real therapeutic value which should be given consideration--even though it's unusual, I think it should be given serious consideration by this body. We have all experienced discussions with people--they are so disillusioned, they say they just don't bother to go to the polls. This would give them a way of going to the polls and expressing dissatisfaction with the candidates they are given to vote for, and I think it therefore would serve a real purpose. It is a positive way of venting voter dissatisfaction and would be a clear message; if the "None of the Above" received a majority of the votes, for example, it would mean that it would be necessary to go and get new candidates, and we would have an election where people who are really responsive to the needs of all the voting public would actually run for office. Those of you who saw the movie *Network* may remember the half-crazy commentator who got everyone so worked up that when he said, "Throw open your windows and say, 'I'm mad as hell, I'm not going to stand for it any more'"--when his program came on throughout the city, this noise reverberated throughout the streets. We don't want that in Hawaii. This is a better way to accomplish that; I would suggest to you that this is a quiet, effective way to accomplish the same thing.

CHAIRMAN: Thank you, Delegate Burgess. Is there further discussion? Delegate Chun is recognized.

DELEGATE CHUN: Yes, I'd like to speak in favor of this amendment, primarily because I think it's a fundamental right of each person to be able to have the right to vote. What happens to the person who is turned off by the system? In fact, right now he has no way of having any input into the system. And since it is a fundamental right that belongs to every citizen, I think he should have that. This will open the door for that person to exercise his fundamental rights.

CHAIRMAN: Thank you, Delegate Chun. The Chair recognizes Delegate Taira.

DELEGATE TAIRA: Thank you, Mr. Chairman. Mr. Chairman, I concur with the flowery remarks of the preceding speaker but I reluctantly must speak against this amendment, and I do this because in checking Section 4 of Article II of our Constitution, I find that this is but a 4-line section and it speaks about the election process--the method--in very, very general terms. And it seems to me that to put something specific like this as a requirement of something that should go on the ballot is only taking care of one big concern or issue.

Many of those who run for public office are concerned because the candidates' names are always alphabetically arranged, and I think the candidates have a legitimate concern and gripe in feeling that the candidate whose name appears first on the ballot has some sort of inside track, or has an advantage. And a lot of candidates feel that--whenever there are too many people running for a given office and the reverse side of the ballot has to be

used for names after T, Y, Z, and so on down the line--a lot of candidates feel that to use both sides of the ballot is very unfair to those candidates whose names must appear on the reverse side. My point is that if we are going to be very specific about something like this, then there are other concerns as to what should go on the ballot that we ought to look into and take care of, but obviously we can't do this within our Constitution. So I think for whatever merit this proposal has, we should defer to the legislative process to take care of this.

CHAIRMAN: Thank you, Delegate Taira. The Chair recognizes Delegate Kono.

DELEGATE KONO: Mr. Chairman, I rise to speak in favor of this proposal. I think that it is one of the more positive proposals that we have seen in this Convention, and I know that I, for one, became a candidate for the Constitutional Convention with the hope that we would encourage, or we could develop, a political structure that would more fill the needs of the people, so that we could overcome many of the objections and the criticisms that people level at the political system. I think that in a small way this will do that, and I think that this is about the only thing that I've seen coming out of this Convention--if it does in fact come out of this Convention--that could generate some positive aspects to our political system, and by the political system--I mean the election of our representatives.

One of the previous speakers mentioned that the purpose of electing officials, in going to the ballot box and putting our X down, is to choose representatives, and I would suggest to that delegate that this would be an enhancement of that particular purpose, in the sense that it would give the voters an opportunity to better the system and to choose more desirable representatives in the future. Instead of just limiting ourselves to the choices that we have at hand, perhaps the electorate in a particular district would choose to check the "None of the Above" box for a very good reason; I think that in the information we had provided to us by Delegate Odanaka, there are very few elections--in fact, only one race here--which showed a significant deviation from what would normally be an occurrence of maybe 4 or 5 percent dissatisfaction, and I think that that statistically would indicate that the people in those races just didn't have much of an objection to the people who were running. However, results could be indicated in one particular district or one or two particular districts that would indicate that voters did have a particular one.

In answer to another delegate's concern about the 6th representative district, or wherever that race was occurring, if in fact the candidates are that good, I would expect that there might be only about a 5-percent checkoff in that particular district, which is not to say that this is the situation in all the districts in the State. It could just turn out that in 1980 or 1982 there would be 5 percent across the board and that would be fine. I don't think that it would indicate any particular and obvious dissatisfaction.

Another thing that was brought out is that elections are not a time to be taking polls. I submit to the delegate that brought up that particular argument that this is not a poll. It is merely an indicator of some sort of dissatisfaction. I would suggest to that delegate that a more specific poll would probably be undertaken in the event there was 47.3 percent dissatisfaction indicated at the election, and that that specific poll could indicate just what concerns the people did have in that particular district. We can tell them to vote for "None of the Above."

For these reasons, I think that this small change in the election ballot would encourage candidates to go out, as other delegates have mentioned, and try to overcome this negativism that might occur in their particular district. I think it would also encourage political parties to find candidates who would not run into these objections from the electorate and who would run on platforms that would satisfy their electorate. And for these reasons I speak very strongly in favor of this proposal.

CHAIRMAN: Thank you, Delegate Kono. The Chair recognizes Delegate Stegmaier, to be followed by Delegate Sterling.

DELEGATE STEGMAIER: Mr. Chairman, I reluctantly speak against this amendment because I don't think that we should encourage the attitude in our society that the answer to being dissatisfied with political candidates is simply to say to hell with you--or to use the equivalent or even stronger language against all candidates and the electoral system itself.

CHAIRMAN: Thank you, Delegate Stegmaier. Delegate Sterling is recognized.

DELEGATE STERLING: I rise to speak in favor of the amendment. I think it's very bold and I think it will give us a proper indicator, as Delegate Kono said, and also reflect the feelings of the voters. I went home this weekend, getting into Kona late Saturday night, and I had a church service at 8:00 and 10:00 and a baptism, and by the time I got home at 1:30--between 1:30 in the afternoon and 10:30 last night, I think I had 100 percent "None of the Above." If we were to ask the voters today, about each one who is running for office, we'd find a great percent saying "None of the Above." The voters of Kona are very turned off at what is happening here. This would be an indicator of voters' feelings--and I think it's bold and I think it's required. Perhaps there was an overreaction to the Sunday newspaper about crime--the prosecutors blaming the judges, the judges blaming the prosecutors, the prosecutors blaming the police. I'm quite sure that if every official were to run for office today they would get "None of the Above," and rightfully so.

CHAIRMAN: Thank you, Delegate Sterling. The Chair recognizes Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to speak in favor of this amendment. Although I do not believe it is the entire solution to the problem, I think it is a step in the right direction. I remember some years ago there was a commentary by Walter Cronkite in connection with the election of the late Senator Humphrey and former President Nixon; and he indicated the tremendously large number of people who stayed away from the polls and simply didn't vote and he construed that to mean a positive kind of disillusionment in the system. That kind of result, where individuals totally stay away from the polls, is a completely negative thing and I think it behooves us to do everything in our power to move people in the direction of the polls--even if, in this instance, the vote they pass will be an official indication that they are not happy with the individuals on the ballot.

But I think we are all deluding ourselves if we believe that this is going to solve the problem. There's only one way to get candidates of excellence on the ballot, but if all of us sit at home and are armchair complainers and do nothing about it, that's the problem we're going to have to face on a consistent basis. The way to get candidates of excellence is--first of all, to get into the party system and work for candidates of excellence who may not have the money or wherewithal themselves, climb the hills for them and help them go door to door if you believe that these individuals have the capacity; and that is the way we will see people on the ballot who are a reflection of what we feel are excellent public servants.

CHAIRMAN: Thank you, Delegate Campbell. The Chair will ask if there is any delegate who wishes to speak for the first time. The Chair recognizes Delegate Goodenow.

DELEGATE GOODENOW: Yes, I speak for the amendment. Many of those opposed speak as to the constitutionality of this amendment. This is restrictive because attempting to make appropriate changes makes it very difficult, and change in this 20th century is indeed imminent. Ballots could likewise be considered restrictive without utilizing the option of "None of the Above." I strongly support this amendment. There is an urgent need to let the people reflect their feelings on the ballot. It means taking a positive approach for the people we represent. Again, I'm in favor of the amendment.

CHAIRMAN: Thank you, Delegate Goodenow. The Chair recognizes Delegate Barnard, to be followed by Delegate de Costa and Delegate Shinno.

DELEGATE BARNARD: Mr. Chairman, I have a point of inquiry for the mover of this amendment.

CHAIRMAN: Please state your point.

DELEGATE BARNARD: I want to know--in what year did the state of Nevada implement its "None of the Above" policy?

CHAIRMAN: Is the question understood by the movant? Would you care to respond to that? What year did the state of Nevada institute "None of the Above"?

DELEGATE ODANAKA: In 1974.

CHAIRMAN: The answer is 1974. Does that satisfy your inquiry? The Chair calls on Delegate de Costa, followed by Delegate Shinno.

DELEGATE DE COSTA: Thank you. I'd like to speak against the motion, even though I know she's cute, young and all that. But "sticks and stones can break my bones" but words won't, and I don't think "None of the Above" will do anything to encourage or discourage anybody from running for office, because look at us here today--did we have the 50 percent or a majority of the people? But we're still here doing--trying to do our work.

CHAIRMAN: Thank you, Delegate de Costa. Delegate Shinno.

DELEGATE SHINNO: Mr. Chairman, I speak in opposition to this amendment. If a person feels that none of the above candidates is desirable, he could have filed himself and put his own name in.

CHAIRMAN: Thank you. Is there any delegate who wishes to speak for the first time? Delegate Chung.

DELEGATE CHUNG: Thank you, Mr. Chairman. Without going through all the flowery words, I think Delegate Odanaka has an excellent concept and therefore I'm supporting her idea. Originally I was against this, but I see the goal of this proposal is to improve the candidacy for the kind of candidates we would, hopefully, have in the future, and this measure is one of the ways of--or the objective for reaching it. I am not saying that it's the only way. There are many other ways, as you've heard this morning. One of the most pressing problems facing politics locally and nationally is the growing deterioration of confidence in politics, the erosion of this confidence, the alienation, and this is why we're here about initiative, referendum and recall, and all of these other ideas--so that fundamentally we can hopefully restore, at some time in the future, the public's faith and confidence in government. This is what we ultimately want to reach. It may not take 5, 10 or 20 years, perhaps it may take longer. However, if this is one of the ways that might help reach it, I'm all in favor of it.

CHAIRMAN: Thank you, Delegate Chung. The Chair recognizes Delegate Takitani.

DELEGATE TAKITANI: Mr. Chairman, I rise to speak in favor of this amendment. I've heard several times already that the "None of the Above" idea encourages a negative attitude. If you check the records of voter registration and turnout, the negative attitude is already there in the people. This is definitely a positive change, it's an attempt to make voters' attitudes more positive, to make this a representative democracy. We don't live in a democracy, we live in a representative democracy--we're trying to make it work. My only reservation with this thing is that it doesn't allow the "None of the Above" vote to win the race.

CHAIRMAN: Thank you, Delegate Takitani. The Chair asks for the last time if there are any speakers who wish to speak for the first time, and subsequent to that I will recognize both Delegate Takehara and Delegate Shon. But the Chair now recognizes Delegate Blean.

DELEGATE BLEAN: Mr. Chairman, I rise to speak in favor of the amendment. I also feel that it is a very constructive step and not a negative one. If a voter stays home from the polls and doesn't vote on other issues or other candidates out of dissatisfaction with one candidate, that is a negative step. But to go to the polls and exercise his right as a citizen and vote, but to be able to express it if he doesn't like the caliber of candidates--that is constructive.

I think frustration is destructive. If you feel you have no way to convey to the candidates or the political parties or the powers that be that they are putting up a slate of candidates who are unqualified or unacceptable to you, and you have no way to express that, that is destructive. But to be able to express that is a constructive step.

And third, for a person to go and look at a slate of candidates and say--well, this guy is the lesser of 2 evils, or 8 evils, or 29 evils--however many delegates some of the people ran against--that is a destructive thing, to vote on that basis--he's not very good but all the other ones are worse. But to be able to say--I don't like any of them, let's get some new people next time around--and to be able to put your X and stamp of approval on that philosophy, I think that is constructive and I think that this is a very good step in voter reform.

CHAIRMAN: Thank you, Delegate Blean.

DELEGATE STERLING: Mr. Chairman, I rise on a point of personal privilege.

CHAIRMAN: State your point, Delegate Sterling.

DELEGATE STERLING: I notice that in all the arguments the masculine gender has been used, and this is wrong--"he's a no-good guy," "he's a no-good fellow," "he should be out." That's bad.

CHAIRMAN: Your distress on this is accepted and so registered.

DELEGATE HALE: Personal privilege also. Yes, I'm distressed too, but maybe it registers as Freudian thinking.

CHAIRMAN: Thank you, Delegate Hale. Your distress is noted. Any other delegate for the first time? If not, Delegate Takehara is recognized for the second time.

DELEGATE TAKEHARA: Mr. Chairman and fellow delegates, I rise again to speak against the amendment regarding the addition of the "None of the Above" choice to election ballots. My summary of objections are as follows: This alternative will not solve any problems inherent in the present system. All it will do is show the number of voters not favoring or undecided about the candidates, and these data are already available through statistical analyses of voting percentages. Furthermore, the "None of the Above" option may prove to be an easy way out for voters who are not willing to take the time to make a valid choice. Are we asking the electorate to come to vote merely to express, "I don't like any of these candidates"? Or do we want them to seriously weigh the strengths and weaknesses of those running and to take a stand. What we should be doing is fostering an educated electorate, providing incentive for voters to make these decisions.

This "None of the Above" issue seems to me to be a very negative means for voicing dissatisfaction over a situation which could be promoted positively. Rather than a statement negating any choice, an educated electorate and an elite slate of candidates should be the ultimate goals toward which we are striving. For these reasons, I strongly speak against the aforementioned amendment and urge that you vote against it.

CHAIRMAN: Thank you, Delegate Takehara. The Chair recognizes Delegate Shon.

DELEGATE SHON: Thank you. I'm speaking against, again. I think that we live in a very complex society, that there are many, many factors which bear on the alienation, the frustration of our citizens. But I would hate to take the stand at the Constitutional Convention that we put in our Constitution to put on every ballot the option that we need not look at the sources of that alienation, that we need not look toward the solving of problems. I think there is an incorrect allusion here, that somehow by putting in "None of the Above" we are going to reduce the alienation, reduce the frustration; but I submit to you that as the--perhaps average--citizen looks at inflation he thinks, "None of the Above." When he goes to the grocery market, "None of the Above." When he spends hours each morning in traffic, "None of the Above." When he purchases a new car and it doesn't work, "None of the Above"--

DELEGATE PENEBACKER: Mr. Chairman, point of order.

CHAIRMAN: Delegate Penebacker, state your point.

DELEGATE PENEBACKER: I don't think the speaker is addressing himself to the problem before us. He's getting off onto something that's not even relevant to the issue here.

CHAIRMAN: The Chair will rule that your concern is valid on the base of it; however, it's difficult to determine and I think that the speaker--if he would continue, perhaps he will bring this together as he wraps up his argument.

DELEGATE SHON: Yes, Mr. Chairman. Several of the delegates who spoke earlier referred to the relationship of alienation and frustration to the therapeutic effect of having "None of the Above" on the ballot, and I'm speaking to that concern. I do not believe that it is necessarily healthy that we take the attitude that because the general electorate is feeling frustrated and alienated, that we should institutionalize and reaffirm the notion that--well, if you can express this, then that's okay, that you need not work as hard as you can

for a particular candidate or particular solution, that instead you can vote "None of the Above." Now I feel very strongly about this. I don't think this amendment is frivolous but I think it's a very important thing for us to seriously consider, because it is the direction in which we are going in relation to technology, to many, many things in our society.

I hope that you will vote, not for therapy in a kind of abstract sense but for responsibility, not for reaffirmation of frustration but for recommitment to work for the improvement of our community. Passivity, the lack of willingness to look at the complexity of society, is something that faces each and every one of us. We turn on the TV and we oversimplify, and I also ask you to look once again at the practical implications of this in terms of electoral politics. One of the basic tenets for an incumbent to win is divide and conquer--as many people as you can have running to divide the frustrated vote, those who will go to the polls--that leaves an advantage to the front-runner. And not only are we saying divide and conquer with many, many candidates who may come forth, we're also saying we're going to add another category to divide the frustrated, alienated vote that is not satisfied--you can vote "None of the Above" instead of for an alternative.

So once again I urge, with all due respect to this creative proposal, that this is not the kind of direction we want to move our electoral process in.

CHAIRMAN: Thank you, Delegate Shon. The Chair recognizes--

DELEGATE ALCON: Point of inquiry, Mr. Chairman.

CHAIRMAN: State your point of inquiry, Delegate Alcon.

DELEGATE ALCON: Thank you very much, Mr. Chairman. We have to take the amended Constitution to the voters. Will "None of the Above" also be included?

CHAIRMAN: The answer to that, I believe, was given earlier that it will not be available this time around since it does not take effect until after the election. Delegate Ching is recognized.

DELEGATE DONALD CHING: I have possibly two inquiries. I think that the answer is apparent on the face of it, but the language is not all that clear. Is it possible in a multi-member race--say you're allowed to vote for four, can you vote for two or three and then plunk in "None of the Above"? And if you're allowed to do that, what happens to your ballot?

CHAIRMAN: The Chair will direct that question to the movant.

DELEGATE ODANAKA: Yes, in multimember districts I would suggest that this could be--

CHAIRMAN: The question, Delegate Odanaka, is whether if there are four to be elected, for example, and two are voted for, if the voter also votes in the square "None of the Above," does that void the ballot?

DELEGATE ODANAKA: No, it wouldn't. I would suggest that we put "No Others Are Acceptable" in the case of a multimember district.

CHAIRMAN: In the case of a multimember district, Delegate Ching, the answer was that the two would stand and that "No Others Are Acceptable" should be the language used. I'm not sure if that answers your question--

DELEGATE DONALD CHING: Mr. Chairman, I raise a further inquiry. What would happen if this were passed and people in a multimember race voted for one candidate and then plugged in "None of the Above"--and again I'm very concerned about the number of spoiled ballots that may come about as a result of that. Supposing we get a ruling saying that if you vote "None of the Above," you're not allowed to vote for any candidates at all. I think this is a real problem.

CHAIRMAN: Is there any delegate who wishes to answer that question? Delegate Takitani.

DELEGATE TAKITANI: It is my understanding that when you vote "None of the Above," you vote only "None of the Above"; and if you do vote for any candidates in a multimember race, you cannot vote "None of the Above."

DELEGATE DONALD CHING: Mr. Chairman, may I inquire of that speaker--where in the amendment does it say that?

CHAIRMAN: Delegate Takitani, would you--

DELEGATE TAKITANI: Apparently it doesn't.

CHAIRMAN: The answer is that it doesn't, that it does not specifically say that. Delegate Wurdeman is recognized. Are you rising to some point?

DELEGATE WURDEMAN: Yes, I notice in the amendment that--

CHAIRMAN: What is your point?

DELEGATE WURDEMAN: "Only votes cast for the named candidates"--

CHAIRMAN: Are you providing information or answering the question?

DELEGATE WURDEMAN: I am providing additional information. It says: "Only votes cast for the named candidates shall be counted in determining nomination or election...." So if that one person was voted, he would get the vote and that would leave the other three boxes open.

CHAIRMAN: Thank you.

DELEGATE HALE: Point of information.

CHAIRMAN: State your point, Delegate Hale.

DELEGATE HALE: Could I ask the movant--is this the wording in the Nevada law?

CHAIRMAN: If the question is understood by the movant, would you care to respond to that? Whether this is the wording--

DELEGATE HALE: Is this the exact wording taken from Nevada?

DELEGATE ODANAKA: No, it isn't. In the Nevada ballot it is worded "None of these Candidates."

CHAIRMAN: So the answer is that the wording is slightly different. Does that answer your question?

DELEGATE HALE: May I call for an administrative recess?

CHAIRMAN: The Chair calls a short recess.

At 12:23 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 12:24 p.m.

CHAIRMAN: The Committee of the Whole will come to order. The Chair recognizes Delegate Hale.

DELEGATE HALE: I would like to move to amend this amendment by striking "None of the Above" and putting in "None of these Candidates."

CHAIRMAN: Delegate Hale, the Chair did not hear your motion. Please state that again?

DELEGATE HALE: Yes, I move that we strike the words "None of the Above" where it appears in this amendment and insert "None of these Candidates."

DELEGATE VILLAVERDE: I second it.

CHAIRMAN: It has been moved and seconded that instead of the words "None of the

Above" in the amendment, it will now read "None of these Candidates." So the wording will now be, according to this amendment to the amendment, instead of "None of the Above," it will now read "None of these Candidates." Delegate Hale, you may speak first, unless there is a point of information.

DELEGATE DONALD CHING: Yes, there is a point of information.

CHAIRMAN: State your point.

DELEGATE DONALD CHING: Maybe if the movant would explain to me in her discussion on the amendment--how would this affect my prior question, where a voter voted for one candidate and also voted, computerwise now, voted for "None of these Candidates"?

CHAIRMAN: Thank you, Delegate Ching. Delegate Hale, perhaps in your discussion you can treat that, since I understand that's the reason for your motion.

DELEGATE GOODENOW: Mr. Chairman.

CHAIRMAN: Is this a point of inquiry?

DELEGATE GOODENOW: Yes, point of inquiry.

CHAIRMAN: Please state your point.

DELEGATE GOODENOW: Yes, I would like the movant please to explain how "None of these Candidates"--how that will be different from just a blank space, when it seems obvious that if you don't mark them that the amendment might not be necessary.

DELEGATE HALE: If I may speak to my amendment--

DELEGATE TAKEHARA: Point of inquiry. Could we have Delegate Ching's question answered?

DELEGATE CROZIER: Mr. Chairman, I think I can answer that.

CHAIRMAN: Delegate Takehara, your point of inquiry of asking that Delegate Ching's question be answered--the Chair earlier suggested that the movant, since she is about to speak to her amendment to the amendment, would probably explain the purpose of it and in that case may answer the question. If so, fine; if not, the delegate can so restate it. Delegate Crozier.

DELEGATE CROZIER: No, sir, I'll wait until he reasks the question.

CHAIRMAN: Thank you. Delegate Hale, proceed.

DELEGATE HALE: Mr. Chairman, the reason I am substituting the words "None of these Candidates" is because this is the way the Nevada law reads. Evidently the movant changed the wording in the committee at the suggestion of a delegate who is not here, but since that delegate is not here to answer why "None of the Above" seems to be better than "None of these Candidates," it seems to me that we should vote on "None of these Candidates" because that is what we're basing our decision on--the information that was given to us by the state of Nevada.

It would be my assumption, in answer to Delegate Ching, that if you voted for "None of these Candidates," you could not vote for any other candidate. Anyhow, I'm offering this so we don't get confused about what we're voting for. We're voting for a system that has been tried in Nevada, and I think it's really astounding when you can see that in one election race 47.3 percent of the people voted "None." What we are doing is, we're giving the electorate a chance to not stay away from the polls, a chance to actively--

CHAIRMAN: Delegate Hale, may I interrupt--in that your remarks at this point are addressing the main purpose--

DELEGATE HALE: They're addressing "None of these Candidates."

CHAIRMAN: Well, I was going to suggest to you that the relevant discussion is why

you are substituting "None of these Candidates" for "None of the Above," and I think you've already explained that.

DELEGATE HALE: Because we're being very specific. We are telling the candidates that none of them are our choice or we feel are qualified or capable or the kind of people that we would like to have represent us. And I think nobody will misunderstand with the words "None of these Candidates." They may misunderstand "None of the Above," although "None of the Above" is a little easier to say and a little more, maybe, broader in its appeal. I think what we're really trying to give the electorate is an opportunity to say, "You people who have put yourselves up for election, we don't like any of you. Next time please, political parties--or people who are interested in the political process--come forth with some people that we can consider." And this is all we're saying--

CHAIRMAN: Delegate Hale, you are now speaking to the main motion--

DELEGATE HALE: I am speaking on "None of these Candidates."

CHAIRMAN: Well, the purpose of the debate now is whether or not to change it from "None of the Above" to "None of these Candidates," but your arguments are for changing it.

DELEGATE HALE: That's right. My arguments are that this makes it very clear--that we have taken the position that none of these particular names on the ballot are satisfactory. There's no question then as to what we really mean, and how that can be interpreted will be discussed further in my second speech on the whole thing.

CHAIRMAN: Thank you, Delegate Hale. Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, I raise my point of inquiry again. What happens to a ballot when in a multimember race the voter votes for one of the candidates and also votes for "None of the Above"?

DELEGATE HALE: I would assume that ballot would be no good, just as it would if a person voted for five senators when there were only four to be elected.

CHAIRMAN: That is the opinion of Delegate Hale, I believe.

DELEGATE DONALD CHING: Where in the amendment does it state that?

CHAIRMAN: Your question is, where in the amendment does it state that. Does anybody care to answer that?

DELEGATE CROZIER: Mr. Chairman.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: Yes, to answer the question--I would say that it "shall prescribe the method of voting at all elections"--that that statement could be used to clear that matter up.

CHAIRMAN: Are you talking about the language that already--

DELEGATE CROZIER: The existing language.

CHAIRMAN: I see. Thank you. Does that answer your question, Delegate Ching?

DELEGATE WURDEMAN: Point of clarification--

CHAIRMAN: Point of information, Delegate Wurdeman. And then Delegate Sutton will be recognized.

DELEGATE WURDEMAN: If you look at your ballot when you go to the polls, there's always an "Attention, Voter, Read Before You Vote," and I'm sure the State will put something in that area explaining "None of these Candidates."

DELEGATE SUTTON: Point of order.

CHAIRMAN: Your point of order is recognized, Delegate Sutton.

DELEGATE SUTTON: We already have an amendment to the amendment, so I think we should just speak to the merit or demerit of that motion, not to the involvement of the other words around it.

CHAIRMAN: Delegate Sutton, your point is well taken. The Chair recognizes Delegate Lacy.

DELEGATE LACY: Mr. Chairman, I move to rise and report to the Convention that we need more time to make a decision, and during the lunch period maybe we can have some discussion among those who would tighten a little bit of the language.

DELEGATE GOODENOW: I second the motion.

CHAIRMAN: It has been moved and seconded that the committee rise and report to the Convention that we have not completed our consideration of Committee Proposal No. 16, and that we need more time to proceed with our work. All those in favor raise your hand. Opposed? The motion is carried.

At 12:35 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Monday, September 11, 1978 • Afternoon Session

The Committee of the Whole was called to order at 1:12 p.m.

Delegate Kaapu presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The Chair recognizes Delegate Hale.

DELEGATE HALE: Mr. Chairman, I would like to withdraw my amendment to the amendment.

DELEGATE VILLAVERDE: I withdraw the second, too.

CHAIRMAN: If there are no objections, the amendment to the amendment will be withdrawn. Hearing none, so ordered. Let's go back--we're on the main motion which is Amendment No. 3 to amend Committee Proposal No. 16 by adding a new section relating to "None of the Above." We're back to the original language. Delegate Villaverde.

DELEGATE VILLAVERDE: Mr. Chairman, I want to speak again for the second time for this amendment on "None of the Above." I'm recapturing some of my notes here, because some of the arguments earlier in opposition sort of strengthen my position in that, as I have looked into some of the areas covered--the sign-waving area was mentioned. I feel also that ads don't tell us anything but the charisma of the individual, by his looks--if he has a mustache, if you like mustaches, you like him; if you don't like a mustache or long hair like mine, you wouldn't elect them either.

But I also feel that if their positions are known to the voting public, at least the public has a gauge in making its decision as to whether his position versus his good looks versus family pictures would be helpful for him to be elected. I also disagree that--and I like to believe that incumbents are strong--but I believe that this would also place the incumbents and the newcomers to elected office with the same advantage, in that the newcomer, if he positions himself, versus an incumbent who does not and with the period of time between primary and general and with the "None of the Above" option for the voters--the voters will in fact say that the candidates will have to work harder, campaigning on the basis of positions. And in spite of the idea that a newcomer may not have positions, I think there are enough positions to go around for the newcomer to pick from because he can nitpick the performance of the incumbent based on whether he was successful in his legislative tenure.

Also with our attitude that if your family attitudes are so, being that we have crooks in office--well, if he is strong about that particular attitude or his family is strong about that particular attitude, maybe this would give him an incentive to go into the polls and vote "None of the Above" or really dig into the positions of other candidates and say this one is much better than the other. But my concern here is also in the area of nonparticipatory democracy when the voters have this opportunity to vote and go to the polls to express their feelings. If you look at the handout you received and the pamphlet from the movant, I noticed that although this gives us the higher offices--the congressional and senatorial as well as the presidential elections--the trend does go down to the lower area--that is, the lower offices. I notice indications by the Nevada statistics that people have gone to the polls and voted one way or the other. And so in certain offices no one should be concerned that people will just be dropping their ballots into the box because of discontent; we have statistics here of people turning out to vote instead. And the percentages are lower for those that they desire in office and percentages are up high for those that they don't want to have in office.

I feel that this is a good indication that we can enhance voter apathy by giving them another choice and that choice is to make it known that they are not satisfied with certain candidates, or they are satisfied with certain candidates.

CHAIRMAN: Thank you, Delegate Villaverde. Delegate Odanaka.

DELEGATE ODANAKA: I would like to make a point of clarification. The previous speaker brought up the question--

CHAIRMAN: What is it that you wish to do? You want to ask a question?

DELEGATE ODANAKA: No, I wanted to make a clarification.

CHAIRMAN: That would not be in order at this point. Perhaps if the previous speaker raised a question, you could answer it.

DELEGATE ODANAKA: It was a question that was raised before the recess.

CHAIRMAN: Then it would be in order to include that when you speak last.

DELEGATE BLAKE: Point of privilege. I've heard a word used here very frequently--that all politicians are just about crooks. And I don't think--I'm not just referring to the last speaker--I've heard it a number of times. We should all be very careful how we use that word because I know many who don't even come close to it. I don't think this Convention, the delegates seated here, should be so free in using that word.

DELEGATE VILLAVERDE: Mr. Chairman, point of personal privilege.

DELEGATE BLAKE: I'm not just talking about the previous speaker. I've heard this from a number of speakers who used the adjective very frequently. I think it's wrong.

CHAIRMAN: Thank you, Delegate Blake.

DELEGATE HALE: Mr. Chairman, point of personal privilege.

CHAIRMAN: The Chair recognizes Delegate Villaverde. State your point.

DELEGATE VILLAVERDE: This is not to really freely use the word in description, but this is to bring out that these are concerns--the statements that have been made. It's not to be-- This is to be held in a particular concern.

CHAIRMAN: Thank you, Delegate Villaverde. Delegate Hale.

DELEGATE HALE: I consider myself a politician--

CHAIRMAN: What are you rising to, delegate?

DELEGATE HALE: Personal privilege.

DELEGATE TAKEHARA: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Takehara, you're recognized. State your point.

DELEGATE TAKEHARA: I had the understanding in the Committee of the Whole there would not be any points of personal privilege.

CHAIRMAN: Delegate, the point is not correct. Privilege can be raised when the air-conditioning is not working well or there's too much noise or a person feels aggrieved. The parliamentarian has checked on that and apparently it can be done. However, I would suggest to the delegates that personal privilege is bordering on being used to debate the issue. Delegate Hale.

DELEGATE HALE: Mr. Chairman, Delegate Blake felt aggrieved by references being made to politicians being crooks. I would just like to say that I consider myself a politician and do not feel aggrieved because I do not feel like a crook. My point is--if the shoe fits, wear it.

CHAIRMAN: Delegate Hale, that is out of order because you do not feel aggrieved, you do not have the point to raise. Delegate Pulham is recognized.

DELEGATE PULHAM: Mr. Chairman, could we get back to the issue--the amendment, the use of "None of the Above" on the ballot.

CHAIRMAN: Delegate Pulham, this is your first time to speak?

DELEGATE PULHAM: Yes, it is. This is my last time--you don't need to write it down, Mr. Chairman. I just want to say that I have gone over this language fairly carefully. It is plainly written; I don't have any problem understanding it, and I don't think it's going to give us any problem in voting or the computer any problem in counting, as it is written. Therefore, I would like to go on record as supporting this.

CHAIRMAN: Thank you, Delegate Pulham. Does anyone else wish to speak before I call on the movant to speak for the final time? Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, I speak in favor of the motion and the amendment that's on the floor. As a matter of fact, for candidates after the primary election it should be a great help. As you can see, in Nevada there were quite a few voters that voted "None." If you're really aspiring to office, you certainly can work in this area to collect more votes. I speak in favor of the amendment.

CHAIRMAN: Thank you, Delegate Blake. If there are no further--Delegate Barnes.

DELEGATE BARNES: Just very briefly, one point that I think was not mentioned. In the poll in our district--and I think this would probably be true statewide--over 70 percent of the people favored a blanket primary. This means that the people want more choices and I feel that, speaking in favor of the amendment, "None of the Above" does offer a way to focus their concerns more specifically. So I speak in favor of it.

CHAIRMAN: Delegate Ihara.

DELEGATE LES IHARA: Before we vote on it, I'd like to ask a question that Delegate Ching asked.

CHAIRMAN: Are you rising to a point of information?

DELEGATE LES IHARA: Yes. The--

DELEGATE CROZIER: Point of order. I answered that question sufficiently, sir.

DELEGATE LES IHARA: What was the answer?

CHAIRMAN: Delegate Ihara, if I may state the question that Delegate Ching asked, then you can tell me whether or not you feel this was answered--that whether or not if a person votes twice on a ballot that has "None of the Above," in which case they have voted for some of the candidates as well as "None of the Above," does that in fact render that ballot invalid for that section? The answer was yes. Does that answer your question?

DELEGATE LES IHARA: Yes.

CHAIRMAN: All right. There being no further speakers--Delegate Pulham.

DELEGATE PULHAM: I don't want to get into a long debate at this point, but that question did arise before we went to lunch, and I did go over this very carefully. The way it's written, it does not. I hate to disagree with whoever answered that, but when you say, "Only votes cast for the named candidates shall be counted..." that means the computer is going to count those pukas as one vote for that person and one vote for "None of the Above."

CHAIRMAN: Delegate Pulham, the Chair will repeat again--and correct me if I'm wrong--but the reference to only "named candidates shall be counted in determining" the outcome means that "None of the Above" votes simply are an indication of a feeling, whereas in the determination of who won the election, only those votes that are actually cast for candidates shall be used to determine that. In other words, if there are two candidates and "None of the Above" got more than both of them combined, you still would see which candidate of the two had more votes, and that one would win. That was brought up before and should be confirmed.

DELEGATE PULHAM: I think the answer to that question was that those votes wouldn't be counted, and that's not true. They will be counted.

CHAIRMAN: The answer given to Delegate Ching was, where people voted for "None of the Above" and they also voted for some candidates on the same ballot--which would be an invalidation of that portion of the ballot since they voted for "None of the Above" and also voted for one of the above--it would be a spoiled ballot as far as that was concerned. Is that your understanding?

DELEGATE PULHAM: It is not--

DELEGATE CROZIER: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, there are the words--and I repeat--"and shall prescribe the method of voting at all elections." Just that statement alone means that the lieutenant governor's office can go ahead and set up the computer to choose--if there are four people to be elected and the voter puts in the four punches and also punches "None of the Above"--that it would spoil the whole thing. So it's just a matter of mechanisms and it's covered by that statement there.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Sterling.

DELEGATE STERLING: This is the second time I'm speaking for this. I think the worksheet of the state of Nevada answers that--I think that the worksheet handed out answers these concerns.

CHAIRMAN: Thank you, Delegate Sterling. The Chair recognizes Delegate Villaverde. What point do you rise to?

DELEGATE VILLAVARDE: Inquiry--just a matter of clarification for me. Now, let's assume that here is a ballot and there are several offices with a whole bunch of names. Now if your ballot has "None of the Above" for a particular group of candidates and that ballot is spoiled for that particular group, would that ballot be spoiled for the rest of the candidates?

CHAIRMAN: Would the movant care to respond to that?

DELEGATE ODANAKA: I would like to make a clarification at this time--this is in regard to Delegate Ching's question that was raised earlier, too.

CHAIRMAN: Delegate, does this also relate to Delegate Villaverde's?

DELEGATE ODANAKA: I made a mistake when I answered Delegate Ching's. My intent is that "None of the Above" means none of the above; if it is used in a race with

several members, if the voter votes for "None of the Above," he can't vote for anyone else. I hope that by stating my intent--and if it is supported by this body--it will be interpreted that way. I would also stress that, as another delegate stated, this should be strongly stated in the instructions to the voters.

CHAIRMAN: Delegate, you are now no longer providing information, you're suggesting ways in which your proposal should be implemented. Delegate Villaverde did ask a further question and that was, if there were several categories of candidates and it was spoiled in one category, would that spoil the entire ballot?

DELEGATE ODANAKA: I checked this out with [Director of Elections] Morris Takushi, who said that you can do anything with the computer. My intent is now clear--that if the legislature did so decide, they could provide for any variation that they wanted to.

CHAIRMAN: Thank you, Delegate Odanaka. I think, though, that the question more or less answered itself.

DELEGATE SAKIMA: Mr. Chairman.

DELEGATE TAKEHARA: Point of inquiry.

CHAIRMAN: Delegate Sakima first, then Delegate Takehara.

DELEGATE SAKIMA: I've heard many things said, "according to law." Whenever you make laws, they're going to court and challenge the constitutionality. So let's make it clear here--or they're going to ask what do we mean.

CHAIRMAN: Delegate Takehara.

DELEGATE TAKEHARA: I have a question of the movant--a point of inquiry, to clarify my confusion. In other words now, if I put "None of the Above" for the five candidates running in the senatorial race, I'm not allowed to vote for any one of those?

CHAIRMAN: That's correct.

DELEGATE TAKEHARA: Then if I will press "None of the Above"--movant, does that mean that I'm objecting to all five of them?

DELEGATE ODANAKA: Yes.

CHAIRMAN: All right, is there any further discussion on this matter? Delegate Ching.

DELEGATE HAUNANI CHING: On Delegate Villaverde's question--I don't know if it's a point of inquiry, but I'm confused. If on the ballot you vote for house, senate, congress, governor, and I choose to vote "None of the Above" in the senate race but I vote for the house and vote "None of the Above" for governor--can I do that?

DELEGATE ODANAKA: Yes, you could.

CHAIRMAN: Delegate Uyehara.

DELEGATE UYEHARA: Mr. Chairman, I was trying to be very quiet because I wanted to keep my mind open for the delegate who made the amendment. But with all the confusion that has gone on, I rise to speak really against this amendment. I often wondered if "None of the Above" would affect Delegate Sterling, as his occupation is concerned with none of the above and he looked up and there is nobody above. And also, in my candidacy I always put my name and one of my strategies was to say, "Start from the bottom." And being last on the list all the time, I had a definite advantage. I'd like to keep that advantage.

CHAIRMAN: Thank you, Delegate Uyehara. Is there any delegate who wishes to speak? Delegate Ihara.

DELEGATE LES IHARA: Mr. Chairman, I'd like to just speak briefly against the

amendment. I speak against the amendment because I believe it creates an advantage for incumbents. I think the proposal that the committee came out with, the public financing of campaigns and spending limits, works toward an equalizing effect in campaigns. I think this could be a step backward.

I'm also concerned about having spoiled ballots. When you have multimember districts where you vote for--

CHAIRMAN: Hold it just a second, Delegate Ihara. I'd like to ask that courtesy be given to the delegate while he's speaking. Proceed.

DELEGATE LES IHARA: As I was saying, my second concern was the concern raised by Delegate Ching which is my concern, that there would be a lot of spoiled ballots, especially when you have multimember districts where you have eight candidates with four to be elected. Many citizens may vote for one or two and also vote for "None of the Above."

CHAIRMAN: Thank you, Delegate Ihara. Delegate Weatherwax is recognized.

DELEGATE WEATHERWAX: Mr. Chairman, just an aside for information. This matter was considered for vote twice within the committee, and in both instances it failed to reach consensus to pass the proposal. One of the other items--during the deliberations of the committee, one of the committee members stated that he would be more in favor of a write-in ballot, something of this nature, because it was much more constructive. If someone is frustrated enough and has taken the time to go and vote and feels that in fact there are none of the above he can vote for, then of course a handy pencil would so indicate it on the ballot.

CHAIRMAN: Thank you, Delegate Weatherwax. Is there any delegate who wishes to speak? Delegate Iwamoto.

DELEGATE IWAMOTO: Mr. Chairman, I rise to speak briefly against the amendment. I heard one of the previous speakers saying that this would enhance voter apathy. Indeed, I believe it would. I do not believe that a ballot should enhance voter apathy.

CHAIRMAN: Thank you, delegate. Is there any further discussion on this matter? Delegate Hale, are you rising to some point?

DELEGATE HALE: I rise to speak in favor of the amendment. A previous delegate said something about a handy pencil would do it. A handy pencil on a ballot today would void your ballot. That seemed to be the concern of another delegate who was speaking about spoiled ballots. I don't think it's going to accomplish the same purpose. "None of the Above" is a definite indication of frustration about the candidates for that particular office. You might very well go to the polls and decide that for governor or for mayor or for councilman you will vote, but for representatives in your district, or some other race, there were no candidates that satisfied your requirements, and in that particular race you would vote "None of the Above." It does not mean that a person is going to vote "None of the Above" on all the candidates; this would be for each particular office. If you happen to vote for a candidate for that office and you also voted "None of the Above," your ballot would be spoiled for that office.

I don't think we should confuse the issue. What we are talking about here is a new, constructive, creative idea to tackle the problem of voter apathy, which the committee on bill of rights is also tackling in the way of public financing, and which others on the committee were not able to get through as a proposal for an open primary election. But all of these things are necessary. No one is claiming that any one approach is going to solve the problem of voter apathy. But this is certainly a novel new idea, one that I think would capture the imagination of the voters and one that would kind of help to re-establish the credibility of this Convention in sponsoring new ideas and giving the electorate the chance to vote on it. If people in general don't like this idea, they will vote it down. All we're asking is to give the people a chance, to see whether they do think this is a good idea. I hope you will vote for it.

CHAIRMAN: Thank you, Delegate Hale. Is there any other delegate wishing to speak? If not, the Chair will call upon the movant to speak for the last time. Delegate Odanaka is recognized.

DELEGATE ODANAKA: I'd just like to go over some of the arguments that have been raised against this amendment. In regard to it being a negative idea, I really don't believe this or else I wouldn't have made the amendment in the first place. We can't deny that there are people out there with negative feelings. They deserve a voice too--perhaps not a majority voice, but a voice nevertheless. It's harmless, and it may bring people back with a valid and significant expression. That's a step in the right direction.

Also, it may bring about a positive change in the campaign process. No longer could a candidate benefit from simply attacking his opponent. If he does, voters will vote "None of the Above" and not for him.

Another thing that was brought up was that people who don't vote are saying the same thing. I've heard this argument before, and essentially it says that people can accurately express themselves by not voting. I find this kind of hard to believe. As I said, not voting and voting "None" are two different things; one expresses ignorance and apathy while the other makes their views more clearly known. As was stated in my chart, people who don't know, don't vote.

In regard to hurting newcomers, "None of the Above" is not used to turn elections around, as shown in my chart. It could encourage new candidates to run who see a weakness in the incumbent's support, as expressed by large numbers in the "None of the Above" vote. As one delegate has said in supporting this argument, about where the system--where so much money is necessary to become known in your district. I agree with him in that this is a problem in our system. But I would add that this problem is partly a result of the lack of district choices in any race. A candidate who hopes to take advantage of the dissatisfaction voters feel toward an incumbent simply by picking up votes against him will never win an election, because votes that are simply against the one incumbent will be randomly scattered among newcomers who oppose him.

I'd like to conclude by saying that this could be a statutory matter, like a lot of other issues, but I don't believe that the legislature will put this into action. I'd also like to say that I've already answered all the questions to the best of my ability, and I really believe in and support this amendment. I know that some of you have your doubts, and all I ask is for your careful consideration and vote as you feel is right. There are many issues before us today that are far more important than this. But if you feel as I do that this will be an improvement over what we now have, then I ask you to please support it on its merits.

DELEGATE VILLAVERDE: Mr. Chairman, request for a roll call, please.

DELEGATE TAKEHARA: Mr. Chairman, point of inquiry.

CHAIRMAN: State your point of inquiry, please.

DELEGATE TAKEHARA: I'm still confused on this, in the sense that this is an expression of frustration and voter apathy--

CHAIRMAN: Delegate Takehara, would you state it in the form of a question.

DELEGATE TAKEHARA: What I'd like to know is, being in the situation that we're in in the 4th senatorial district that I explained recently, as a point of expression of our frustration of those five outstanding candidates, would she consider an amendment to the amendment to put in "All of the Above"?

CHAIRMAN: The question is whether an amendment is being considered at this point?

DELEGATE ODANAKA: I don't think this matter is funny.

DELEGATE HALE: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Hale, state your point of order.

DELEGATE HALE: The point of order is that you said Delegate Odanaka was to be the last speaker before we vote. Now a roll-call vote has been called for.

CHAIRMAN: Okay, it's in order. Do I hear 10 seconds? The Chair counts 10 seconds. Mr. Clerk, please call the roll.

Roll call being in order, the motion to amend Committee Proposal No. 16 by Amendment No. 3 carried by a vote of 48 ayes, 47 noes and 7 excused; with Delegates Alcon, Barnes, Barr, Blake, Blean, Burgess, Cabral, Campbell, Laura Ching, Chong, Chun, Chung, Crozier, DiBianco, Eastvold, Ellis, Fernandes Salling, Fujimoto, Funakoshi, Goodenow, Hagino, Hale, Hanaike, Hoe, Hornick, Ikeda, Ishikawa, Kimball, Kono, Lacy, Rachel Lee, Liu, Marumoto, Miller, Nozaki, Odanaka, Ontai, O'Toole, Penebacker, Peterson, Pulham, Souki, Sterling, Takitani, Tam, Villaverde, Wurdeman and Chairman Kaapu voting aye; Delegates Andrews, Barnard, Calvin Ching, Donald Ching, Haunani Ching, Chu, de Costa, Dyer, Fukunaga, Fushikoshi, Harris, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hokama, Les Ihara, Teruo Ihara, Iwamoto, Izu, Kaito, Kojima, Ledward, Marion Lee, Lewis, McCall, Nakamura, Nishimoto, Okamura, Paty, Sakima, Sasaki, Shinno, Shon, Silva, Stegmaier, Stone, Taira, Takahashi, Takehara, Takemoto, Tamayori, Uyehara, Weatherwax, Yamashita and Yoshimura voting no; and Delegates Anae, Chang, De Soto, Hamilton, Dennis Ihara, Sutton and Waihee being excused.

CHAIRMAN: The amendment is approved--48 ayes, 47 noes.

DELEGATE VILLAVERDE: Mr. Chairman, I rise on a point of personal privilege.

CHAIRMAN: The Chair recognizes Delegate Villaverde on a point of personal privilege.

DELEGATE VILLAVERDE: I'd like to extend my congratulations for the delegate's persistence, effort and time that she put into this particular conviction. Congratulations.

CHAIRMAN: Take now Amendment No. 4, relating to general, special and primary elections.

DELEGATE ODANAKA: Point of personal privilege.

CHAIRMAN: Delegate Odanaka is recognized on a point of personal privilege.

DELEGATE ODANAKA: I'd like to thank all of you delegates for putting up with me, I know it was really difficult.

CHAIRMAN: Thank you, delegate. The Chair recognizes Delegate Miller to make a motion regarding her amendment.

DELEGATE MILLER: Mr. Chairman, I would like to speak first and last. This is a simple amendment. I would like to amend the proposal--

CHAIRMAN: Delegate Miller, may I interrupt you a second. The Chair will entertain from you a motion to approve. Do you so move?

DELEGATE MILLER: I surely do.

DELEGATE KIMBALL: Second.

CHAIRMAN: It is moved and seconded that Amendment No. 4 be approved. Delegate Miller, you have the floor.

DELEGATE MILLER: Mr. Chairman, I know the argument--

CHAIRMAN: Just a moment, Delegate Miller. Will the delegates please afford their courtesy to the delegate.

DELEGATE MILLER: I would like to amend the proposal to make the primary election precede the general election by at least 60 days. I know the argument has been advanced that the proposal to move it back from 30 to 45 days does not prevent the legislature from setting it back 6 months if they so desire. However, minimums have a funny way of becoming maximums, and the legislature can be very literal-minded at times. Throughout the years the legislature has repeatedly rejected any and all attempts to lengthen the general election campaign period, despite the clamor by election officials such as the county clerk, the lieutenant governor and most recently we heard from Mr. Takushi in connection with a cutoff on proposed amendments, and we heard what a struggle it was in the lieutenant governor's office for the general election.

The main reason that the legislature has repeatedly rejected moving the date back is simply because a very short general election campaign period favors incumbents. This is exactly the type of measure the Con Con should address itself to. Challengers to the incumbents have to involve themselves in long primary campaigns and then only have a few weeks to face the incumbent on the major issues. The candidates who face tough primary battles are hard-pressed--

CHAIRMAN: Delegate Miller, would you hold up a second. There still is such a strong undercurrent of conversation going on that the delegates are having a hard time hearing the speaker. The delegate should be extended every courtesy. Proceed, Delegate Miller.

DELEGATE MILLER: Thank you. The candidates who face tough primary battles are hard-pressed to switch gears from the primary to the general. After all, they wouldn't want to print up thousands of brochures for the general election without knowing if they would even make it. When they do win, they hardly have time to get out new materials before the election is over.

Now, let us look briefly at the national picture. Of the 50 states, Hawaii holds the fiftieth and last primary election in the nation. Even if the date does move back to 45 days for the general, Hawaii would still hold last place. Early September is also relatively late, considering when the other states hold their primaries, but at least it would give proper time to the election administrators to properly perform their functions and adequate time for a general election campaign so the voters would be properly informed on the basic issues. Please support this amendment.

CHAIRMAN: Thank you, Delegate Miller. Is there any other delegate who wishes to speak on this subject? Are we ready for the question? The question being to-- The Chair recognizes Delegate Weatherwax.

DELEGATE WEATHERWAX: I rise to speak against the amendment. Basically, again there's really no magic to 60 or 45 days. However, as a minimum, the committee recommended 45 days because of the relationship of the primary and general. They felt that 45 days in fact was the better of the two. There was consideration for 60 within the committee, and that length of time was felt to be too lengthy, that in fact both elections should come within the 45 days. This also satisfies the concerns of the lieutenant governor, and I believe that as a minimum it should remain at 45 days.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair recognizes Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, I rise to speak in favor of this amendment as it's one that I also introduced a proposal on. So I kind of like it. I recall that the legislature almost every year for at least 5 or 6 years, or 8 or so at least, has had this question in front of it and nothing has been done about it. Therefore, I think it gives good reason that we should set an absolute date. The points also that were made by Delegate Miller I would like to share.

It's very interesting. I remember when we had the big debate regarding the cut-off date, that the lieutenant governor's office was given much consideration because of the time span between the primary and general elections to get the ballots printed. And by having it 60 days before the general, I think we'd give them that adequate space with a little bit of leeway. So those are some of the reasons I would urge everybody to accept this amendment.

CHAIRMAN: Thank you, Delegate O'Toole. The Chair recognizes Delegate Kaito.

DELEGATE KAITO: Mr. Chairman, I rise to speak against this amendment to extend the time between the primary and the general elections. I believe the committee's proposal provides a good time span between the primary and the general elections. I believe that the present 30 days between elections places a severe hardship on newer candidates. However, I feel that 60 days would put another burden on the new candidate.

This new burden would be a substantial one. The new candidate would probably find it more difficult to finance the additional 15 days in a campaign than an incumbent or elected official. The new candidate is also more apt to take time off from work or other

endeavors to campaign during this period and he or she would more likely be placed in personal financial straits than an incumbent or a more established political figure.

So, although it has been argued that this additional time would be to the advantage of the newer candidate because he or she would be able to muster more support, I believe that this might serve to discourage new candidates from entering the race. I do not believe this amendment will serve to enhance our political process, and I fear that it will do a great deal more harm. I urge you to vote against this amendment.

CHAIRMAN: Thank you, Delegate Kaito. The Chair recognizes Delegate Kimball.

DELEGATE KIMBALL: I rise on a point of information.

CHAIRMAN: State your point.

DELEGATE KIMBALL: I'd like to know, if the committee proposal passes unamended by the present amendment before us, what would be the date of the 1980 primary election?

CHAIRMAN: Delegate Weatherwax, would you care to respond to that?

DELEGATE WEATHERWAX: I'm not able to answer that question. I think the lieutenant governor's office would probably set the date of the election in 1980 and then of course the minimum would come into play. That, hopefully, would be 45 days, so if we have an election on, say October 7, 1980, then it would be 45 days back off from there. I do not know the exact election date for 1980.

CHAIRMAN: Thank you, Delegate Weatherwax. Is your question answered, Delegate Kimball? The Chair recognizes Delegate Blean.

DELEGATE BLEAN: Mr. Chairman, I rise to speak in favor of this amendment. I would like to make three quick points. One, just the practicalities of election life, of which I am personally learning as I enter my first campaign--one being simply the time it takes to order brochures and bumper stickers and things like this. If you don't know if you're going to win your primary and you don't want to go out and spend that money gearing up for the general election, if you have 2 months it gives you far more time to make your orders and get the types of equipment and accoutrements needed to run an effective campaign. With this argument, I would say it would actually be cheaper for someone to enter politics as they wouldn't have to waste so much money up front.

The second point being I think that it would encourage newcomers to enter politics because they could make up for lack of exposure between the primary and the general election by meeting more people, by campaigning harder and by allowing the public more time to view the candidate. Especially if one party was going through a very heated primary battle and was getting most of the press coverage and attention and another candidate had a relatively easy primary battle, this 2 months would be needed for him to sort of get back into the electioneering process which we've established in this State.

The third point I would like to make is that I don't personally agree with the argument that a longer election period would make it more expensive for a newcomer. Personally I know that the least expensive ways to campaign are by doorbelling, sign-waving, walking your neighborhoods, walking the businesses and meeting people. This makes up for the lack of thousands and thousands of dollars you would need on media, mailers and the more expensive methods by which one campaigns. Therefore, if one is going to campaign on a grass-roots, sort of down-home, one-to-one basis, this extra time would be far more important for the less well financed, less known candidate if he is going to win the election.

CHAIRMAN: Thank you, Delegate Blean. The Chair recognizes Delegate Silva.

DELEGATE SILVA: Mr. Chairman, I speak against the amendment. I don't think the argument used as to the number of days, primary or general election--I think anybody running for office should go with the intent of winning the general, not the primary. We should also note that from August 7 till November 7, there's only 90 days in there if you'd like to campaign for the general election. But if you're talking about grass roots, you could start a whole year before the election year. You don't have to wait for the 45 or 60 days, or whatever; you can start your campaign right away. So I speak against the amendment, and I think 45 days is sufficient.

CHAIRMAN: Thank you, Delegate Silva. Delegate Villaverde.

DELEGATE VILLAVERDE: The delegate from the Big Island took the words right out of my mouth. Campaigning during this additional 15 days between the primary and the general--with this amendment, which I speak against--60 days may help but in most cases will not help. I've had the fortunate experience of having campaigned twice on my own behalf, and I find that for aspiring candidates who are running, it's very true that you don't campaign from the time of filing; you campaign from the time that you think you're going to be a candidate. I've learned this from the incumbents. You campaign from the year before, or 2 years before, not the last 15 days that make up the 60.

CHAIRMAN: Thank you, Delegate Villaverde. If there are no other delegates wishing to speak, I'll recognize Delegate Miller to speak for the last time.

DELEGATE MILLER: Final remarks on the proposed amendment--let me review the basic reasons, again, behind this amendment. Even with 45 days, we would still have the last primary in the nation. Election officials need more time to prepare new ballots and other materials for the general election--the realities of this thing. Some of us are candidates, some of us have worked hard on other people's campaigns, some of us have worked as election officials, and the reality of the thing is that 1 month between the primary and the general is not enough time to get everything in order for all hands. Election officials withdraw from the polls and so on, and new people have to be found--training, retraining and so on. The public needs more time to hear and consider the general election campaign issues.

We've heard that younger, newer campaigners have a chance to really get the issues before the constituents, and incumbents are in good shape on that matter anyway. It gives more time for the challengers to make themselves known all over. In general, it would improve the electoral process in this State if this amendment were to succeed. Please support this amendment.

CHAIRMAN: Thank you, Delegate Miller. The question before us is Amendment No. 4 to Committee Proposal No. 16, to change the period from 45 days as proposed to 60 days. All those in favor of the amendment, raise your hand. All against? The noes have it, the amendment fails.

DELEGATE SAKIMA: Mr. Chairman.

CHAIRMAN: Delegate Sakima.

DELEGATE SAKIMA: I don't want to dig up the grave, but can we ask the clerk to give us the count on the last vote. Not this one, but the previous one. I have a vote of 48 noes. I was just wondering.

CHAIRMAN: Mr. Clerk, would you please give us the count on the previous vote.

CLERK: The count on the roll call, Mr. Chairman, as I reconfirmed it, was 48 ayes, 47 noes and 7 excused.

CHAIRMAN: My suggestion is that perhaps a review could be made during a recess to see if your record is correct, Delegate Sakima.

DELEGATE MILLER: Mr. Chairman, may we know the count in this last vote?

CHAIRMAN: Delegate Miller, are you talking about the vote on your amendment? Mr. Clerk, do you have a count on the last one?

CLERK: Yes, Mr. Chairman. The tally was 31 ayes and 47 noes.

CHAIRMAN: We now take up Amendment No. 5 regarding registration, voting, by Delegate Campbell. Delegate Campbell, you are recognized.

DELEGATE CAMPBELL: Mr. Chairman, I move for adoption of this amendment.

DELEGATE ALCON: Second.

CHAIRMAN: It is moved and seconded that Amendment No. 5 be adopted. Discussion? Delegate Campbell, you have the floor.

DELEGATE CAMPBELL: Mr. Chairman, I rise in support of this amendment. It is a well-known fact that a large percentage of the electorate in Hawaii continues to stay away from the polls because of discontent over the closed primary system. Many people feel that this is an invasion of their privacy, that it is repugnant to our democratic process. As a result, they simply refuse to go to the polls and divulge their party affiliation, or some voters are simply switching sides. Recently, 5,300 Republicans switched to the Democratic party to be able to vote as Democrats in the forthcoming primary election.

As delegates, I believe that we have a responsibility to assure that every opportunity be given to our citizens to exercise their franchise so that they can play an important role in shaping the future of our State. One means of doing this is to establish a blanket primary, which this amendment accomplishes. It provides that all candidates be listed together on one ballot irrespective of party affiliation, and that voters may vote for any candidate for office regardless of the political party of that candidate.

What is also very important to note is that the voter would not be required to divulge his or her party preference. I invite your attention to Minority Report No. 13, dated September 9, which has attached to it several forms of ballots, one of which states on the right-hand side: "This is a sample of the format for a blanket primary election ballot." This will give you a pictorial designation of exactly how such a ballot would appear in a blanket primary.

The blanket primary, fellow delegates, differs from an open primary in that the ballot in an open primary is a divided one; it has two or more columns, each column containing the names of the candidates from a party. The voter in this case can vote in whichever column he chooses, but he must stay within the confines of that particular column. He may not cross over. A frequent argument given in opposition to the open primary is that it is susceptible to "raiding," and this means that members of an opposing party vote for the weaker candidate in the primary so that in the general election he would be pitted against a stronger candidate who presumably would then win. Assuming arguendo that this is correct, this same argument is not applicable in a blanket primary because, in the latter case if a group voted in a block for the so-called weaker candidate, their own candidate would lose in the primary. Further, I'm not at all convinced that you could actually get a large number of Hawaiian people to vote for a weaker candidate.

Contrary to what has been said by a number of delegates, I do not believe the establishment of a blanket open primary system in Hawaii is likely to hurt our two-party system--because in our State anyone can run either as a Democrat or a Republican with no restrictions placed upon the candidate by the parties as such. What is more, the parties do not make any endorsements in the primary. It is only in the general election that the parties give approval to those who have won in the primary. What we have here in Hawaii--and this is well known to all of us--is political factions which are oftentimes stronger than the party, and there are certain factions which draw support across party lines. Some examples of individuals of that description are former Senator Hiram Fong, the late Governor Burns and Mayor Blaisdell.

How can the parties be hurt by the establishment of a blanket primary, when the parties are so far removed from the primary election process? Only if we had parties truly active in the primary, designating their choices and adhering to them, both in the primary and the general election, could this be said. We should also be mindful of the fact that the closed primary has not in fact encouraged participation in the elective process. I think this is extremely significant because, on the contrary, it has had the opposite effect historically. As I said earlier, more and more people are staying away from the polls; therefore, it has not strengthened the two-party system in Hawaii. I urge my fellow delegates to enhance voter participation in the elective process by voting for this amendment.

CHAIRMAN: Thank you, Delegate Campbell. Is there further discussion? If not, the Chair will call--Delegate O'Toole.

DELEGATE O'TOOLE: I think I'd like to stand up in support. In going door to door, I think one of the most common expressions that I got from people was the fact that we should try and go for an open primary because they didn't like the idea of designating a party preference. Especially they didn't like the idea of going into a voting location and not

being able to choose one ballot or the other; or going to the voting location and being told that you might be a Democrat instead of a Republican. I've known of situations where individuals went to the voting location and were refused a ballot even though they were registered from one party--and they've said that they're not.

In other words there's a lot of confusion, and when you get to that voting location and for some reason or other they've got you listed in the opposite party--especially if you want to vote for certain individuals who are not in the party whose ballot you are being given--you're going to run into some serious problems. At least by establishing the open primary, where you can pick the ballot that you want or pick up one ballot that you can either vote on one side or the other--in other words, one party or the other--you can eliminate a lot of problems that you have with the closed primary. For those reasons I would like to express my support for this amendment.

CHAIRMAN: Thank you, Delegate O'Toole. Delegate Weatherwax.

DELEGATE WEATHERWAX: I rise to speak against this amendment primarily for the reason that I believe--first of all, the statement with reference to individuals staying away from the polls as being due to the closed primary has no statistical basis. In other words, there was no statistical information that supported this in the committee at the time of deliberation. I think there may be other factors which cause the voters to stay away; and limiting that by changing the closed primary system would not foster party participation, which we believe is an important part of the political process.

Despite the fact that at the present time it seems there is a general consensus that we have only a one-party system--I have to admit that the Republican party presently is not a major strength--however, to go to a blanket primary as this permits may in fact annihilate the Republican party. I know there is a delegate from Maui who would agree that that would be the best thing to happen. However, I do not believe that that should be the case. I think that remaining with the closed primary would force an individual to be up front about the fact that he is a party member and that he should participate in that process. That process has worked in our nation and I think, on a personal basis, I myself was never involved in any sort of political affiliation until approximately 1975, and I found the party process to be an open one. All it takes is for an individual to make that choice to participate. I think he can make that avenue work.

Sometimes we look for easy remedies or placebos, or things that would change things. I don't think that changing to the open primary or the blanket primary will necessarily solve the problem at hand. There is another consideration with the blanket primary, which is the consideration about the general election and whether or not, in fact, the two highest vote-getters would automatically go to the general election or perhaps this would be an outright election which would in fact make the primary election the general election.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair will recognize Delegate Barnes.

DELEGATE BARNES: Mr. Chairman, I'd like to speak very strongly in favor of this amendment. Once again, I participated actively in the conducting of a poll in our district and over 70 percent of the people--as you would poll them you would merely begin to explain what the blanket primary is and they would say yes. Whereas even on the other major issues or reforms or changes that we've considered so far, there would be a lot of doubt--like on home rule, you would have to try to explain to them what home rule meant before they could tell you what their opinion was. On this issue there was never any question.

This is by far the first major change that we've considered in this Con Con to date, that has more support among the voters out there than any other issue. If this is voted down, I assure you it's the first step toward serious disillusionment. I strongly urge you to vote for this amendment.

CHAIRMAN: Thank you, Delegate Barnes. The Chair recognizes Delegate Hale, who hasn't spoken yet.

DELEGATE O'TOOLE: Mr. Chairman, I just have a point of information.

CHAIRMAN: State your point of information, delegate.

DELEGATE O'TOOLE: The remarks that I made--I had not realized--I think I was looking at the wrong amendment. I was looking at the one following, Amendment No. 6, which relates to an open primary and that's what my remarks were based on and not on the one here that we're talking about regarding the blanket primary. So I'd like to have the record state that.

CHAIRMAN: The record does now contain your statement of what you were speaking on, which is a matter somewhat different from that under consideration. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I would like to speak for this amendment. I'd like to call your attention to the chart that is attached to the minority report and explain because it really doesn't tell. The solid line is the vote in the general election; the dotted line is the vote in the primary election. I think, in answer to the delegate who opposed this amendment, the statistics do definitely show that people do not vote in a primary election in the proportion that they vote in the general election, and even the general election is not what it should be in terms of registered voters or potential registered voters.

But I'd like to follow this chart with you a little bit and just show you what happens. The first big upsurge, from '50 to '58, we had what is known as an open, sort of blanket, primary--that's the first picture here showing how we used to segregate according to parties, but there was no line down the center so you could jump on both sides. And it wasn't until 1968 that that changed. Now in 1959 there was an upsurge because this was the year we got statehood, and I think that is the rationale for that particular election, and because that was the first election in which we elected our governor.

I'd like to point to 1962, which was another gubernatorial election, the reason, I feel, for the upsurge then in the primary--which was a primary fight on the Republican side, when the Republicans had a party. This was when Kealoha ran against Quinn. In '64 the closed primary as we know it today came into effect; in that election, people had to go and ask for a ballot for a particular party, and you can see the drop in the primary election in that year. And the upsurges have been basically where there was a gubernatorial election. After '64 the gap between the primary and the general has grown larger. Now in times like '78 where we're going to have another primary fight like we did in '74, you can see there that there was a drop in the general election because the real fight was in the primary in the governor's race.

The point is that even there there was a difference of 8 or 9 percentage points between the people who voted in the primary and the people who voted in the general. And probably a lot of people didn't vote in the general because their candidate lost in the primary. But I too would like to testify that the people I contacted in my district--and I did campaign on issues and I campaigned on the idea of the open or the blanket primary (for that matter I could live with either one of them)--but I feel that the people would prefer the blanket primary. The reason I say that is that historically I have lived and voted since the days of the open primary, and I know the resistance that people had even in the secrecy of the poll booth when they could not cross the line. I think that somehow, mistakenly or not, people are not convinced that political parties are inherently necessarily the thing they would like to strengthen in the governmental process. They have a tendency to vote for people rather than a party.

The closed primary has not strengthened the political party system in this State; it has made us, again, a one-party system. This is not healthy, and we should get back to a system where people would participate and people would be interested in politics and people would come out and vote in the primary--where, in the case of this election, I think most people would agree that the next governor is going to be elected in this primary election. The importance of this has not gotten over to many, many of our people--maybe it's a lack of the educational process--but whatever, we have to give people what they want if we are to have a representative government. I feel they want a chance to vote for the candidate they feel is the best. Therefore, I strongly support this amendment and hope that you would give it consideration.

CHAIRMAN: Thank you, delegate. The Chair recognizes Delegate Lee.

DELEGATE RACHEL LEE: I have submitted an amendment following Delegate Campbell's; however, I cannot refrain from helping and supporting this amendment. I

represent the people of the Wahiawa district; my district is considered or referred to as a "bedroom community" because many of the residents are federal civil service workers either at Pearl Harbor or Schofield Barracks. These people, these voters, object to the closed primary as it serves no good purpose, since they are prohibited by the Hatch Act from joining or participating in any political activities. These people therefore prefer to vote for the candidates' qualifications rather than party affiliation.

It is therefore only right that we do not discriminate against these citizens by denying them their right to vote according to their preference. I therefore strongly urge the delegates to vote in favor of a blanket open primary.

CHAIRMAN: Thank you, Delegate Lee. The Chair recognizes Delegate Blake.

DELEGATE BLAKE: Thank you, Mr. Chairman. I speak in behalf of the amendment that's on the floor. I've had the opportunity to experience the blanket open primary. One of the questions raised was that the two top vote-getters would be elected. That's not true; you have to obtain something like 75 percent of the total vote to be elected outright.

I remember, too, when the closed primary was first discussed. As a matter of fact, I sat down with many Democrats when they talked about this thing here, and I believe the Democrats at that time did accomplish their purpose. I've watched the polls. When it first started, you walked to the poll and declared what ballot you wanted. Later on you had to sign up on one side or the other. The nice thing about the blanket primary is you have candidates running on both sides of the fence who are good; and I think you're taking away the privilege of the voters when you say you can only vote one side of the fence. I don't think this is right. In selecting candidates, I think we should be able to look over the entire slate and pick the ones we want.

As for the massive members supposedly in the Democratic party, I don't believe this either. I don't think there's 14,000 Democrats carrying cards and saying they belong to a party. And likewise for the Republicans--down to about 10,000. All the rest of the people are over on that side of the fence because that's where the action is. But the majority of the people voting on that side who claim to be Democrats are independent. And the only reason they're voting there is because they feel that's where the action is and that's where they want to vote. I still contend, for the good of the people of Hawaii, there should be a blanket open primary, and give everybody a free chance to vote the way they please. I urge everyone to vote for the amendment.

CHAIRMAN: Thank you, Delegate Blake. Delegate Souki, do you wish to speak?

DELEGATE SOUKI: Mr. Chairman, I wish to speak against the amendment. I seem to be a prude--everyone seems to be speaking for it. However, I wish to give my arguments. One, I believe it will, as was mentioned by a previous delegate, weaken the two-party system. I think if anything, we need to strengthen the two-party system. Also I think it would be inconsistent with the general election. The fact is that this is a State that is partisan, and if you're going to have a nonpartisan primary, then possibly we should have a nonpartisan house and senate--you should go all the way. The whole State should be nonpartisan. This would be inconsistent with the philosophy of the State.

Also, I'd like to mention that I am very proud to be a card-bearing member, and I would like to see the parties--the respective parties, not just one but two or three--become strengthened. We need a good strong two-party system. And without safeguards to provide for such, we're going to end up in a one-party system--as this will do.

CHAIRMAN: Thank you, Delegate Souki. The Chair recognizes Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I'd like to--for you, Mr. Chairman, and for any of those delegates dozing in the room--I'd like to speak for this amendment. Before I get into my argument, since they brought this minority report out as evidence, I'd just like to show that Clarence (Fat) Crozier, who came from Maui, at one time made it to the house as a nonpartisan. Later on he became a card-carrying Democrat. So you nonpartisans, don't give up.

Mr. Chairman, I am a strong believer in the two-party or multiparty system. I believe that members of a party should believe in the philosophy and the platforms of that

party and should not be there just for convenience, as a lot of people are today. I dare say that some of the people running for office from this Convention--there may be a few of them--are running on the Democratic ticket out of convenience. They probably don't know where the Democratic party's center is.

Mr. Chairman, let's use this Con Con as a good example. We were elected in a form of blanket election; the people elected us on our individual qualifications and not what party we represented. But once we got here we broke up into different groups, and these groups were developed based on philosophy or basic type of platform. Mr. Chairman, that is what happens when you have a blanket primary. People have a choice in electing individuals. Once those individuals get there, they group up together. And they really believe in the causes they are after. But what's happening today is a lot of guys jump on the bandwagon and they're just a detriment to the Democratic or Republican party.

I speak for this amendment, just in that it will eliminate the hangers-on in the majority or minority party, and in that way the leadership won't have to cater to these pseudo-majority members.

CHAIRMAN: Thank you, Delegate Crozier. Is there any delegate wishing to speak on this matter? Delegate Peterson is recognized.

DELEGATE PETERSON: Mr. Chairman, I wish to speak in favor of this amendment. I think some of the delegates who have spoken already have discussed the issue of strengthening the political parties. I wish for a moment to return to some of the discussions which were raised in the consideration of the original Constitution of the United States concerning political parties.

In Jerome Horowitz' analysis of the U.S. Constitution being drafted, he comments in summary on some of the fears of the framers of the Constitution concerning political parties. There were four different concerns which they had. The first was that they would have a divisive influence over the people and would tend toward disharmony and ill will. The second consideration was that political parties would have the effect of putting ambitious, power-seeking men in office because these would be the sort of men who would seek office through building party organizations and fighting their way into situations of power and influence. Thirdly, unsound laws would be passed, as men with ambition and drive but without soundness of judgment and integrity influence laws in order to reward those who supported them. Under the party system, a government official's personal interests are best served by giving that person's primary allegiance to the party rather than to the Constitution. And fourth, the competition for public support would result in deception and fomentation of antagonism and would weaken the government itself.

Turning from his analysis, I would like to briefly quote President George Washington, who in his Farewell Address said the following concerning political parties: "Let me... warn you in the most solemn manner against the baneful effects of the spirit of party.... It exists under different shapes in all governments...but, in those of the popular form, it is seen in its greatest rankness, and is truly their worst enemy."

"The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension...is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries, which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later the chief of some prevailing faction, more able or... fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of Public Liberty."

As summary to these comments and in closing, he said that in considering political parties in the context of separation of powers and shifts in balances, due concern should be given the possibility that all branches of government may be controlled by a single party. The danger to our freedom inherent in that possibility was indicated by James Madison in The Federalist in the following words: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

Only by establishing a blanket primary can we concentrate on the people who are running and vote for those whom we feel are best irrespective of party, both in the primary and in the general election. I therefore urge you to support this amendment.

CHAIRMAN: Thank you, Delegate Peterson. The Chair recognizes Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I would like to speak against this amendment, and my reasons are very simple. As a party member, I would like the members of my own party plus those independent voters who are inclined to share my party's philosophy to have a hand in nominating the people who are going to be running in the general election for the various offices. We must not forget that the primary election is the time for each political party to bring out in a proper election the best candidates to run in the general.

In the presidential election this is done through what is called the convention method. But in state and local elections, we have these two elections: the primary election and the general election. Now the fact that in Hawaii one party is very weak while the other is considered ultra-strong is--I don't think that should be the reason for us to change what we have as the closed primary today. To strengthen the other party, it would take more than having such a thing as the blanket primary that we're discussing now.

And so I say to all of you, under our system of two elections, the primary and the general, in the primary I think we should leave it up to the members of the political party and those who are leaning toward that party's philosophy to do their own electing of their party's nominees for the general election.

CHAIRMAN: Thank you, Delegate Taira. The Chair recognizes Delegate Sutton.

DELEGATE SUTTON: Mr. Chairman, I'd like to speak in favor of this amendment, partly in respect to the previous speaker. In that power structure, the State right now is locked; the pendulum, swinging in the direction of the Democratic party, is locked there. I, as a Republican, think it's very unfair. I don't think the Republican party has got off the ground either. In all fairness, for the two-party system to become bound in this State, a blanket or an open primary in this State will have to be effectuated or else there will be only one party.

CHAIRMAN: Thank you, Delegate Sutton. Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I'd like to yield to Delegate Cabral. I don't believe he has had an opportunity to speak yet.

CHAIRMAN: Delegate Cabral, please speak.

DELEGATE CABRAL: Mr. Chairman, I rise to speak in favor of this amendment. I have always advocated the rights of the people. The right of the people should prevail over any singular or minority group--in this case, the two-party system. I say be damned to the two-party system, for it deprives the right of all the voters to be able to freely and duly elect the--

CHAIRMAN: Delegate Cabral, apparently you're not being heard as well as you could be. Could you move a little closer to the mike?

DELEGATE CABRAL: In my opinion, the closed primary, which was originated to strengthen the party system, has in fact deprived the electorate, or the voters of Hawaii the opportunity to make an independent choice of the candidates that they want elected to office. I feel that the blanket primary, where there is no requirement of a party affiliation and no limitation to voting for the candidates of a single party, appears to be the best way of placing the responsibility for electing public officers squarely with the voters.

Lieutenant Governor Doi, in an address to the members of the BORSE committee, I believe stated that what has gone wrong with the closed primary is that no more than 15 percent of the total registered voters in Hawaii belong to a political party. And as such, there are many independent voters who simply have not voted because of this system of closed primaries. It appears only proper to me that the right of citizens to vote for the candidates of their choice is a more important factor than the rights of any political party. Therefore, I say that this amendment in fact will redress a system--a wrong that takes away and deprives the rights of all citizens. Therefore, I urge that you support this amendment so that it can restore the rights of all voters of Hawaii.

CHAIRMAN: Thank you, Delegate Cabral. The Chair recognizes Delegate DiBianco.

DELEGATE DiBIANCO: I rise to speak in favor of this amendment. This particular issue has given me, personally, more trouble than any other issue this summer. On the one hand, I understand the arguments being made that a closed primary does seem to cut off whole legions of voters in this State. But on the other hand, I do have to share the views of Delegate Taira that a political party should have the right to choose its own candidates and offer them to the general public.

I think frankly there's only one solution to this whole problem--not to my problem, but to anybody else who shares this concern and this problem--and that's to submit the matter to the voters and let them decide.

CHAIRMAN: Thank you, Delegate DiBianco. Does any delegate wish to speak either for the first or second time before I call upon the movant? Delegate Pulham, you're recognized.

DELEGATE PULHAM: Mr. Chairman, I don't know whether I have a question or whether I want to speak against this. Am I correct in understanding that in any of these races the two top vote-getters in this primary would be on the general election ballot regardless of their party? Am I correct?

CHAIRMAN: The movant indicates yes, that is true. The two top vote-getters--

DELEGATE PULHAM: In that case, may I then exercise my option to speak against the particular amendment. While this may seem unusual to some people--I certainly am for an open primary--this, however, this blanket primary, would seem to me to be a thinly veiled disguise to further the party that's already in power, because it's pretty obvious to anyone, I think, that the two top vote-getters--for instance, this year in the gubernatorial race, are going to both be in the same party. Therefore, we're not strengthening the two-party system, we're simply setting out to eliminate the two-party system. This is not true in the case of an open primary--I fully realize and support that concept. But I certainly can't support anything in this area of a blanket primary which would be the death call for our two-party system.

CHAIRMAN: Thank you, Delegate Pulham.

DELEGATE BLAKE: Point of information, Mr. Chairman.

CHAIRMAN: Yes, Delegate Blake, please state your point.

DELEGATE BLAKE: My question is, in this particular amendment, am I to understand that the two leading contenders will run in the general election, or the top from each party will run in the general election? It is my impression that the two top of each party, not the two of the same party.

CHAIRMAN: Maybe the movant can answer the question. The question earlier was asked by Delegate Pulham whether, in the voting in the blanket primary, whether the two top vote-getters, should they be in the same party--would they both be on the ballot at the exclusion of the highest vote-getter of the other party? Or as Delegate Blake asks pursuant to that--whether it would simply be the top vote-getter in one party and the top vote-getter in the other party. Which of these would be the case?

DELEGATE CAMPBELL: It is my understanding, Mr. Chairman, that it would be the top vote-getters irrespective of the party, because all the parties are listed together on the ballot.

CHAIRMAN: Thank you, Delegate Campbell. Does that answer your question, Delegate Blake?

DELEGATE BLAKE: No, it doesn't. It's still my belief, unless I can be shown facts, that the two top--say the two top Democrats were the two highest, and I'm being told that they would run in the general election. My understanding has been all this time that the two top of two different parties would be the candidates in the general election, not the same party.

CHAIRMAN: Thank you, Delegate Blake.

DELEGATE CROZIER: Point of information.

CHAIRMAN: Delegate Crozier, state your point of information.

DELEGATE CROZIER: The two top vote-getters would go on the ballot. What you're thinking of is more of an open primary. We're talking about a blanket primary, sir.

CHAIRMAN: I appreciate your answer, Delegate Crozier, but perhaps if the movant could state again, to the question that was raised by Delegate Blake, whether this nominating procedure could result in two persons from the same party being on the general ballot to the exclusion of anyone from another party--is that so or not?

DELEGATE CAMPBELL: Mr. Chairman, perhaps an administrative recess would be in order so that I can be absolutely sure. That was my understanding, but I may stand to be corrected.

DELEGATE STERLING: Mr. Chairman, perhaps I could answer that.

CHAIRMAN: Delegate Sterling, could you please try and we'll see what happens after that.

DELEGATE STERLING: The blanket system was designed for a specific purpose--to give the people complete freedom, and the two top vote-getters, regardless of the party affiliation, would go on to the general election. It had a special purpose--I'm speaking for the amendment. The closed primary had a special purpose, where it was more or less, as Delegate Taira said, a nominating process, and the nominations were restricted to the party members. Consequently, the closed primary system is restricted to party members. But the designation and the purpose of the blanket is to put all the names alphabetically in columns. It's not designed--and that's one of the arguments against it, that it has no party discipline and there's no incentive to become associated with a political party--it's not designed for that purpose.

However, I do feel, the way the parties stand now that a closed primary has certainly not encouraged the building of the Republican party. But because of the problems facing us and voter apathy or disillusionment, I believe that we have to change the system. We've had many talks in the past few days, and some were beautifully stated. But I think the acting chairman of today's meeting stated it best--that we should try to come out with a better product.

CHAIRMAN: Thank you, Delegate Sterling.

DELEGATE BLEAN: Point of information, Mr. Chairman.

CHAIRMAN: Delegate Blean, state your point of information.

DELEGATE BLEAN: There seems to be a little confusion, I'm a little confused also. I took the liberty of looking over Delegate Sterling's shoulder. He has a very concise summary of selected, open and blanket primaries, and I wonder if you would allow him to take a couple of minutes and sort of lay out those major distinctions for us. Would that be in order?

CHAIRMAN: Delegate Blean, I was--yes, the Chair was going to respond to the request for a brief administrative recess to determine how the mechanics of this would work. Delegate Hale.

DELEGATE HALE: May I call your attention during this administrative recess to this sample of the format for the blanket primary election ballot. We had this drawn up by Morris Takushi of the lieutenant governor's office, the chief election officer, and he is a proponent of the blanket primary. This is what a ballot would look like, and it specifically says there: "In the three contests below, only the two candidates"--

DELEGATE VILLAVERDE: Mr. Chairman, point of order. I believe that we are not to present our information to others but to answer your own questions by--

CHAIRMAN: Your point is well taken. An administrative recess would be in order. Why don't we make this double, for other purposes as well. We'll reconvene about 4:00.

At 3:48 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:04 p.m.

CHAIRMAN: Committee of the Whole will come to order. Delegates, will you please take your seats. The Chair will ask Delegate Blake, who had asked the question which we were seeking to resolve, whether the question has been answered and if it has been, would he share it with us. Delegate Blake.

DELEGATE BLAKE: I see the mover of the motion isn't here. The blanket open primary we are referring to here was used up until 1949. Now this is the ballot I'm speaking of. On this ballot you can go right or left. If there's an independent party there would be a third column here, and you could pick there also. Let's say for instance there were nine men running for the council and you have twelve in one column, seven in the next, six in the next. You can pick three from each column for nine. This is the ballot I'm referring to; this is the real, true open blanket primary I'm referring to right now.

CHAIRMAN: Delegate Blake, is that the one put forth in Amendment No. 5?

DELEGATE BLAKE: No, I believe that the delegate is referring to this one here. This is a new concoction that I've never seen before.

CHAIRMAN: Delegate Blake, are you satisfied with the--

DELEGATE CROZIER: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order, Delegate Crozier.

DELEGATE CROZIER: Point of information, I apologize.

CHAIRMAN: State your point of information.

DELEGATE CROZIER: Does the delegate across the room know that the "new concoction" was designed to fit into the computer cards. It's basically the same thing, but it's just for the computer cards.

CHAIRMAN: Delegate Blake, does that further enlighten you?

DELEGATE BLAKE: Mr. Chairman, at this point I'm not even worried about the computer cards. I'm worried about what Mr. and Mrs. John Public want.

CHAIRMAN: Thank you. Is there further discussion? Delegate Weatherwax.

DELEGATE WEATHERWAX: Mr. Chairman, I rise to a point of inquiry of the movant also and ask whether or not the blanket primary in this instance where the two highest vote-getters, in this case for lieutenant governor, if in fact one is a Republican or both are Republican and then you have a governor who is a Democrat--when you go to the general election, the two highest vote-getters being Republicans and also in the governor's office being a Democrat or the two highest being Democrats--whether or not that would in fact conflict with the executive article which now mandates that they run as a team?

CHAIRMAN: Your point of information is understood. I don't see the movant nor do I see any delegate rise to--Delegate Kimball.

DELEGATE KIMBALL: Mr. Chairman, I believe the movant is on the phone with the lieutenant governor's office to get clarification on this point.

CHAIRMAN: Thank you, Delegate Kimball. Perhaps if there are any other speakers who would like to speak--if it's no problem to Delegate Weatherwax who raised the question.

DELEGATE SOUKI: Point of information, Mr. Chairman.

CHAIRMAN: State your point, Delegate Souki.

DELEGATE SOUKI: There was an administrative recess to try and clarify the problems that they apparently have here. Did we come to any conclusion, Mr. Chairman?

CHAIRMAN: Delegate Souki, apparently we have not in that the movant has not yet returned--I beg your pardon.

DELEGATE CAMPBELL: As MacArthur said, "I shall return." I'm here.

CHAIRMAN: Have you heard the question that was raised by Delegate Weatherwax?

DELEGATE CAMPBELL: No.

CHAIRMAN: Would you restate that, Delegate Weatherwax?

DELEGATE WEATHERWAX: My inquiry, Delegate Campbell, is with reference to the executive article right now, there is a requirement that the lieutenant governor and the governor run together. I understand under the blanket primary which you are proposing, which would be the last sample ballot, if in fact the two highest vote-getters for lieutenant governor are Republicans and the two highest in the governor's race are Democrats, would you not then have a conflict with the executive article and would either be required not to have a blanket primary, or would it require a change in the executive article?

DELEGATE CAMPBELL: It does appear that there would be a conflict. However, the lieutenant governor's office indicated to me that it would be up to the lieutenant governor's office or to the legislature to handle these kinds of details. I found out the answer to only one question of the delegate to my right; the question put to me was what result would be obtained if you have for example a senatorial race where there were eight candidates and there were four offices that were vacant--how would that be resolved? I believe that when we spoke it was my impression that the four candidates with the highest number of votes in that group of eight would be the winners, and there really would be no need for a general election. But that's really not any different from many instances in the present situation where, if there is no Republican opposition, for example, and the Democrats win in the primary, their names are on the ballot in the general but they are really not running against anyone. So this wouldn't be very much different.

And in answer to the delegate from Kauai, the two contenders with the highest number of votes in a particular office, if there was one office--for example, for governor--would be on the general ballot without respect to their both being in the same party, and it would simply be a run-off election in the general.

CHAIRMAN: Thank you, Delegate Campbell. Does that answer your question, Delegate Blake?

DELEGATE BLAKE: Yes, Mr. Chairman, it does answer my question. If that's the answer, I withdraw my support for the amendment. I was thinking about this ballot here, and I believe this is the ballot that many people throughout the State of Hawaii are thinking about. It was the last blanket primary used in 1949--not the one they are talking about today. So if such is the case, I withdraw my support for the amendment.

CHAIRMAN: Thank you, Delegate Blake. Delegate Barr is recognized.

DELEGATE BARR: Mr. Chairman, I guess I'm rising to a point of information. I would like to know where in the wording of the amendment in front of us does it resolve this matter? I'm not too concerned with the opinion of the lieutenant governor's office or anyone else, other than what it says we're going to do, and both interpretations are admissible under this language.

CHAIRMAN: Delegate Campbell, would you care to address yourself to that?

DELEGATE CAMPBELL: The answer is patent; there is nothing in the language which would respond specifically to that question. As best I can understand from the lieutenant governor's office, that is something which they would have to work out by way of procedure.

CHAIRMAN: Thank you, Delegate Campbell. Delegate Hirata.

DELEGATE HIRATA: Mr. Chairman, I rise to speak against this amendment. I believe that the purpose of a primary election is to allow each party to bring forth its strongest candidate. This amendment defeats this purpose of selecting the strongest candidate each party can field so that the voters could have clear choices to make in the general election.

The present primary system gives the voters a chance to make a clear choice of candidates and of programs and platforms. The political scientist Clinton Rossiter explains the role of a political party in this way: "The primary function of a political party in a democracy such as ours is to control and direct the struggle for power. . . . [T]he political process in a free country is essentially a conflict, limited and regularized but nonetheless relentless, among groups of men who have contradictory interests and more or less mutually exclusive hopes of securing them." Until the promised day of golden utopia when "there will be enough of everything to go all the way around. . . we will. . . be living in societies where there is a scarcity of. . . things [which] can be won. . . . The struggle for political power, and for the privileges and immunities that political power can be made to produce, will go forward without rest. . . ." I believe that it is the aspiration of democracy to bring this struggle for political power under control: "to institutionalize it with organization, to channel it through nominations and elections, to publicize it by means of platforms and appeals, [and] above all" and most important, to stabilize it in the form in which the participants in this democracy can "change places from time to time on a signal from the voters. The [political] parties did not create the struggle for power; [and without such parties] it would go on merrily. . . however, much less purposefully [, less] effectively and [less] openly. . . ."*

Rossiter continues: "Constitutions [can] make frugal provision for the election or appointment of persons to high office, but they extend no aid at all to those persons in and out of government who must act as recruiters. . . . [The Constitution offers] no guaranty that the men on top of the permanent bureaucracy will be like-minded enough to give it a sense of cohesion or alert enough to the needs of the public to give it. . . direction."* Political parties are simply agents who "bring order out of disorder, simplicity out of diversity, precision out of chaos. They comb the population for willing and. . . able recruits; and, by placing their [name] tags upon these aspirants for election or appointment, they help us all, even in a country where tags can sometimes be misleading, to make more rational choices."**

CHAIRMAN: Delegate Hirata, could you stop for just a minute while I ask the delegates to extend their courtesy to you in carrying on conversations while you are talking. Proceed.

DELEGATE HIRATA: A stronger argument is suggested by research which indicates that cross-over voters have different candidate preferences from those who identify themselves with a particular party. The argument has been made that closed primaries have been a major factor in the decline of the Republican party in Hawaii. The fact, however, is that the GOP's lack of popular appeal is not the fault of election laws. Rather, it simply reflects an inadequate political program and an inability to attract popular support. If they choose to field short tickets so that their candidates will be assured of a clear field in the primary, it is their business, but it is not the fault of election laws and constitutional amendments will not remedy this.

I believe that this particular amendment will go contrary to the concept of what a primary election should be. The function of the primary election is to select the strongest candidates from each party. If we are to adopt such an amendment as this, a blanket primary, I would suggest that we just go to the general election with no primary at all, for we may end up having two candidates from the same political party. I strongly believe that the present primary does foster the growth of two political parties, which I believe that a number of my colleagues here feel, and I concur, is very important--that we have this type of two-party system. So with that I strongly urge you to vote down this amendment.

CHAIRMAN: Thank you, Delegate Hirata.

DELEGATE HALE: Point of information, Mr. Chairman.

*Clinton Rossiter, *Parties and Politics in America* (Ithaca, New York: Cornell University Press, 1960), pp. 39-40.

***Ibid.*, p. 41.

CHAIRMAN: The Chair recognizes Delegate Hale for a point of information. State your point, please.

DELEGATE HALE: I would like to have this completely explained to me, and I understand Delegate Sterling can do so. I would like him to do this.

CHAIRMAN: Delegate Hale, your question is whether Delegate Sterling would be able to explain--

DELEGATE HALE: --the differences between the different kinds of systems.

CHAIRMAN: I'll put the question to Delegate Sterling, if he would be willing to take it as a part of his discussion of the matter. Will you proceed?

DELEGATE STERLING: I received this as a result of an inquiry from the lieutenant governor's office, and also it comes from other sources. These are descriptions of the different primaries. The closed primary: Voting is limited to members of the party. Each voter is given a ballot containing only names of candidates belonging to his political party. Selective system: The voter is free to choose a party at the time of his voting. The ballot is similar to that of the closed primary. In this system, the voter can select the party at the time of voting. He does not have to make a party preference known. Open primary: Names are listed on the ballot by party columns. Each voter much restrict his choice to a single party column without having to publicly declare his party. You can have three or more political parties on the same ballot, but you are restricted to whatever party you start off with. On the blanket: Names of candidates are not listed in party columns but are grouped as to the office sought. Names are co-mingled without regard to political parties. A voter does not have to restrict himself to candidates of one party; he does not have to declare publicly a political party.

Those are just basic outlines. I believe the problem here is how these would be implemented, whichever system this body chooses to come up with. Then the various arguments-- The closed system is primarily and theoretically a device for nominating party candidates and therefore is limited to party members. In a selective system, the voters can select a party at the time of voting and do not have to make party preference known. In the open, the voters are free to choose the political party they want to, up to and within the time in the voting booth. They do not have to state their party preference. In the blanket primary, the voters have a free choice of candidates. You can vote for the best without regard to political party. I hope I've answered some of the questions on the four different systems.

CHAIRMAN: Delegate Sterling, would you state which it is we're now discussing.

DELEGATE STERLING: I believe we're speaking about the fourth primary system, the blanket. The language seems to be the same. I agree with the questions that have been raised here. The chairman of the BORSE committee had a very pertinent question because it does, upon passage, seem to conflict with our Constitution as it now exists. However, this would have to be worked out by the lieutenant governor's office, I believe. I have tried to outline the basic skeleton forms of the four different systems.

CHAIRMAN: Thank you, Delegate Sterling. The Chair will recognize Delegate Blake on whatever point he has. Delegate Blake, would you state on which point you rise.

DELEGATE BLAKE: Mr. Chairman, I'm speaking in favor of the amendment because--

CHAIRMAN: Delegate Blake, let me ask one thing. Is there anyone here who has not spoken previously on this?

DELEGATE FUSHIKOSHI: Point of information. I haven't had a chance to talk.

CHAIRMAN: Delegate Fushikoshi, please proceed.

DELEGATE FUSHIKOSHI: I'm kind of confused as to Delegate Weatherwax' question. What happens to what the executive committee already passed, whereby the governor and lieutenant governor shall come from the same party? Now if this should be passed, what would happen then, I would like to know. Maybe the movant can answer that question.

CHAIRMAN: Would anyone care to respond to that? Delegate Hamilton, I see, is rising to contribute.

DELEGATE HAMILTON: Mr. Chairman, I believe the Committee on Style would have to come up with a resolution indicating that the Convention goofed and would have to resolve the problem.

CHAIRMAN: Delegate Fushikoshi, does that answer your question? The answer is, if that happened the Committee on Style would report back to the body that the Convention goofed in passing conflicting provisions.

DELEGATE FUSHIKOSHI: Then that would mean that both amendments would be killed, or whatever?

CHAIRMAN: I don't believe he said that, but--would you state that again, Delegate Hamilton.

DELEGATE HAMILTON: I believe the regulation is that when something comes to the Committee on Style which is in conflict with something previously approved, the Committee on Style must report back to the Convention what was done and ask for a resolution. It's then up to the Convention to resolve the problem in the proper way. But until the Convention does resolve the problem, both things would stand approved.

DELEGATE FUSHIKOSHI: Thank you.

DELEGATE LES IHARA: Point of information, Mr. Chairman.

CHAIRMAN: Yes, Delegate Ihara, state your point of information.

DELEGATE LES IHARA: Did the executive committee--and I think the answer is no--pass an amendment that requires the governor and lieutenant governor to run as a team? If the answer is no, then there wouldn't be any conflict; this amendment would conflict with the existing Constitution. So I don't know how we would handle that.

CHAIRMAN: The Chair will ask if Delegate Fukunaga would care to respond to that.

DELEGATE FUKUNAGA: The executive committee did not pass any provisions which would have required the lieutenant governor and the governor to run as a team. The changes that were made in the area of the lieutenant governor and the governor's terms were for a limitation on the number of terms.

CHAIRMAN: Thank you, delegate. Does that answer your question, Delegate Ihara?

DELEGATE LES IHARA: Yes, and that raises another question.

CHAIRMAN: Proceed.

DELEGATE LES IHARA: What would be the solution to the problem if this body passes an amendment that conflicts with existing language in the Constitution?

CHAIRMAN: Delegate Hamilton, would you care to answer the question as to what happens when a new amendment would conflict with existing language?

DELEGATE HAMILTON: I'm getting out of my depth, but I think I'm right. The old language wouldn't necessarily come to us but the new language would. And then--at least the rule of common sense would seem to indicate--we ought to point out to the Convention that they now had something that conflicted with previous language. This is what I would be inclined to do unless somebody told me I couldn't.

CHAIRMAN: Did I hear you say we should cross that bridge when we come to it, more or less?

DELEGATE HAMILTON: Seems to me if we find something in conflict, we ought to let the Convention in on it.

CHAIRMAN: The Chair now will call upon Delegate McCall.

DELEGATE McCALL: I rise to speak against this motion. Having heard all the arguments, I still don't see the words in there that say who will appear on the final ballot. The only thing I find on that is in the sample shown of a blanket primary ballot, in which somebody has written the words up at the top that the two top vote-getters shall be so qualified for the general election. I don't see that anyplace in the amendment, and I certainly don't think we should pass something that leaves it up to the lieutenant governor to decide what we mean. I believe it could be solved by adding that the top candidate of either party shall--or the top vote-getter in either party shall appear on the final ballot, but that's up to the delegates.

CHAIRMAN: Thank you, Delegate McCall. Delegate Goodenow.

DELEGATE GOODENOW: I speak for the blanket primary. I'd like to point out at this time that the majority of voters in our State are not card-carrying party members, for the most part. They are what they like to call themselves--"independents." And maybe they've got a "D" after their name or an "R" or something, but they should have the right to go in and vote on a ballot where if they like this Democrat, fine--if they like the Republican, fine. I think that this should be allowed to our people, bearing in mind that the greatest of our populace of voters are independent thinkers although they may have some letter behind their name.

CHAIRMAN: Thank you, Delegate Goodenow. Delegate Hale, you would be speaking for the second time?

DELEGATE HALE: I'd like to make an amendment. I'd like to amend this amendment by adding these words: "The person receiving the greatest number"--this would be at the end--"of votes at a primary as a candidate of a party for an office shall be the candidate of the party at the following election. Any nonpartisan candidate receiving at least 20 percent of the votes of registered voters cast at such primary shall also be a candidate at the following election; provided, however, that any candidate receiving the votes of a majority of the registered voters voting in the district in which he is a candidate shall be thereby duly and legally elected to the office for which he is a candidate at said primary."

DELEGATE DiBIANCO: Second

CHAIRMAN: The Chair would like to request at this point that I be given a copy.

DELEGATE HALE: This is taken from--

CHAIRMAN: Delegate Hale, may I have the copy before you begin.

DELEGATE WAIHEE: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Waihee, state your point of order.

DELEGATE WAIHEE: This amendment is out of order because basically this should have been in writing, according to our rules. Now, the types of amendments that we have been allowing are those that are simple insertions and deletions. This adds a whole new sense to the present amendment. I think it should have been in writing.

DELEGATE CROZIER: Point of order, Mr. Chairman.

CHAIRMAN: The Chair was in the process of considering and ruling on this point.

DELEGATE CROZIER: I want to make a point of order to what he said.

CHAIRMAN: I'll call on you in a moment, Delegate Crozier. There can only be one point of order ruled on at a time. As with parliamentary law, apparently there's always a reasonable way out. The rule is that the point of order is well taken in that the sense of the change is of a major nature rather than of a minor nature and that the appropriate time to make an amendment of this sort would be at Second Reading. So the Chair rules that the amendment offered, due to its scope and its effect on the existing proposed amendment, is of a nature so great as not to be in order at this time.

DELEGATE HALE: May I respectfully explain to the Chair why I do not think that's true?

CHAIRMAN: That's handled by an appeal of the Chair, which if you so wish you could so debate. Do you wish to appeal the ruling of the Chair, Delegate Hale?

DELEGATE HALE: Can you debate an appeal?

CHAIRMAN: Yes.

DELEGATE HALE: All right. I appeal.

CHAIRMAN: The ruling of the Chair has been appealed. The Chair will first explain the reason for the Chair's ruling, which is what I just said. The Chair now opens it up for discussion of the appeal. Delegate Hale.

DELEGATE HALE: I think, Mr. Chairman, that we are a little bit confused, and I think that, really, nobody wants to see a rerun of--let's be very specific--the contest between Fasi and Ariyoshi in the general election. What I'm attempting to do is to go back to the law as it existed for this particular primary ballot that is No. 1 on this minority report; this is the law under which this open blanket primary ballot was developed. I think the problem is that there is confusion. What we are attempting to do in the blanket primary is to allow people to vote for any party they want. But I don't think the net effect of what we were trying to do would be to say that the top two Democrats or the top two Republicans would be voted upon again. This is going back to the system that existed in this State before 1948--

CHAIRMAN: Delegate Hale, I don't want to interrupt your discussion of the appeal, but would you confine your discussion now as to why the ruling of the Chair is not correct.

DELEGATE HALE: Because I don't think it is a major--I think it's only a clarification of what this amendment is trying to do. I don't think that it's a major amendment in terms of changing the sense of the amendment. I think all it is doing is specifically clarifying what would happen if this amendment passed; we're putting in more detail so that we can really know what will happen. Under this language, anything can happen. But with this amendment to the amendment, I think we capture the sense and the objectives to the blanket primary and put it in specific detail so that we really know what we're voting upon, rather than voting upon this general language.

CHAIRMAN: Thank you, Delegate Hale. Is there any further discussion on the ruling of the Chair? Point of information is being asked by Delegate DiBianco.

DELEGATE DiBIANCO: I just wanted to make sure from the maker of the amendment whether or not I understood her correctly, in that what her amendment is doing is simply saying that in the blanket primary if a candidate got more than 50 percent of the vote, he or she would automatically be elected and therefore would not have to run in the general? Is that what you're saying?

DELEGATE WAIHEE: Point of order. Mr. Chairman, there's an appeal on the floor and all debate should be confined to the Chair's ruling. I don't see us debating the amendment.

CHAIRMAN: Your point is well taken, Delegate Waihee. The debate is whether or not the appeal of the ruling of the Chair should be sustained.

DELEGATE EASTVOLD: Point of order.

CHAIRMAN: State your point of order, Delegate Eastvold.

DELEGATE EASTVOLD: Just a point of order if I can ask you--is it the parliamentarian's interpretation that this was a complex--or a change of a drastic nature, or was that your interpretation?

CHAIRMAN: Upon advice of the parliamentarian, the Chair was informed that the scope of this amendment appeared to be--

DELEGATE EASTVOLD: Wouldn't it be more appropriate to ask the mover of the motion whether this is changing her intent?

CHAIRMAN: The Chair will rule on your point of order in the respect that the amendment is now the property of the body rather than the movant.

DELEGATE DiBIANCO: Point of inquiry. I want to know how I can possibly vote on the appeal unless I know the sense of the amendment. It went by rather quickly, and I can't know whether to sustain the Chair or not unless I know the precise meaning and effect of the amendment.

CHAIRMAN: The Chair will answer your inquiry by this--that the debate on the question of whether to sustain the ruling of the Chair should cover those points necessary to persuade the body either to sustain the Chair or to overrule the Chair.

DELEGATE WAIHEE: Mr. Chairman, it's precisely for this reason that I believe the Chair in its ruling should be upheld. I believe--

DELEGATE DiBIANCO: Is this a point of order or is the delegate arguing--

DELEGATE WAIHEE: No, this is a debate on the motion--

CHAIRMAN: The Chair has recognized Delegate Waihee at this point to state a point of order.

DELEGATE CROZIER: Point of order, Mr. Chairman, he's debating the question. He's not stating a point anymore.

CHAIRMAN: Proceed.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak in favor of upholding the Chair's ruling.

CHAIRMAN: Okay, proceed.

DELEGATE WAIHEE: Mr. Chairman, it's precisely for this reason, that none of us can understand the complexity of this motion, that it should have been reduced to writing according to our rules. Now for those reasons, I think the Chair ruled the movant out of order to begin with, and I would ask the delegates to support the Chair.

CHAIRMAN: Delegate Crozier is rising and is recognized.

DELEGATE CROZIER: Mr. Chairman, I'd like to speak against the appeal myself, not for the reasons that the gentleman to my left said but just because the parliamentarian has advised us so and I trust him, and for that reason alone.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Campbell is recognized.

DELEGATE CAMPBELL: Mr. Chairman, I cannot conceive of being able intelligently to vote either to sustain you or to vote against your ruling without really having fully heard or understood the amendment. It was read rather hurriedly and there were all kinds of points of order made. I would appreciate it very much if the Chair could at least read the amendment to us because the question as to whether or not we shall or shall not sustain you depends upon whether we believe that this is a major amendment, such that its complexity militates against our handling it as a part of this particular amendment.

CHAIRMAN: The Chair appreciates your remarks and for clarity and to facilitate the debate of the appeal will read the language as offered, which would be added to Amendment No. 5 at the end: "The person receiving the greatest number of votes at a primary as a candidate of a party for an office shall be the candidate of the party at the following election. Any nonpartisan candidate receiving at least 20 percent of the votes of registered voters cast at such primary shall also be a candidate at the following election; provided, however, that any candidate receiving the votes of a majority of the registered voters voting in the district in which he is a candidate shall be thereby duly and legally elected to the office for which he is a candidate at said primary."

The Chair's ruling was that this complexity and length were such as not to be of a minor nature and therefore properly offered at another time and not proper at this time. Is there further discussion on the appeal of the Chair's ruling? Delegate Shon is recognized.

DELEGATE SHON: I'll have to speak in favor of the ruling because I believe the amendment as worded does not take into account multimember districts. It speaks more to a single-member-district situation. I believe it refers to "the person." So on that basis I would have to sustain your ruling.

CHAIRMAN: Delegate Blake is recognized. State the point to which you rise.

DELEGATE BLAKE: I rise to sustain the decision of the Chair because earlier I asked the mover of this motion just what we were talking about and I think the answer given me was to leave this to the lieutenant governor's office to decide. At that time I was ready to ask another question when the delegate across the floor stood up and made this motion.

CHAIRMAN: Thank you, Delegate Blake. The Chair recognizes Delegate Hale.

DELEGATE HALE: I'd like to withdraw the amendment to the amendment.

CHAIRMAN: The appeal is on the floor at this time. All those in favor of sustaining the ruling of the Chair say aye. Opposed, no. The Chair's ruling is sustained. Delegate Hale, your amendment is withdrawn automatically by that. Delegate Blake, you are recognized.

DELEGATE BLAKE: Mr. Chairman, I'd like to ask the mover of the amendment a question. My question is this: I believe the statement was made that if the amendment went through--and now we're talking about two different types of open primaries--that we would leave this decision to the lieutenant governor's office. I am definitely against that. I think we should decide here whether we're going on the 1949--on this ballot, or on the ballot that was--this new sample ballot. I think this decision should be made first. When I stood up and spoke for this thing, I spoke on behalf of the old ballot where you can vote on either side of the fence.

CHAIRMAN: Delegate Blake, you'd like to ask the original movant of the motion which of those two ballots would be established by passage of this amendment?

DELEGATE BLAKE: That's correct.

CHAIRMAN: Delegate Campbell, would you like to answer that?

DELEGATE CAMPBELL: The ballot that the movant had in mind was the one which says, "This is a sample of the format for a blanket primary...."

CHAIRMAN: Okay, does that answer your question, Delegate Blake?

DELEGATE BLAKE: May I ask the mover of the amendment, after all this discussion, whether she would reconsider the sample ballot as this one here?

CHAIRMAN: Delegate Campbell, I understood you to mean that it was the one that shows as a sample ballot the vertical columns?

DELEGATE CAMPBELL: Mr. Chairman, the one that appears in this series of ballots is one that I was not familiar with. It was very capably put together by another delegate--

CHAIRMAN: Delegate Campbell, could I ask you to stop for just a minute while I ask the delegates to extend to you the courtesy of their attention. Proceed.

DELEGATE CAMPBELL: I have no hard choices. If the Convention were to decide in favor of a blanket primary based upon their choosing the old blanket primary form, I would not be averse to that, because essentially I am concerned about returning to an open primary system. The specific form is secondary to me.

CHAIRMAN: Am I understanding you to say that either format would achieve your objectives and you simply want an open primary of a blanket nature?

DELEGATE CAMPBELL: Yes, Mr. Chairman.

CHAIRMAN: Does that satisfy you, Delegate Blake?

DELEGATE BLAKE: Mr. Chairman, no, it doesn't. As I said, this is the format the people of Hawaii know about. They've never seen the other one. This is the one the people throughout the State are talking about--this type of open primary.

CHAIRMAN: The Chair suggests that such matters as were cited in the earlier ruling might thus be considered at Second Reading and perhaps our discussion now is beginning to become redundant. I recognize Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, for the second time I'm rising to speak against this amendment. We've had a lot of confusion, and I think we've had enough information now to know that passage of this amendment would make this Convention look very, very foolish. Therefore, I suggest that if we're going to take any action in the absence of any withdrawal, that we take the vote. I for one will vote no.

CHAIRMAN: Okay. The question before the body-- Delegate Kimball, do you wish to speak again? Delegate Crozier.

DELEGATE CROZIER: Just a closing remark. I speak in favor of this amendment just for the reasons stated earlier, that we would be building a two-, three-, four-, five-party system based on platforms and philosophies and not as parties of convenience as it is today when guys join any party just because it's the only game in town.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Hirata is recognized.

DELEGATE HIRATA: Mr. Chairman, I just wanted to ask the movant a question. What is the difference between the old blanket and the new one? Is there any difference?

CHAIRMAN: Delegate Campbell, would you respond to that?

DELEGATE CAMPBELL: I wish Peanuts were here. Delegate Blake, would you want to answer why you prefer that?

CHAIRMAN: The Chair will so direct questions, Delegate Campbell. Your suggestion, however, is well taken. Delegate Blake, would you care to respond to that question?

DELEGATE BLAKE: If you will look at the sample that states: "Old blanket primary used up until 1949"--all right, on this form here a person receiving a ballot for the primary election can go on either side of the fence, both sides. The leaders in the respective offices would then run in the general election. That's the open primary that the people of Hawaii know about.

Now if you look at this one now, this is a completely new type of ballot for the blanket open primary. Now the difference with this one, from what I am told, it means that the two top leaders, whether Republican or Democrat, will run again in the general election. Now this is the chief difference with this one here. From what I can see, this is the only difference between this and the old primary used until 1949. I repeat again, the one in 1949--you take the highest of each party to run off in the general election. This one here states that the two highest will run off in the general election. If it's two Democrats or two Republicans, they will run again in the general election.

CHAIRMAN: Thank you, Delegate Blake. Delegate Hirata, does that answer your question?

DELEGATE HIRATA: Yes, it answers the question as to the difference between this ballot here and the one on the last page. But how would that be clarified by this amendment?

CHAIRMAN: Is there someone rising to clarify that point for Delegate Hirata? Delegate Hale, you wish to clarify?

DELEGATE HALE: That was what my amendment to the amendment was attempting to do, because this ballot that we're referring to was developed on the basis of that law that I read. But it got too complicated and I realized that nobody could do it. I suggest that-- if it's possible, may I speak on the amendment?

CHAIRMAN: I recognized you to give information. There are others who are waiting to speak and I'll call on you when others have spoken for the first time. Delegate Hamilton.

DELEGATE HAMILTON: Mr. Chairman, I rise to speak against the amendment. Seems that we are dealing with an unusually important matter here, and the only thing that's really clear is that we don't know what we're talking about. I think we could really come a cropper on this. This weather's been so changeable I don't know what to hock anymore. It just seems to me--and here I agree with the delegate under whose influence I have fallen, who heads a very forward-looking club--that if I don't understand 'em, I'm not going to vote for 'em.

CHAIRMAN: Thank you, Delegate Hamilton. The Chair recognizes Delegate Shinno.

DELEGATE SHINNO: Mr. Chairman, I speak against this amendment. We've deliberated long enough. I think we are exhausted. According to the movant of this amendment, it's clear that she is proposing this amendment using the sample ballot on the last page, which I understand is a Con Con type of ballot where the two top vote-getters get to be candidates in the general election. Rather than be all confused, let's take the amendment as the movant made it and let's get on with the business. It's getting late.

CHAIRMAN: Thank you, Delegate Shinno. Delegate Goodenow.

DELEGATE GOODENOW: I'll make this very, very short. When I give an examination to pupils, I say--read those questions for 10 minutes, make sure you understand what you are doing; if not, consult me. Mr. Chairman, I am consulting you because I am confused. I thought I was voting on the blanket primary. Could you please clarify what exactly the vote is and the type of ballot, if that's necessary. It is very, very important in order to vote on this.

CHAIRMAN: Delegate Goodenow, the Chair is not able to enter into a discussion of this, but I can repeat to you what Delegate Campbell said, and she can correct me if I'm wrong. Her amendment would provide for a blanket primary if it is passed.

DELEGATE BLAKE: Mr. Chairman, could we have an administrative recess?

CHAIRMAN: The Chair will ask this--I will seek an advisory feeling from the group. All those in favor of an administrative recess, please raise your hand. Opposed? No administrative recess will be called at this time. We'll proceed.

DELEGATE McCALL: Mr. Chairman, point of order.

CHAIRMAN: Delegate McCall.

DELEGATE McCALL: I disagree with your definition even though you did repeat what Delegate Campbell said. There's nothing in here that indicates whether the two top people will qualify for the general election or not. It does not say that in the amendment offered.

CHAIRMAN: The Chair will pass your point of information to the movant. Does this provide, Delegate Campbell, that the two top vote-getters will be engaged in the runoff in the general election?

DELEGATE CAMPBELL: Mr. Chairman, what I said earlier in reference to the questions from the delegate from Kauai is that I have no objection to the use of the form for the old blanket primary if that is the choice of the body here. The very last one was provided me by the lieutenant governor's office as a sample for a blanket primary, and that's why I indicated it was descriptive of the measure. However, I believe that the manner in which this amendment is actually drawn ties it to that particular form. The way it reads, it indicates that voters shall be allowed to vote for any candidate for office regardless of the political party or nonpartisanship of the candidate.

It appears to tie in. If it doesn't, I have no objection to using this ballot. I'm just concerned that we have an open primary.

CHAIRMAN: The Chair would like to ask the present speaker whether this question is satisfactorily resolved in her mind at this time or whether procedurally the matter could be further considered at Second Reading or a later date, in view of the fact that there seems to be some degree of uncertainty as to what form and what procedure might be used to implement it? Would that information be correct?

DELEGATE CAMPBELL: Mr. Chairman, the lieutenant governor's office has sent over one of his staff to answer some of these questions, and I just received a note indicating that that individual is present.

CHAIRMAN: Delegate Campbell, I think we're going to have to stop at this point in view of the fact that you've answered Delegate McCall's question to the best of your ability alone. It would not be proper at this time to proceed with the matter in the manner that we would have done in one of the committees. However, to the extent that that information has been brought and can be made available to some delegates, including yourself, it might then be of benefit to the body. So if we can proceed with this matter and if through some ingenuity on your part you can achieve that--

DELEGATE CAMPBELL: Mr. Chairman, I appreciate it and I ask your indulgence and apologize for the further delay, in spite of the fact that this individual has been sent here to assist us. I would appreciate having a short administrative recess.

DELEGATE CROZIER: Second the motion.

DELEGATE DE COSTA: Point of information.

CHAIRMAN: State your point, Delegate de Costa.

DELEGATE DE COSTA: There's no big words over here, and all I can see here is that the delegate is asking to vote in secrecy. We don't have to say blanket or open, or whatever.

DELEGATE CROZIER: Mr. Chairman, a recess was asked for, sir.

CHAIRMAN: The Chair at this point, since the lieutenant governor's staff member is here, will call for a 1-minute recess.

At 4:48 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:00 p.m.

CHAIRMAN: Committee of the Whole will come to order. The Chair would like to ask Delegate Campbell if, since the conference was held with the lieutenant governor's staff, that she give that information. But before that, the Chair would like to suggest to this body that because of the confusion that appears to surround this issue, that it would be the Chair's strong urging that we proceed to some form of a vote and that any decision as to what further action might be taken be made between now and Second Reading in order to get along with the business at hand.

A good focused discussion on the pros and cons, the Chair would feel, is in order, but any continued floundering about, trying to figure out what we're talking about, the Chair will suggest we not do. Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I would like to move that my amendment be withdrawn at the present time.

DELEGATE WAIHEE: Second.

CHAIRMAN: If there is no discussion, all in favor of withdrawing the amendment say aye. Opposed? The motion is withdrawn.

DELEGATE PENEBACKER: Mr. Chairman, you mean after 3 hours we're going to do it just like that?

CHAIRMAN: Well, we have another amendment of a similar nature. The Chair would, of course, at any time accept the suggestion that we rise and advise; however, at this point we have a very similar--though less confusing, I think--amendment. I will call on Delegate Lee to make the appropriate motion for us.

DELEGATE RACHEL LEE: Before I begin, Mr. Chairman, I wish to make a correction on this amendment. On line 3 after the words "voting at all elections," there is a typographic

error; there should be no period there and "Secrecy of voting shall be preserved"--those words are deleted.* I wish to refer to Standing Committee Report No. 72--

CHAIRMAN: Delegate Lee, would you make a motion to approve this.

DELEGATE RACHEL LEE: Mr. Chairman, I move to amend Committee Proposal No. 16 with Amendment No. 6 as corrected.

DELEGATE HALE: Second.

CHAIRMAN: Thank you. It's been moved and seconded. Now you may proceed to discuss your amendment.

DELEGATE RACHEL LEE: The reference to read will be found on page 9 of Standing Committee Report No. 72, the very last paragraph: "In the open primary, party affiliation is not declared by the voter. At the time of elections the voter is given ballots representing the different parties with their candidates listed thereon. The voter must make his selection(s) on only one of the ballots, thereby maintaining or restricting his choice to candidates of only one party."

Mr. Chairman, as a delegate from Wahiawa, the pineapple capital of the world and where the air is the cleanest and purest on the Island of Oahu, I move as stated. Mr. Chairman, I also wish to be given the privilege to be the first and last to speak.

Fellow delegates, next to the blanket primary the open primary is the best democratic process for selecting candidates for public office. A sample of an open primary ballot, as you are aware by now, is on your desks. Perhaps for some of the younger delegates an explanation would be in order now. The open primary was used during the 1950s, but in 1964 the present closed primary was initiated with the hope that it would stimulate and create a stronger two-party system and more responsive parties. Unfortunately, it hasn't worked that way, so it's time we consider a change. Therefore, I ask my fellow delegates to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Lee. The Chair recognizes Delegate Dyer.

DELEGATE DYER: Mr. Chairman, I rise to speak in favor of this amendment. Although I am a proud card-carrying member of a political party, I don't feel that all voters should have to declare party preference in advance, as required by the closed primary method. Other delegates have discussed various flaws in the closed primary system. I would like to point out that the closed primary has led to the effective illusion that an overwhelming number of voters are strongly tied to the majority party. However, this is not the true picture. I feel the result of the 1976 presidential election in Hawaii provides better evidence: 51 percent were for Carter, 49 percent for Ford. In addition, other delegates have cited the feelings of their constituents. I would like to add the results of my district to the evidence--that 83 percent of those who answered my questionnaire favored open primaries, to choose ballots at the time of election. Mr. Chairman, I urge my fellow delegates to put this to the people for a vote.

CHAIRMAN: Thank you, Delegate Dyer. Delegate Chong.

DELEGATE CHONG: Mr. Chairman, I speak in favor of an open primary. As a precinct worker for many years, I can testify to the fact that the general public, the voting public, deeply resents the intrusion of their basic right to declare their party preference. Again, this is another means to deny the voters their right and privilege as citizens of the State of Hawaii and the United States of America.

If a citizen is a registered voter, he or she cannot vote in the primary unless he or she declares, for all the world to see, a party preference. Then and only then can a private citizen exercise his or her birthright. This is definitely against the basic principles of our democratic government. The closed primary was conceived by the Democratic

*This correction was inadvertently omitted in subsequent drafts of the amendment as presented for final reading.

party soon after their rise to glory in the State, to insure their continuing victory. Well, over the years it has been successful; we are now on the verge of a one-party system-- a split democratic system. I have seen newly registered voters who come to the precinct undecided. Sometimes they walk away, reluctant to declare a party preference; many times they decide to take a Democratic ballot, for who wants to be on the losing side?

To emphasize the general public's resentment of declaring their party preference, in 1974 there were 235,000 votes in the primary compared with 275,000 in the general-- a 40,000-vote difference; in 1976 there were 250,000 votes in the primary compared with 350,000 votes in the general--100,000-vote difference. A clear indication that the general public is distressed with the present system. To further emphasize this problem, I cite as an example the senate race in the windward district, an area I am familiar with and part of the area I represent. There are very few Republicans left. However, as the results of the general election show, Republican senators have consistently been elected to the two top seats, receiving votes in excess of 30,000. I contend that there are not that many Republicans left in the whole State. This then means the Democrats and undeclared voters have switched (an unpopular term today) party preference in order to vote for the candidate of their choice.

I cite this only as an example, an example that the closed primary, instead of furthering our two-party system, is denying the citizens their privilege to elect the candidates of their choice, thereby denying them their rights as citizens. I wonder also--and I ask the question to legal counsel, Mr. Chairman--does this section violate the right to privacy section that the Constitutional Convention just approved?

CHAIRMAN: Thank you, Delegate Chong. The Chair recognizes Delegate Hokama.

DELEGATE HOKAMA: Mr. Chairman, I'll yield to another time.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I also rise to speak in favor of this amendment, to make two points, one of which, I think, has already been made by several speakers. Most voters are in the voting booth to choose a man, not a party. Some years they may want to vote Republican, some years Democrat, some years even Aloha Democrats. The party is unimportant to them; it's the person they are concerned about, and I think they should have the right to vote for the person, or groups of people they choose.

Also, one thing that has always troubled me about the primary is that, if in fact the primary is simply a nominating process for a political party, it's always disturbed me-- what right any political party has to demand that the State print up the ballots for it. Seems to me that if the State is going to print up ballots for political parties, then all the voters of the State should have the right to go into the voting booth and choose members of those parties to run in the general election. That does take a little bit away from the primary election as being in fact simply a party preference type of poll, but on the other hand I think it's a small price to pay for having the State of Hawaii do all the work in printing and distributing the ballots and getting these ballots out to the various party members so that the party members can make their choice. I think they're going to have to give up a little; what they give up here is that they have to share the choice of their party preference with all those independent voters who go into the voting booth and decide this year that they're going to be Republican, Democrat or whatever party they desire.

The final remark I'd like to make is simply the one I made before: Since there seems to be so much controversy about this, since the State of Hawaii has tried so many different kinds of ballots over the past 25 years, I think that the general public is rather well informed on this particular issue by now and it's a classic issue to submit to them for their decision.

CHAIRMAN: Thank you, Delegate DiBianco. The Chair recognizes Delegate Sterling.

DELEGATE STERLING: I rise to speak in favor of the amendment, stressing the fact that the voter must be given the freedom of choice of candidates. I agree with the two previous speakers, but I'd like to bring up a third point. In Section 2 of Article I--"All persons are free by nature and are equal in their inherent and inalienable rights"--I

believe that the present system is very restrictive, infringing upon these "inalienable rights." And then the last sentence of that paragraph--"These rights cannot endure unless the people recognize their corresponding obligations and responsibilities"--if we are to restrict them in their obligations and responsibilities by limiting them to a particular ballot without the freedom of choice, I don't think we can hold them to be responsible unless they are given the freedom of choice. I urge your support of this. I think this is positive legislation and is a big plus for this Convention.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Hokama, do you wish to be recognized?

DELEGATE HOKAMA: Mr. Chairman, I rise to speak against this amendment. Although I don't like to disagree with the movant, I think Lanai has the world's largest pineapple plantation. My reason for disagreeing with this amendment, Mr. Chairman, is for one thing--abuse. I foresee a major abuse of this type of primary election to be that--a member of party A, knowing that out of the two candidates of party B, should he go and vote for, let's say the second candidate, the weaker opponent, that during general election time the weaker opponent will be a lesser opponent, thereby strengthening his or her own goals and objectives of winning the general election. I see this as a way of further destroying whatever two-party system we have left. For this rationale I shall vote against this amendment.

CHAIRMAN: Thank you, Delegate Hokama. The Chair recognizes Delegate Cabral.

DELEGATE CABRAL: Mr. Chairman, I rise to speak in favor of this amendment. I would like to cite the following statistics that were contained in a report of the Commission on Presidential Nomination and Party Structure held and reported out in January of 1978. In key arguments, proponents of the closed primary cite that the primary and foremost argument against other than a closed primary was that no nomination of weak candidates, of course, could be sustained in a closed primary. And the process of cross-over voting would be eliminated.

However, in the commission report the foremost problem that was identified and argued was that in the following statement: "Two distinct arguments have been made in favor of banning open and crossover primaries. Some have argued that Republicans 'raid' Democratic primaries. However, the existence of 'raiding' has never been conclusively proven by survey research."

It was further stated that many Republicans who voted in Democratic primaries--in particular, the voting by Republicans for McCarthy in the primary in 1968--argued that "...Republican supporters clearly did not vote for [McCarthy because of his party affiliation, but that they voted for him because of his stand and] opposition to the Vietnam war."

A stronger argument for banning open primaries is suggested by research that indicates the Republicans who cross over have different candidate preferences from the Democratic party identifiers in the electorate. It was again found that Republican voters who crossed over into the Democratic primary once again voted for the man of their choice because of his potential and qualifications, and not so much for the individual's party preference. So I therefore support this amendment and ask that you all consider this as a "people's choice" kind of consideration of a constitutional amendment.

CHAIRMAN: Thank you, Delegate Cabral. The Chair recognizes Delegate Odanaka.

DELEGATE ODANAKA: Mr. Chairman, I would like to speak in favor of this amendment. Our system of closed primaries is a basic restriction blocking the achievement of a totally free and democratic election process. Voting is a citizen's most fundamental right and a vital part of our representative democracy. It is high time that we return to the people their right to choose whatever party they see fit. An open primary election operates to protect a person's voting and privacy rights. As the system operates now, a voter must declare to a total stranger his party preference at the time of registration and at the primary voting.

I ask you--what becomes of the secret ballot concept under these circumstances? Each one of us here must also consider that the closed primary is not consistent with this Convention's concerns for the individual's right to privacy. It has been stated that the

right to privacy includes "the issue of informational privacy or the ability of a person to control the privacy of information about himself."* The right to privacy under this definition given to the Convention includes the right of a person to act as an individual and not be concerned with forced party participation. I urge you to support this amendment.

CHAIRMAN: Thank you, Delegate Odanaka. Delegate Kimball is recognized.

DELEGATE KIMBALL: Mr. Chairman, I speak in favor of this amendment. The open primary system is defined as the strongest primary system that we can offer the voters of Hawaii because not only does it protect all voters' rights to privacy with respect to selection of party, it does not deteriorate from any political party.

In view of the fact given the freedom of choice to choose, all voters will vote in a positive manner in tune with the political philosophy and programs of the candidates they feel are the best. In addition, arguments have been raised with respect to so-called cross-overs and raiding. In my research, I found that the crossovers and raiding situations are "necessary evils" of the closed primary system. How can I cross over from one party to another when I in an open primary am given the freedom to select the party of my choice at the time I vote? With respect to raiding, research and surveys show that political party leaders discourage raiding because raiding will lead to ticket-splitting in the subsequent or general election, which will delete their power bases.

In addition, this amendment is needed on a constitutional basis because we are facing a dilemma of nonvoter participation and that participation is basic to our representative democracy. Therefore I urge all of my fellow delegates to vote for this amendment.

CHAIRMAN: Thank you, Delegate Kimball. Delegate Souki, do you have a point of inquiry?

DELEGATE SOUKI: Mr. Chairman, may I direct a question to the movant through the Chairman? Question No. 1 is, can this be construed to be a blanket primary election? And No. 2, can the movant explain to me if there is any substantial difference between Amendment No. 5 and Amendment No. 6?

CHAIRMAN: Delegate Lee, would you care to respond to the questions that have been placed?

DELEGATE RACHEL LEE: Yes, Mr. Chairman. No, this is not the same as a blanket open primary. As I stated before, the differences are explained in Standing Committee Report No. 72, page 9, the last paragraph. That will explain this amendment.

CHAIRMAN: And would you answer also the second part of the question, which had relation to--which the delegate has raised.

DELEGATE RACHEL LEE: It is not the same. You can again refer to page 9 of the standing committee report. It explains it in detail.

CHAIRMAN: Thank you, Delegate Souki and Delegate Lee. Delegate Blean.

DELEGATE BLEAN: Mr. Chairman, I rise to speak in favor of this amendment. With the Chair's permission, within the time allotted to me I would like to read a resolution passed by the Maui county council that supports my argument--which was passed a little over 2 weeks ago, August 21. This, incidentally, was passed unanimously by the Maui county council, which consists of nine members, seven of whom are Democrats and two of whom are Republicans. It states:

WHEREAS, under the present primary election laws contained in HRS, Chapter 12, there is one special or primary ballot for each party and non-partisans; and

*See Standing Committee Report No. 69, p. 7.

WHEREAS, presently, a person desiring to vote in the primary must state his party preference to the precinct officials or will be refused the right to vote; and

WHEREAS, the present "closed" primary election laws violate the right to cast a secret ballot and discourage those "independent" voters who do not have a party preference;

WHEREAS, the present "closed" primary election laws results [sic] in an unwarranted intrusion by the government into a person's right of privacy and a reduction in voter turn-out especially among "independents"; and

WHEREAS, under an open primary, voters would be entitled to cast a ballot for the person of their choice regardless of party affiliation; now, therefore,

BE IT RESOLVED by the Council of the County of Maui that it does hereby respectfully request that the State of Hawaii Constitutional Convention amend the Constitution of the State of Hawaii to preserve the voters' right of privacy and encourage full voter participation by eliminating the "closed" primary in favor of an "open" primary; and

BE IT FURTHER RESOLVED that a certified copy of this resolution be transmitted to the State of Hawaii Constitutional Convention.

This was signed by all nine members of the council and certified by council chairman Goro Hokama of Lanai. Now following that, if I may proceed to some arguments of my own. I hate to be redundant but this to me is a very important issue and I would like to touch just briefly on some of the reasons I support the amendment.

I don't think it's been mentioned--the right to assemble, which is in our Bill of Rights and essentially gives the right "peaceably to assemble" or to join a group. Now, I'm not a constitutional lawyer but I would think the corollary of that would be that we have the right not to assemble, or not to join a group if we don't so wish. And to say that we cannot vote or we cannot vote for people of our choice, or in effect to disenfranchise Americans in a democracy because they do not wish to join a group, I think, is constitutionally wrong. And for evidence of this, since it's been stated earlier that there is no statistical basis to show a closed primary can prevent voter turnout, I would like to refer again to my county. This is the number of registered voters who will be eligible to vote in this election: there will be a total of 28,263 registered voters in the County of Maui. Of these with no party designation (in other words nonpartisan) choosing voluntarily not to vote in the primary because of this requirement, there are 6,371. In other words, 23 percent of the people are officially going on record as saying--I will not vote in the primary as I do not want to declare a party affiliation.

I think what we're really talking about is the right of the majority in a democracy. The majority of the people in this State are nonpartisan; only 5 percent of the registered voters in this State are official, certified members of any political party. And yet we force them to, in effect, swear an allegiance to one party or another when they go to the polls. Now the argument has been made that the primary election exists for the benefit of the party. This is wrong and it was declared constitutionally wrong in the '50s when the Democratic party in the South refused the rights of blacks to vote by saying that this is a private club, the Democratic party--we do not want you to join, the primary exists for us as a private club to select our candidates. This concept has not been valid in our country for 25 years, and to say that it is a reason for a political party or private group to determine its candidates for an election, again, I think, is fundamentally wrong.

A previous speaker mentioned the right to privacy; again, I think this is a very strong concept. When we vote, we have a right to secretly vote--not only who we are voting for but why and on what basis. And I submit to you--although this isn't as much of a factor as it was in earlier days in this State when, if you lived in a small town, especially a sugar mill town, and were a supervisor, and you went and asked for the wrong ballot or you were a rank-and-file member and you went in and asked for the wrong ballot--that would be a stigma attached to you in your daily lives. I think this is an intrusion on a person's secrecy and his right to choose when he votes. Again, the threat of crossovers has been mentioned;

again I say the people vote for two reasons--either because they support a candidate or because they don't support a candidate and want to vote against that candidate. And who are we to say that one is a good reason for voting and one is a bad reason.

Also, I don't agree with what I consider a kind of suspicious view of the democratic process which says the people go out to vote out of some kind of sinister motive, that they're trying to raid the other party and damage the party process. I think it's very frightening for us, especially members of a constitutional convention, to view the voting public in a democracy in those terms. I have no evidence to back this up and I don't think there is any way we can statistically, but I think the majority of the people, when they do vote, vote sincerely for the best candidate because they want the best government for them.

Another point I want to bring up, and again this goes back to the question of parties and their role in elections, and that is the question of--does the State have the right to enforce loyalties on its citizens. We all come here with loyalties, whether it's to our families, our church or to a fraternal organization, and many of us to our party, which I share. But the State does not have the right to challenge me that my party loyalty should come before that of my friends. And if I have a friend who belongs to another party other than myself and I support his candidacy, I say that I have a right to support my friend when I go in and vote on the ballot.

I want to make one more point if I may, and that is simply this: I am a Democrat. I am a card-carrying Democrat. I'm a precinct officer, and I've been a delegate to the Constitutional Convention for the last 2 months and I'm proud of my party. But I think our party can stand on its own merits, on the merit of what it sells the people, on the merits of the legislation that is presented to this country and especially to this State. Therefore we do not need artificial aids, artificial subterfuge in our Constitution to keep our party in power. We can do it by an open, above-board manner saying the majority of the people will vote for us. We don't have to sneak around by saying you've got to register early, you've got to publicly declare, we want to use this as a tool to keep the people in power in power. Again I submit to you that democratically and constitutionally that attitude is wrong. Therefore I urge you to support this amendment.

CHAIRMAN: Thank you, Delegate Blean. The Chair recognizes Delegate Harris.

DELEGATE HARRIS: Mr. Chairman, I rise to speak in favor of this amendment. I won't reiterate all the excellent reasons we should pass this open primary amendment. I will say that I believe the people of Hawaii have given us a clear mandate that they want the open primary. I believe it's our duty to put this question on the ballot in November. Certainly on Kauai I know my polls have indicated that 85 percent of my constituents want to see the open primary question on the ballot. I intend to respond to their requests and vote for this amendment. I urge all the delegates to do likewise.

CHAIRMAN: Thank you, Delegate Harris. Delegate Chong.

DELEGATE CHONG: Mr. Chairman, I think this is probably a point of inquiry. The issue of closed primary is, in my opinion and obviously to many delegates here, an invasion of privacy. At this time, Mr. Chairman, I request an attorney general's opinion for this body, the question being--is the closed primary a violation of the right to privacy provision approved in Committee Proposal No. 15? I would then, Mr. Chairman, ask that we defer this issue until the question is answered.

CHAIRMAN: Delegate Chong, your point of inquiry is not one that can be answered within this body; therefore it is not in order at this time. However, the question is one that you are entitled to ask as a delegate, but you must do so outside the process of this Committee of the Whole. As to the matter of deferring this issue until such time as that question is answered, the issue which is before us, whether we vote for it or not, will not be entirely settled until after Second Reading. So it is the Chair's suggestion that in the interim time your concern be transmitted to the attorney general who may, if he wishes, be able to give you some opinion along those lines. Would that satisfy your concern?

DELEGATE CHONG: I would prefer that the question be asked by the Committee of the Whole rather than just from me, to satisfy everyone.

CHAIRMAN: We can at your request transmit to the attorney that portion of your

remarks which would be contained in the transcript of this body to use as the basis of his answering the question. I don't believe the Chair can hold the proceedings up in the Committee of the Whole until that answer is received, however. Does that satisfy you?

DELEGATE CHONG: Then the question will be referred to the attorney general from this body?

CHAIRMAN: At your request. The Chair recognizes Delegate Hale--I'm sorry, Delegate Hale, I had recognized Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I wish to speak against the motion. Where conceptually I may believe in the open primary system, I believe there are some flaws here. It seems that the movant of the amendment is construing the language here in Amendment No. 6 to be the same as is on page 9 of the standing committee report, item 3 on the open primary where it provides for the ballots to be of one party selection. However, nowhere in the language here does it provide for that. Therefore, I believe that if this should pass, there might be some constitutional questions and possible litigation. As the sage from Manoa said, when you're in doubt, don't vote.

CHAIRMAN: Thank you, Delegate Souki. The Chair recognizes Delegate Hale.

DELEGATE HALE: I'd like to speak for this amendment, and I'd like to say that I think the intent of the amendment is outlined very clearly on page 9 where it says: "In the open primary, party affiliation is not declared by the voter. At the time of elections the voter is given ballots representing the different parties with their candidates listed thereon. The voter must make his selection(s) on only one of the ballots, thereby maintaining or restricting his choice to candidates of only one party." I think if we pass this with the reference to this description in the committee report, we are passing what is known as an open primary. And this was the intention of the movant.

I'd like to give a little history in support of this amendment. This kind of open primary ballot was in effect in this State from 1950 to 1964. There's been a lot of talk here about not doing anything that's going to hurt the two-party system, as though we still had a two-party system. But at any rate there is talk from both sides of the fence and everybody agrees that we should have a two-party system. I'd like to point out that in 1950 the Republicans controlled the legislature of this State and they controlled it again in 1952, but in 1954 under this kind of open ballot the Democrats took over. It had nothing to do with the ballot; it had to do with the political parties and the philosophy and the programs and the platform that was given to the people at that time. From 1954 to 1964 the Democrats stayed in power under this particular ballot, except that during a period right after we got statehood the Republicans were able to elect a Republican governor.

So it seems to me that the history of this open primary ballot has shown that both parties can prosper and that it's going to depend on the political platform and philosophy and candidates as to which party is going to get the voters' attention. And if we really want to strengthen the two-party system, I think it is obligatory for us to go back to this so-called open primary system.

I would also like to say that in this particular amendment there is no question like that that bogged us down in the last amendment, as to whether or not there is going to be, say, two Democrats for governor on the general election ticket. We are going to preserve our political party system and the general election will be an election between the parties. But the primary election can more truly be an election between the people who are running. I urge you to please carefully consider this amendment. On the second ballot in the minority report is a sample of the kind of ballot that was used before. This may not be the kind of ballot that we would use now under our voting system, but I'm showing it to you to point out that you do have to stay on one side of the party line. And you are going to strengthen the political parties, you are going to make the process more open for more people to be able to vote because they do not have to declare before they go in. There's nowhere in the public records that the voter registration--as to whether they are a Democrat or a Republican, and in the privacy of the voting booth they can vote their consciences.

I believe this is what the people of this State are asking for and I urge you to please give them the chance to vote on this in the general election as one of our proposed amendments.

CHAIRMAN: Thank you, Delegate Hale. Delegate Tam.

DELEGATE TAM: Mr. Chairman, I rise to speak against the amendment. I do have problems regarding my concerns about the cross-over abuse that could arise. However, I would like to bring something to the attention of the body. The resolution that another delegate from Maui read expressing the intent of the Maui county council to me is a little ambiguous. All the delegates from Maui county received a copy of the resolution. There does seem to be some question as to whether it supports an open primary or a blanket primary. I myself asked one of the councilmen as to what was intended and the answer at that time sounded more like a blanket primary. So there is some ambiguity to that resolution.

The other point I would like to make is that even though I am against the amendment, I do believe there are going to be problems in the future regarding this right to privacy, in that what we did pass the other day was that the "right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest." And it would seem that there is no "compelling state interest" for the State to know the particular political affiliation of a voter. So it would seem that even if we can keep the closed primary, its days are numbered.

CHAIRMAN: Thank you, Delegate Tam. Delegate Okamura.

DELEGATE OKAMURA: Mr. Chairman, I rise to speak against the amendment. I would like to point out the specimen ballot provided by the lieutenant governor's office on the open primary from 1950 to 1964. It's a good example of how abuse can occur when you have this type of ballot. If you look at that particular specimen ballot, you will notice that on the Republican side there's one candidate for chairman and executive officer; you have three on the Democratic side. On the board of supervisors you can vote for six members; you have only six on the Republican side, whereas you have eleven on the Democratic side. If this were the case, then all the Republicans would vote in the Democratic column and they would vote for the weaker members of the Democratic party so that the weaker members could possibly be elected and challenge the Republicans in the general. I think this is an abuse.

I would also like to point out that the purpose of a primary is to nominate candidates for political parties. It's really considered a privilege. In at least 14 states there is some form of convention practice where there is no direct primary election; in these 14 states the candidates are selected by convention delegates of a political party.

CHAIRMAN: Thank you, Delegate Okamura. The Chair recognizes Delegate Hironaka.

DELEGATE HIRONAKA: Mr. Chairman, I feel compelled to say something on this matter. First of all, I would like to say that I am against the amendment, and I'm also for strengthening the two-party system although I have been a lifelong Democrat. But I don't think that having an open primary is going to do it. To me, it may further weaken the two-party system so you'll have a one-party system, and this could conceivably happen.

For instance, this year's election--if you didn't have to declare whether you were going to take the Democratic or the Republican ballot beforehand, probably many people who would have chosen the Republican ballot would be thinking--well, that's all right, my friends who are Republicans will probably take the Republican ballot. So because the governor's race is so interesting this year--we know that probably the guy who wins the primary is going to be our governor--I'd like to have a say in that, so I'm going to take the Democratic ballot. And it may wind up that nobody is going to take the Republican ballot this year--if you make an open primary.

If that happens, I think that's the death of the other party. I think that when you have a closed primary you make people stick to whatever beliefs they have, and this is the reason for the primary. If that's not the reason, then I think we shouldn't have a primary or we should just have a runoff, like we have in high school elections where there is no party and you just have to--because we need to elect two people, we take the top four guys and the top four run off just to eliminate having 20 guys running and just have a few running in the general. So you have a runoff. So at least the winners get close to or a majority of the people voting. If this is the reason and this is what you people want, then that is what you want--just nonpartisan all the way, just have a popularity election.

I don't think that's what we want, because our nation was founded on this party system. I think we ought to preserve this. In order to preserve this, I think the best way is a closed primary.

CHAIRMAN: Thank you, Delegate Hironaka. Delegate Weatherwax is recognized.

DELEGATE WEATHERWAX: Mr. Chairman, I will try to hopefully put some perspective in this. If you review the Constitution, in Article II you will find nothing about primaries in there other than presidential primary. The section we're trying to amend, Section 4, says: "The legislature shall provide for the registration of voters and for absentee voting; and shall prescribe the method of voting at all elections. Secrecy of voting shall be preserved." There's nothing in there about a closed primary or an open primary or a blanket primary, or any primary at all.

In this instance, I believe that the amendment is trying to do something that it's not doing accurately. It is attempting to get to an open primary system by attacking the particular problem of secrecy, or to try to maintain the problem of secrecy. That's a separate issue--that perhaps the "secrecy of voting shall be preserved" which is presently contained in the Constitution, in conjunction with the right of privacy which was previously passed could be held at a later date--and I won't speculate at this time--as not permitting, in fact, a requirement for a declaration as to party affiliation.

However, still addressing that idea of secrecy as to party affiliation, I believe that in the ballots an individual who is a member of a party would be willing to declare in fact that he is a member of a political party. And again going back--and we have heard the same arguments, that the political primary is designed as a nominating process for the party, and you should belong to that party to participate--there have been figures which have indicated that there are independents. If they are in fact independent and they do not want to participate in the political party, then why is it necessary that they participate in the primary election? The argument has been made that, well, the government pays for this and therefore I have a right. Well, I believe that there are a lot of functions that the government pays for that we don't necessarily therefore demand the right to participate in. It's a quasi-public function--the political party system; it's well established; right now it seems to be on the wane, but I think we're attempting to reinforce that.

So I am not convinced, and I hope that the members of the delegation here also are not convinced, that these statistics do not particularly show that the system or the electoral process is causing the disenfranchisement. That sounds like a buzzword. We all automatically say that you're being disenfranchised in not being able to vote. But, remember, this is a nominating process. These individuals do vote in the general election, but the parties are afforded the opportunity to select their best men; be a part of that party, be a part of the selection process.

Getting to the closed primary system and the open primary, there have been historically--and this can go either way--I believe approximately--and this may be inaccurate--there's a large number of individual states--46 comes to mind, but that may be inaccurate--that have a closed primary system and not the open primary system, particularly for the reason of supporting their political parties. There was some reference to the question of blacks and it being a private club. I would hope that you would be able to see through that as being a different situation in the South, and also that that is a particularly different problem from just the machinery itself.

I think again we're looking for a whipping boy and we're trying to jump on the system, the electoral process, and I would hope that we not do that. I think that hopefully--I would ask that this Committee of the Whole look again at the language in Section 4; it directs the legislature to act, and perhaps this is clearly a statutory matter. We've spent nearly 3 hours trying to resolve this problem of the primary. I think that perhaps the legislature is the body that should directly address that.

There was one concern expressed by an individual with reference to a previous amendment and that's with reference to the Hatch Act and federal employees. I think again the problem is not the electoral system. If those individuals who are covered by the Hatch Act are being disenfranchised by not being able to participate in political parties, then that's a problem with the Hatch Act. I myself believe that the Hatch Act should be liberalized considerably.

One more point--as was mentioned this can cut either way--and that's the problem with spoiled ballots. Enough said on that; as you can see, in this one particular sample they have a line drawn down the middle, and the likelihood of individuals crossing over in that instance could cause more spoiled ballots. I would urge that the delegation come to a consensus more in leaving the language in Section 4 as it is, and let the legislature deal with this problem.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair will recognize Delegate Miller.

DELEGATE MILLER: Mr. Chairman, I rise to speak in favor of the proposed amendment. The closed primary law in Hawaii simply doesn't work. This is not just my opinion but it is the respected opinion of the supreme court of Hawaii. They made it clear that our law was not a true closed primary: "[A]ny voter in a primary election is entitled to be given the ballot of the party he designates by merely stating his party preference or nonpartisanship; there is no requirement that he belong to the party whose ballot he has chosen although he may not select a different type of ballot in subsequent primaries unless he complies with certain prerequisites."*

One of the governor candidates has also publicly recognized the nature of the present primary law by openly appealing to members of one party to request the ballot of the opposing party. A "true" closed primary election is one in which only registered party members are permitted to participate in the selection of their party candidates. Under our present laws, you must be a party member in order to run for office in a partisan primary but the prospective voters need not be. The cumulative effect of this primary system is to create a situation whereby 90 percent of the voters vote one way in the primary while they vote almost 50-50 in the general election for the major candidates. Do any of these shenanigans make sense? Of course not, but our not-so-closed primary encourages them.

Interestingly enough, and if my research is correct, among the authors of HB 12 in 1963, the primary law, were Representatives Robert Taira and Donald Ching. The time has come to do away with this primary law and return to a sensible open primary system which represents the true independent nature of Hawaii's voters.

CHAIRMAN: Thank you, Delegate Miller. The Chair recognizes Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, I speak for the amendment. I've heard it mentioned a number of times today that the primary election is an election to select nominees. If we are speaking in the true sense of nominating nominee candidates, then the present method of selecting candidates through the primary election is totally wrong. The Democrats should have their own convention and select their own nominees and the Republicans should do likewise. If this were done, we would save the State of Hawaii a tremendous amount of money, and then each party could come out with its own candidates and have one run-off election, the general election, which would resolve the problem.

This is a very important issue that comes before this Convention. And with regard to us saying nothing about the election method, it's true this has been statutory. I was told this year by two of my representatives that it would come up in the legislature. It didn't; it wasn't even mentioned. And this has been mentioned by many, many people throughout the State--to get back to the open primary. Unless the party--and I'm speaking also about the Democratic party--if you're so concerned about the best way to elect or appoint nominees or candidates for the general election, then why don't you folks be big enough to have a convention where you can select your candidates. If this is not the case, then let's allow the public of Hawaii to select candidates for the general election.

CHAIRMAN: Thank you, Delegate Blake. Delegate Campbell is recognized.

DELEGATE CAMPBELL: Mr. Chairman, I rise to speak in favor of this amendment. I can't help but say that all of these arguments which we continue to hear, that this kind

*Hawaii Reports--Cases Determined in the Supreme Court of the State of Hawaii, Volume 56, p. 521 (Coray v. Koga).

of open primary is going to weaken the party, are very disingenous. To me, the way to strengthen our party system is to do everything in our power to induce the voters to come to the polls to exercise their franchise. How can we strengthen the parties when our procedure seems to have kept people from the polls? I believe that what has gone wrong with the closed primary, as was said by the lieutenant governor's office, is that no more than 15 percent of the total registered voters in Hawaii belong to political parties.

If you examine the closed primary system very closely, you will find that there is really no particular logic to support it. It simply does not give the people the right to select the candidates of their choice. It seems to me that this should be guaranteed to our citizens. We are here not as individuals to do what is good for us personally, but what is good for the citizens at large. I too am a Democrat of long standing; I've never been anything else but a Democrat. But that's not the point. The question is, what is happening to the other people out there, those who are not coming to the polls? They are the ones who should be encouraged to come out and exercise their right to vote. Therefore, Mr. Chairman, I strongly urge the delegates to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Campbell. Delegate Sterling is recognized.

DELEGATE STERLING: I'm rising again to speak for the amendment. This morning as you recall--

CHAIRMAN: Delegate Sterling, you have spoken before. Let me ask if there are any delegates who wish to speak for the first time. If not, proceed.

DELEGATE STERLING: This morning we spent quite a few hours talking about the first amendment to Committee Proposal No. 16 regarding resignation from office. And at this time we talked about parties and changing parties, and we spoke about the integrity of the members of the parties and the integrity of the man who resigns and changes his political party prior to or following the 45th working day and so on. And we spent a lot of time on this.

We're speaking about the same thing. And we shot this down this morning. Now we want to shoot this down on the open primary. I'm kind of reminded at this time of the words, "We have nothing to fear but fear itself." And this is bugging me right now, having gone through what we did this morning and now we want to switch again. I really don't know what direction we're taking. What are we so afraid of?

CHAIRMAN: Thank you, Delegate Sterling. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I would just like to speak very briefly in support of this amendment. But I also would like to take a little personal privilege. I don't like to hear the delegates talk about--that we're blaming the system and that's wrong. If we blame the system, it's wrong; if we blame the individuals and say the politicians in power are no good, then that's wrong. Everything is wrong. But let's find out--we don't really know what's wrong. Something is wrong. People in power today may not realize it because they are in power, but there is something wrong. And one of these days they're going to find that they won't have the power because the people are going to take it into their own hands.

Now I suggest that we have spent 2 hours or so on this and that is an argument that we ought to vote right now. I think that's the best argument that we shouldn't vote. This is a very, very important issue. We've been here almost 4 months. This issue was debated for only a few hours within the bill of rights committee. Now we're bringing it out to the whole Convention. It's an issue that the public is anxiously waiting to see what we're going to do. And I suggest that on an empty stomach and probably an empty head at this time of night, we're in no position to vote on this. Therefore, I would like to move that we rise and request more time to deliberate.

DELEGATE BLAKE: Second.

CHAIRMAN: It's been moved and seconded that the Committee of the Whole rise and report that we need more time. All in favor raise your hand. Opposed? The noes have it. We will proceed. Delegate DiBianco is recognized.

DELEGATE DiBIANCO: Over the past 4 hours or so, in one form or another we've

heard this issue discussed, and I think virtually everybody on the floor has given his opinion at least once. Since it's clear that everyone here has an opinion, and I can assure you that, at least based upon experience in my own district, everybody out there has an opinion--

CHAIRMAN: Delegate DiBianco, let me interrupt for just a moment to ask that the delegates extend the speaker their courtesy. Please proceed.

DELEGATE DiBIANCO: With the exception of initiative, referendum and recall, I got more calls on this than on any other issue, and I wasn't even campaigning on this issue back in April and May. It would seem to me that since everybody seems to have an opinion on this, there's only one way to resolve it and that's to put the matter on the ballot and let the public decide once and for all.

I would remind you that what we are doing here tonight is not deciding whether or not the State of Hawaii should have an open primary, but deciding whether or not the question of an open primary should be put on the ballot. This issue certainly appears to have qualified for that treatment.

CHAIRMAN: Thank you, Delegate DiBianco. The Chair will recognize Delegate Goodenow.

DELEGATE GOODENOW: Mr. Chairman, very briefly I would like to say that I am for the amendment. And I would like to point out briefly that it isn't a matter of what your government can do for you, it's a matter of what you can do for your government. At this moment I hope that you're listening, because we are in a very unique position and will be for the remainder of the next week, whereby if we really believe in things and if the people out there have asked and asked, that we at least give them a chance. This is taking our responsibility in the unique position as the elected officials to this Convention that we are. Please give it serious consideration.

CHAIRMAN: Thank you, Delegate Goodenow. Delegate Hirata is recognized.

DELEGATE HIRATA: Mr. Chairman, I rise to speak against this particular amendment because I feel that we should examine our Hawaiian history before we make a decision on this matter. Prior to the late 1950s, Hawaii had a curious system of primary elections. It was a wide-open system in which, for example, a candidate for the board of supervisors (now the city council) could be elected outright by receiving more than 50 percent of the vote in the primary. It prevailed because it was convenient for the economic and political institutions of that day. Crossing over from one side of the ballot to the other--one vote for a Republican and another for a Democrat--was a common practice.

The major weakness of the open primary is that it does not enhance the fielding of the strongest candidates. In 1954, for example, the Oahu Republicans used cross-over voting to knock off the popular John H. Wilson. Then in the general election they returned to their ticket to elect the late Neal S. Blaisdell. In another instance, cross-over strategy was used in the 1959 statehood special election. Two Democratic candidates sought the U.S. senate seat. A Harris poll conducted shortly after the passage of the statehood bill in 1959 had projected state senator William Heen as the stronger Democratic candidate. But as a result of Republican crossovers, a weaker candidate was nominated and the Republican, Hiram Fong, became one of Hawaii's senators.

I must refer back to my speech given on the previous amendment, because I feel that this amendment again defeats the real purpose of a primary election, which is to select the strongest candidate each party can field so that voters could have clear choices to make in the general election. I believe that the closed primary system, again, gives the voters a chance to make some clear choices of candidates and of programs and platforms of the party they support. I think in their support of a candidate they help in building that particular party. I don't think that there is anything wrong with the election laws. Some people have stated that we seem to have a one-party state. I don't think that the election law or a constitutional amendment is going to solve this problem. I think that in looking at the real intent--in my looking at the intent of a primary election, which is, again, to field the strongest candidate of a political party, I would think that by stating your preference prior to getting the ballot and then making your decision as to which candidate in that particular party you would want to represent you is selecting the best candidate from that party.

If that's not the intent of a primary election, if we are going to open it up as this amendment would do, we may as well do away with the primary and just have a general election and the highest vote-getters at that time would be declared the winners. For these reasons I ask all of you to vote against this particular amendment.

CHAIRMAN: Thank you, Delegate Hirata. The Chair recognizes Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I wish to speak against the amendment, with an empty stomach and possibly an empty head but one who is willing to listen and consider all the options. A delegate mentioned that this body is to act merely as a conduit and provide for the electorate--for their decisions as to what should be in the Constitution. I think we would be remiss if we didn't consider what merits constitutional ratification. This seems to be our major job--not merely to act as a conduit.

In looking at the language, again I must reiterate that I do have some problem with the language. It doesn't seem to elaborate in enough detail the particulars of the kind of open election that you would want. I think that something as important as this would need more time and more elaboration. Therefore the legislature, as provided in Section 4 of Article II, should be provided this responsibility. This should be in fact a statutory matter and not a constitutional matter, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Souki. The Chair recognizes Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I speak in favor of this amendment. I had not planned on speaking, but since this is the month of the Portuguese, I think I can abuse the privilege a little bit. One of the delegates just talked about a bit of history, and I consider myself an amateur historian; I'd like to point out what happened in 1954. It's true, a lot of people jumped over and got Johnny Wilson out, but in doing so they made the biggest change in Hawaii's history since, I think, the annexation. That's when the young Democrats back from the war moved in and took the power away from the Republicans. So to use that to say '54 was a bad year--I don't think so. Because of this open primary we cleaned house and it's been to our benefit.

CHAIRMAN: Thank you, Delegate Crozier.

DELEGATE TAKITANI: Mr. Chairman, point of inquiry.

CHAIRMAN: Delegate Takitani, state your point of inquiry.

DELEGATE TAKITANI: I would just like to have a definition of what is a constitutional issue and what is a statutory issue.

CHAIRMAN: Delegate Takitani, that question was brought up once before, though not in today's meeting. I think the answer would probably hold that it's almost impossible to answer with precision.

DELEGATE TAKITANI: I just asked because I do believe once upon a time prohibition was in the Constitution.

CHAIRMAN: Thank you, Delegate Takitani. Is there further discussion? Delegate Eastvold.

DELEGATE EASTVOLD: I'd like to speak in favor of this motion. First of all, I'd like to point out that I wish the Democrats would quit carrying on about us Republicans. I can sympathize with the Hawaiians and how much the haoles always cared about them and where it put them, and I think this is what happened to the Republicans; the Democrats have cared for so long about us that they've put us right where they'd like to have us.

As far as crossing over, if crossing over is going to bring us such politicians as Hiram Fong, more to crossing over--I hope we have plenty of it. I'd like to remark as to the committee chairman's remark that we should leave this to the legislature: I believe that if we continue to take the attitude that we're going to leave everything to the legislature, I'm not really sure what we're doing here. I believe this is a constitutional matter, and I believe we should act upon it presently. One of the greatest arguments against the

open primary that has been made before us is that it is breaking down the two-party system, or that it would break down the two-party system. I'd have to take odds with this and believe that it will do the complete opposite. If anything, it will increase the two-party system, enabling it to bring out of the woodwork more voters that would in actuality be forced to vote in one party or the other, and increase the participation rate of the public.

If we continue with the status quo, I believe the numbers already have demonstrated to us that it's like a cancer. The closed primary is acting as a cancer and continuously drawing away from voter participation, forcing voters to become more alienated and more frustrated and to feel not a part of their government but separated from it. This open primary, I believe, would not solve all these ills but would be a step forward, a step forward to allow the citizenry to participate in the government which we hope they will support.

CHAIRMAN: Thank you, Delegate Eastvold. The Chair recognizes Delegate Chung.

DELEGATE CHUNG: Point of information. I'd like to ask Delegate Campbell a question.

CHAIRMAN: Will you state your question and then I'll ask her.

DELEGATE CHUNG: Delegate Campbell has withdrawn her previous amendment and I was wondering if she planned to reintroduce it later with a change of language.

CHAIRMAN: Delegate Campbell, could you indicate that information?

DELEGATE CAMPBELL: That was my intention, Delegate Chung.

DELEGATE CHUNG: I have another question. Under the open primary we talked about, there's a danger of misuse as we have heard historically what happened to Wilson and the late Bill Heen. Under the blanket proposal, will this kind of keep this practice under control, or will it remain the same?

CHAIRMAN: Delegate Chung, I'll let Delegate Campbell respond to that.

DELEGATE CAMPBELL: I believe in my opening statement one of my primary concerns for placing the blanket amendment before you was precisely that, that it would not be possible for such things as raiding to take place in a blanket primary.

DELEGATE CHUNG: Thank you very much.

CHAIRMAN: Did you wish an answer from Delegate Lee as to the effect of the amendment which is before us now?

DELEGATE CHUNG: I've heard enough, thank you.

CHAIRMAN: The Chair recognizes Delegate Kimball.

DELEGATE KIMBALL: Mr. Chairman, I'd like to speak in favor of this amendment for the second time. I'd like to address some of the comments and concerns of the other delegates with respect to the language of the amendment itself and whether it distinguishes what type of primary can be conducted. The language does. It says that "no person shall be required to declare their party preference or nonpartisanship as a condition of voting." It does not give the right of a voter to vote for any candidate appearing on the ballot, regardless of the form of the ballot. The other concern is--I hope you will not get hung up on the mechanics of the ballot, whether two or three parties appear on the same ballot or whether they get individual computer cards. Do not lose sight of the intent and purpose of this amendment, which is to protect the privacy rights of all voters and to insure meaningful participation in the electoral process, which includes the primary.

In addition, the closed primary itself as an entity does not prohibit cross-over voting, as we've seen recently with the switchover of better than 5,300 minority party members switching to the majority party--and who will be eligible. In addition, I contend that mere registration in a party does not mean meaningful party participation. So that the closed primary has in it people who are forced--candidates and voters alike--to participate under the banner of the majority party.

CHAIRMAN: Thank you, Delegate Kimball. The Chair recognizes Delegate Pulham.

DELEGATE PULHAM: Again I'll speak very briefly, because I think most of the points have been covered. I would urge you very strongly to vote for this amendment for a number of reasons. I think, primarily, the only problem or the only objection people seem to have is the fear of cross-over voting or raiding on the ballot. Someone went to great lengths to show that that had happened in Hawaii. I'm not so sure that that can be sustained in fact. I, like many other political scientists, can certainly make a lot of theories about a lot of things. But there are others of you in this audience in that same field, and you know as I know that historically this cannot be attributed to the open primary. It just does not hold up. As a matter of fact, the delegate who was concerned back there--that is not so. We have, as someone mentioned a minute ago, a much more blatant example right in this election of someone using a closed primary to get people to cross over for his or her purposes. This same thing can happen in a blanket primary. So that is not a valid concern.

We do have a concern, I think, with what the general public wants at this time overwhelmingly--that is, a chance to vote in secrecy for the party they choose to vote for. You all know as well as I that there has been only one major group lobbying in this Constitutional Convention against this; I don't need to tell you who it is because you all got a letter from them too. So bear this in mind as to who is trying to keep the closed primary, and then why they are trying to keep the closed primary; and I would urge you all to have enough respect for your fellow citizens to give them the opportunity to vote for or against this.

CHAIRMAN: Thank you, Delegate Pulham. The Chair recognizes Delegate de Costa.

DELEGATE DE COSTA: Mr. Chairman, I wanted to ask--everybody is talking about the two-party system. Aren't there more parties now, like the Aloha Democrats, and independents and whatever? Are they all going to be on the same ballot?

CHAIRMAN: The Chair will direct your inquiry to the movant. Under the provisions of the amendment, if there are many parties--I understand the question to be--will they all be on the same ballot, or how will that be handled? Delegate Lee.

DELEGATE RACHEL LEE: As the previous delegate, Delegate Kimball, stated, the details are not our prerogative. We should leave that to the legislature, on those little technical matters.

CHAIRMAN: So your answer is that the purpose of your amendment is simply the secrecy of that choice?

DELEGATE RACHEL LEE: Secrecy of choice, yes, in voting your preference.

CHAIRMAN: Does that answer your question?

DELEGATE DE COSTA: Yes, it answers my question. Can I speak against the motion? If it's up to us to tell the people that we want secrecy and we cannot tell them how to do it, it's kind of silly that we tell somebody they can have something but somebody else got to tell them what to do.

CHAIRMAN: Thank you, Delegate de Costa. The Chair recognizes Delegate Chung.

DELEGATE CHUNG: Mr. Chairman, after listening to all the pros and cons and particularly to my constituents in Kaneohe--I've had more calls on this particular subject than on any other. I'm in favor of the concept of the open primary, but again this is why I asked Delegate Campbell about her concept of the blanket primary, which I felt I'm inclined to favor more because it eliminates the possibility of political trickery.

I've been a Democrat ever since the days of Lincoln Loy McCandless and the days of the late David K. Trask [, Senior]. I've been part of the situation where the late John Wilson lost an election, and I've also seen the days when Hiram Fong became a congressional man based on the trickery of voting--maybe trickery is not the best word, but in a way there was some kind of a deal going on. I don't recall the Democratic party ever pulling such a deal. If the purpose of setting up an election system is to get the best man, period, without the possibility of any kind of trickery, I think this is the way we should go. Therefore, I'll tell my constituents that I will vote against the open primary and seriously consider the blanket

system when it comes up at Second Reading simply because I'd like to be sure that the system will avoid the possibility of usage of any kind of surreptitious method of voting for any candidate working on a deal between the primary and the general election; if that is possible under the open primary, I don't think it's good.

CHAIRMAN: Thank you, Delegate Chung. Delegate Crozier is recognized.

DELEGATE CROZIER: Mr. Chairman, I'd like to speak for my last time for the motion. People keep talking about 1954 and poor Johnny Wilson. Yes, he did lose; but when people jumped over on the other side, what they also did was they got rid of the old established Democrats and those they elected in the primary to go to the general, and finally to get elected were some of our foremost leaders today. Some of the names that I can remember are Dan Inouye, Spark Matsunaga, Sakae Takahashi, Governor George Ariyoshi, Stanley Hara and John Ushijima. So these people came out of the open primary. If we can get quality people like that from the open primary, let's go back to it.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Ihara is recognized.

DELEGATE LES IHARA: Mr. Chairman, I'd like to speak against the motion. The Hawaii State Constitution allows for a presidential primary, and should the legislature decide to have a presidential primary, then they would have to abide by the rules of the Democratic national party. Let me quote a recently adopted rule by the national party. This refers to the--

DELEGATE KIMBALL: Point of order, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE KIMBALL: What does this have to do with the amendment on the floor?

CHAIRMAN: The Chair will rule that your point in this case is not well taken, in that the delegate is in the process, apparently, of developing the relevance of what he says. Perhaps your point could be raised later.

DELEGATE LES IHARA: To make my point short, should Hawaii have a presidential primary, it will have to be a closed primary. And if the presidential primary ballot is mixed in with other races, you're going to have some complications deciding what voters can vote only on the presidential primary ballot or in the other offices.

DELEGATE KIMBALL: Point of order, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE KIMBALL: I see no relevancy to this line of argument.

CHAIRMAN: The Chair, unfortunately, finds that the delegate is arguing against the motion and therefore is in order for whatever reasons he may choose to cite.

DELEGATE STERLING: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order, Delegate Sterling.

DELEGATE STERLING: The federal ballot is separate from the state ballot.

CHAIRMAN: Your point of order is well intended, I'm sure, but the delegate may wish to draw the connection--Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to a point of information. I would like to know the differences between the presidential primary and the blanket or whatever Delegate Ihara is talking about.

CHAIRMAN: Delegate Ihara, would you address yourself to that as part of your argument.

DELEGATE LES IHARA: The presidential primary--if the State should have a presidential primary, which they are allowed to right now if the legislature so decides--would

be a process where the voters in the State would vote for one of the candidates for each party. This would be as opposed to the state party convention for either of the various parties.

So should the State decide to have a presidential primary, at that time it would have to be a closed primary as stated in the following rule: "Participation in the delegate selection process in primaries. . . shall be restricted to Democratic voters only who publicly declare their party preference and have that preference publicly recorded." I want the Convention to be aware of this should the State decide to have a presidential primary and the problems that it may cause in segregating the voters who can vote in an open primary--if the Convention decides to go with an open primary--from those voters who would be excluded or required to publicly declare their party.

DELEGATE HALE: Point of information.

CHAIRMAN: Are you through, Delegate Ihara?

DELEGATE LES IHARA: No.

CHAIRMAN: State your point of information.

DELEGATE HALE: My point of information is--did not this Convention vote down a mandate for a presidential primary in a previous Committee of the Whole?

CHAIRMAN: Delegate Hale, is your question relevant to the discussion on the floor?

DELEGATE HALE: Yes, because the delegate is talking about what would happen if we were to have a presidential primary.

CHAIRMAN: The Chair is aware that you said yes and would ask any delegate here who could answer the question.

DELEGATE WAIHEE: Mr. Chairman, the delegate is referring to a provision in the Constitution which has not been amended which allows the legislature to hold a presidential primary. I don't know what the delegate from Hilo is referring to, but under our present Constitution, until it is amended, we have the ability to have a presidential primary in Hawaii as it stands.

CHAIRMAN: The Chair would like to ask delegates to not use points of information to make points of debate. The Chair will be increasingly less tolerant of that as we go along. Delegate Ihara, please proceed to complete your arguments.

DELEGATE LES IHARA: For the delegate who asked the question, it's Article II, Section 6. The second point I'd like to make is that not much has been said about the advantages of having a strong party. We in Hawaii, being a small state and having just four representatives in Congress, have a senator who is a third-ranking member of the senate because he is of the Democratic party, who frequently meets with the President of the United States and has his ear. That's a tremendous benefit to Hawaii, considering the national importance of some of the issues we're facing today.

Finally, regarding the weakness of the Republican party as was mentioned before, this is what may exist right now, but I'd like to point out that the national Republican party has more money than the national Democratic party and in fact will be spending far more money in the 1978--this coming election--than the Democratic party. To illustrate this, when one of the city councilmen decided to run again and switch parties, the Republican party here did not endorse or give money to that candidate, and the national committeeman of the Republican party--

DELEGATE DYER: Mr. Chairman, point of information.

CHAIRMAN: Delegate Dyer, state your point.

DELEGATE DYER: What does that have to do with the open primary?

CHAIRMAN: Your question is actually a point of order which has, in this case,

already been ruled upon. The delegate, within his allotted time, is attempting to persuade us of his position, so he may use whatever arguments he wishes. Proceed.

DELEGATE LES IHARA: The reason I'm explaining this is the argument that we should have an open primary because it's only one party anyway. I'm saying that the national Republican party with its aid to the local Republican party can strengthen the Republican, so that we can have two parties instead of just one.

CHAIRMAN: Thank you, Delegate Ihara. Delegate Dyer is recognized.

DELEGATE DYER: May I speak on a point of information?

CHAIRMAN: State your point, please.

DELEGATE DYER: I'd just like to point out that the national Republican party's fund does not go to city council races.

CHAIRMAN: Delegate Dyer, you're out of order. The point of order is out of order and you have used a point of parliamentary inquiry to state a debating point, which the Chair has stated earlier would be increasingly less tolerated. Delegate Barr is recognized.

DELEGATE BARR: Mr. Chairman, your delegate from the patient mountain whose residents are not always so patient would like to rise to speak in favor of the amendment. I would like to express, first, some distress at the very bad information that is being used on the floor to decide this issue. I would worry about it more but for the fact I have a feeling we were all pretty much decided before we started sharing bad information. I am also aware that I cannot from memory in a couple of minutes repair the damage, but I would like to make a couple, three points that I hope might be constructive, for the record even if not influential to the decision-makers.

One point, the arguments that have been advanced for a closed primary are classic arguments developed by political thinkers some years ago and the circumstances under which those arguments were developed are no longer true. So the classic arguments for the closed primary are no longer valid. I am happy to see that the proponents of the closed primary have not let new information get in their way. I would like to point out first that the concept of party that was discussed earlier--and I admit it's like 6 hours earlier although nobody may remember it at this point--is a concept that predates television and other mass media; television has had a profound effect upon the party system and has changed the whole nature of the party system. We must be aware that the charisma and the salability of personalities on television changed the nature of the party system and that they make this whole argument about closed primaries a little bit different.

Now I would also like to suggest that there is--I think I referred the other day to the fact that I am a political scientist and the best research available to political scientists is in the area of voter behavior. There are some generalizations that I can share with you from memory that relate to this whole matter of closed versus open primary. For one thing, voter-behavior research shows that in the matter of cross-over voting there are more voters consistently who cross over to pick a strong candidate than there are crossing over to pick a weak candidate. I might parenthetically mention here that this cross-over question is sort of academic at this point in Hawaii's history anyway, because the fact is that very nearly everyone has become a Democrat and there's nobody left to cross over. But that's a parenthetical comment.

I also would like to point out that we have a problem with the closed primary because of the requirement of people to change registration if they decide they want to cross over, and that problem has resulted in the situation we have now; but voter research also shows that anywhere from 10 to 50 percent of the voters will decide who they want to support within the last 2 weeks of an election. That means it's too late if they decide finally that they want, after all, to vote for a Republican instead of the two contending Democrats. They don't have any choice anymore because it's too late to cross over. Now if you don't want them to have a choice, what that means is you don't want them to participate in the primary.

The original primary structure in the country was the nominating convention; that is the way we nominated our candidates--in a nominating convention. In the populist movement in the beginning of this century, that changed because we thought the people ought

to be in on this process, that nominating conventions tend to have very, very few people decide who would be the candidates for the parties. Now, if it is our intention to have primaries at all, then I take it it should be our intention to make them as inclusive as we possibly can, and not as exclusive as we possibly can. Any attempt at a closed primary is an attempt at being exclusive. And fine--if you want to be exclusive, then state it honestly to yourself that that is your intent.

All right, I would like to make a couple corrections of information that kind of distressed me as I heard them. One thing is on this matter of the presidential preference primary--there is a distinction between a delegate selection primary and a presidential preference primary. The preference primary merely has the public declare which of the candidates on that ballot they prefer; it does not elect the party's delegate to the convention. Now it is true that some states have combined these features--like, for example, the state of Ohio--but as a matter of fact, the wording in Hawaii's Constitution would not necessarily allow that. That would take some other action by the legislature and the preference primary would have no relationship to the Democratic party rule. So that whole issue is irrelevant to our discussion here.

Well, I have a whole page full of notes, but I realize that I'm talking kind of long. I would urge you to do one for the voters of Hawaii and have the open primary.

CHAIRMAN: Thank you, Delegate Barr. Delegate Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, it was not my intent to speak on this issue, but another delegate and I have been accused of having participated in voting on this issue back in 1962 [sic], of which I claim to have been guilty. But the point that was raised by the last speaker from up-country Maui forces me to rise and correct the record. I am not a political scientist as he is. I'm only a lowly politician. However, the arguments that he says were not relevant back in 1962 when we put this in our statute books and in '68 when this very issue was debated in the '68 convention are exactly the same, back in '62 and '68 as they are today. I just wanted to set the record straight.

We've heard the arguments, both for and against, and I can say that they're almost verbatim--exactly what we heard then as they are now. So I just wanted to say that nothing new has been added.

CHAIRMAN: Thank you, Delegate Ching. Delegate Blake is recognized.

DELEGATE BLAKE: Mr. Chairman, I speak in favor of the amendment. My colleague to the right just stated that nothing new has happened, since 10 years ago. Many things have happened since. The people themselves throughout the State have recognized this change, and this is the change that we hope the Constitutional Convention will take and allow them a chance to vote on--whether the people of Hawaii want it or not.

CHAIRMAN: Thank you, Delegate Blake. If there are no further speakers, the Chair recognizes Delegate Lee to--Delegate Waihee.

DELEGATE WAIHEE: I just wanted to speak against the amendment for two reasons. First, I don't understand this idea of exclusivity and inclusivity, or all of that. It's just my belief that the primary should be the time when party candidates are selected, and that is what I believe the American system of government is based on. I think the primary ought to remain that way.

The second reason is that I can't see how this would change--I've been listening all night for the way whereby an open primary would increase the number of voters. I still haven't heard it. Under this type of primary, when a person goes into the booth he still has to vote a party ticket. So he can't really vote for the man or woman of his choice. Seems to me that argument made more sense, to me at least, with regard to the other amendment. For this one, I can't see how this really would change anything, and being in favor of a party preference selection I would be against this amendment.

CHAIRMAN: Thank you, Delegate Waihee. The Chair recognizes Delegate Eastvold for the second and last time.

DELEGATE EASTVOLD: Just in response to that last delegate--I speak in favor of

the amendment and to clarify a point for him. This would increase citizenry or voter participation because presently, under the closed primary, independents are not allowed to vote in the primary due to the fact that they have not chosen any particular political affiliation and do not desire to. Under the open primary they would be allowed to; they could go in, select which ballot they would like to have, and they could vote according to the slate of candidates each political party has presented.

CHAIRMAN: Thank you, Delegate Eastvold. The Chair now calls upon Delegate Lee to speak for the last time.

DELEGATE RACHEL LEE: Thank you, Mr. Chairman. I can't understand you delegates, this body. On Saturday this body passed the amendment favoring the rights of individuals and giving them the freedom of choice. And now we're talking about the same concept under a different issue, and there is much resistance to this concept. What does that matter? I can't understand the difference between Saturday's amendment and today's. I ask you this.

As for Delegate Ching's remarks, this same argument was brought up in 1968, 10 years ago. He says it's verbatim. Then why are we withholding it when the cry from the public is louder than ever that they want a change, they want this open primary. Isn't it time that we gave the public what they are asking for?

I'd like to give you some facts from an interesting little article which I read: one vote made Hitler leader of the Nazi party; one single vote saved President Andrew Johnson from impeachment; one vote won Jimmy Kealoha the 1948 primary election and he subsequently went on to win the Hawaii county council chairmanship in the general election. These single votes have definitely affected the course of history. It's very important, that one single vote.

Now we know that many voters are turned off; they resent having their privacy invaded when they are required to declare their party affiliation. Therefore, they stay away from the polls. We must discourage this practice. We must give them the open primary and encourage voter participation. The closed primary system no longer serves the purpose. It is time we change and it is time we have the open primary. Fellow delegates, I urge you--I strongly urge you to vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Lee. The question--

DELEGATE BARNES: Mr. Chairman, I request a roll-call vote.

CHAIRMAN: Are there 10 delegates wishing a roll call? The Chair counts 10, there will be a roll call. The question before us is Amendment No. 6 to Committee Proposal No. 16, to add the provisions of secrecy of voting and choice of political party affiliation or nonpartisanship--that they shall be preserved. Call the roll, Mr. Clerk.

Roll call being in order, the motion to amend Committee Proposal No. 16 by Amendment No. 6 carried by a vote of 51 ayes, 48 noes and 3 excused; with Delegates Alcon, Anae, Barnes, Barr, Blake, Blean, Burgess, Cabral, Campbell, Laura Ching, Chong, Chu, Chun, Chung, Crozier, DiBianco, Dyer, Eastvold, Ellis, Fernandes Salling, Fujimoto, Goodenow, Hale, Hamilton, Hanaike, Harris, Hornick, Dennis Ihara, Ikeda, Ishikawa, Kimball, Kono, Lacy, Marion Lee, Rachel Lee, Liu, Marumoto, Miller, Nozaki, Odanaka, O'Toole, Peterson, Pulham, Shon, Stegmaier, Sterling, Stone, Takitani, Tam, Wurdeman and Chairman Kaapu voting aye; Delegates Andrews, Barnard, Chang, Calvin Ching, Donald Ching, Haunani Ching, de Costa, De Soto, Fukunaga, Funakoshi, Fushikoshi, Hagino, Hashimoto, Hayashida, Hirata, Hironaka, Hokama, Les Ihara, Teruo Ihara, Iwamoto, Izu, Kaito, Kojima, Ledward, Lewis, McCall, Nakamura, Nishimoto, Okamura, Ontai, Paty, Penebacker, Sakima, Sasaki, Shinno, Silva, Souki, Taira, Takahashi, Takehara, Takemoto, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax, Yamashita and Yoshimura voting no; and Delegates Hino, Hoe and Sutton being excused.

CHAIRMAN: The amendment is approved. We now have before us Amendment No. 7, which would amend Committee Proposal No. 16 by deleting section 3 in its entirety.

DELEGATE HALE: Mr. Chairman, point of personal privilege.

CHAIRMAN: Delegate Hale, state your point of privilege.

DELEGATE HALE: I didn't want to get up when Delegate Crozier mentioned the people who got elected in the 1954 election because I didn't want to influence the vote. But I was first elected as a Democrat in 1954, the only Democrat from my district and the first woman ever elected to county government.

DELEGATE LES IHARA: Point of order.

CHAIRMAN: State your point of order.

DELEGATE LES IHARA: The point is moot now.

CHAIRMAN: Delegate Hale, your use of this point of order will be remembered by the Chair--

DELEGATE HALE: Mr. Chairman, I did not use point of order, I used personal privilege. And my name was omitted from that list of people and I felt the delegates here should know.

CHAIRMAN: You were aggrieved, so that's okay then. Next--Delegate Silva.

DELEGATE SILVA: I'd like to rise and advise the Convention that we are doing fairly well in our discussion.

DELEGATE CROZIER: Second.

CHAIRMAN: It's been moved and seconded to rise and report to the Convention that we need more time. Those in favor say aye. Opposed, no. The ayes have it, the motion is carried.

At 6:51 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Monday, September 11, 1978 • Evening Session

The Committee of the Whole was called to order at 8:25 p.m.

Delegate Kaapu presided as Chairman.

CHAIRMAN: The Committee of the Whole will come to order. The committee has before it Amendment No. 7 to Committee Proposal No. 16, which proposes to delete section 3. The Chair calls upon Delegate Dyer.

DELEGATE DYER: Mr. Chairman, I move for the adoption of this amendment.

DELEGATE DE COSTA: I second it.

CHAIRMAN: It's been moved and seconded that Amendment No. 7 be approved. Discussion? Delegate Dyer is recognized.

DELEGATE DYER: Mr. Chairman, I rise to speak in favor of this amendment. Supporters of public financing and campaign spending limits are undeniably motivated by an admirable concern for the health of our political system. I share their concern but I cannot share their enthusiasm for these proposed remedies.

Consider, Mr. Chairman, just a few of the many flaws in public financing and spending limits. First, public financing appears to make legitimate a raid by the politicians on the public treasury. We would leave it to the legislature to determine how the money is to be collected, spent, who will receive it, who will not, and how much will be collected and dispersed. A skillfully designed system of public financing may well become the most effective insurance policy that any incumbent could hope for.

But beyond the enormous potential for abuse, I question the propriety of tapping

public funds to finance the political ambitions of an evergrowing army of office-seekers. It seems more appropriate to me that these costs be borne by the candidate's friends and supporters, not the public at large. We should also consider that public financing and spending limits add to the already oppressive amount of intrusion and regulation we face. As voters and candidates we will be told how much money we can spend or give. Even more of our freedom is surrendered as we increase the role government plays in our lives, and I am not eager to add to that role.

Supporters of public financing would be quick to claim that accepting the public funds and submitting to the limits is voluntary under the rulings of the U.S. supreme court. I am deeply concerned that participation will not be as voluntary as it is claimed. Certainly candidates will not be compelled by the law to accept the public funds and submit to the restrictions, but there would be potentially devastating consequences for not doing so. It is likely that any candidate seeking to remain independent by refusing to take public money would face an uphill battle in defending the decision. However pure the person's motives, it would be difficult to avoid appearing like the tool of special interests or an agent of "big money." Faced with these consequences, most candidates would feel compelled to opt for the safe path and accept the public money and restrictions. It is ironic that doing so would in no way remove the potential for "big money" to gain influence. Under the rulings of the supreme court, such money is exempt from spending limits if spent independently of a candidate's campaign committee.

Mr. Chairman, money in politics creates many problems and I, as much as any other delegate, want to see them solved. I do not believe, however, that adopting a flawed measure like public financing and spending limits will contribute to a solution.

CHAIRMAN: Thank you, Delegate Dyer. Is there further discussion? The Chair recognizes Delegate Ching.

DELEGATE HAUNANI CHING: Mr. Chairman, I rise to speak against the amendment. The American system of government has always been based on the assumption of one man, one vote. Yet at the same time we are faced with an unequal distribution of economic resources. This difference becomes more and more relevant as to campaign resources because of large constituencies and a larger voting population which has become reachable only through means that cost money. Thus, it is only natural for citizens and groups with abundant economic resources to support whatever candidate they favor and to whatever extent they wish. Many feel that money is the only campaign resource used in shaping one's political power base, but there are many others that are vital as well--such as a candidate's personal appearance, his ability to attract loyal volunteer workers, his political skill, his leadership qualities and his community connections. Yet what really happens is that the candidate with the most money usually wins. This unequal distribution of wealth which has prevailed and which we can expect to prevail has created a dilemma for the system.

In Hawaii as well as across the nation, there is a growing concern with reform in the area of election campaign financing. I feel that this will be a step in the right direction and that public financing will channel dollars somewhat more evenly throughout the political system. I believe that public financing will serve a number of purposes: (1) maintain opportunities for more or less equal participation by citizens in the political process and more or less equal participation in the financing of elections; (2) provide enough money to assure healthy, competitive campaigns that define alternatives for public choice at the polls; and (3) assure a fair chance for all candidates to present their views and free them from disproportionate pressures and influences from campaign contributions.

I feel that public financing will also revive the political system if it is operated through the political parties. Voters today have little information about the candidates. Through public financing, parties will make candidates more dependent upon the parties, whereby voters can examine the positions that the parties take and public confidence will be built in the electoral process. Thus campaigns can be expected to be more issue-oriented, rather than personality-oriented.

In conclusion, I believe that public financing is a step in the right direction of controlling election campaign financing; but in designing a system of public financing difficulties will arise, such as who will receive the subsidy and how and when it should be given. Therefore, I feel that the distribution formula should help serious candidates

and yet retain enough flexibility to challenge those in power without supporting with significant tax dollars candidates merely seeking free publicity, and without attracting so many candidates that the elective process is degraded. So I ask my fellow delegates to vote down this amendment.

CHAIRMAN: Thank you, Delegate Ching. The Chair recognizes Delegate Miller.

DELEGATE MILLER: Mr. Chairman, I wish to speak in favor of the amendment to delete public financing of campaigns. Everyone--except, of course, political campaign consultants and advertising account executives--deplores the high cost of politics: several million dollars will be spent on this year's governor's race; senate campaigns will cost up to \$50,000 a piece; house races may cost \$10,000. In one famous instance, a local candidate spent \$583,000 out of his own pocket to run for Congress, making it the most expensive house seat in the history of the United States Congress. This is madness, but it would be equal madness to expect the taxpayers to pay for all this tomfoolery.

Granted the proposed amendment would place a limit on the campaign spending of candidates--but what would be a reasonable limit? A dollar a voter? 50 cents? It costs almost that much to send just one well-prepared mailer to each registered voter. Let's calculate how much a dollar a voter would cost. There are 365,000 registered voters in Hawaii as of the close of registration for this primary. This means that each gubernatorial candidate would be eligible for \$365,000, or a total for the two of them of \$730,000. Since senators and their opponents need to reach the voters, this would represent another \$1.8 million, proportioned to the size of the multimember district; a senator in a four-man district would need to reach four times the voters of a senator in a single-member district. There would need to be \$1.5 million for all the house candidates, and if all the mayors and councils were up at the same time, it would mean \$730,000 for the mayors and another \$1 million for the council races. Of course, the board of education is an elective office too. Seven candidates run at large after Oahu's 300,000 voters; this would require \$4.2 million for Oahu at large and another \$260,000 for the neighbor islands, making a grand total for all board of education races of about \$10.2 million. I might add parenthetically about the extra cost involved in multimember districts: at \$1.00 a voter, the senate candidates under the existing apportionment would need \$1,810,000. If it were a single-member senatorial district, the sum would be about \$750,000. For the house of representatives, under the existing apportionment scheme, the cost at \$1.00 a voter would be \$1,545,000, as opposed to the \$765,000 under single-member districts.

Now what taxpayers in their right minds would support that sort of spending program, even at 50 cents a voter? Besides, I'm only talking about the general election. What about the primary? If there were no funding in the primary, then only the well-financed candidate would even get into the general. Wouldn't this defeat the whole purpose of the amendment? All the big money would still go into the long primary campaign, and public financing in many cases would just be window dressing. A gubernatorial candidate who won a contested primary wouldn't even have time to spend his allotment in the short general election campaign because of the long lead time necessary to prepare television ads, brochures and other campaign materials.

And another caution--any spending limitations heavily increase the odds in favor of the incumbent. Relatively unknown challengers would never successfully oust an incumbent if the limitations were so low that they could not effectively reach the voters several times. Public financing without the other necessary reforms, such as an early primary date for single-member districts, would be a meaningless gesture toward campaign reform. Please vote to eliminate this amendment for public financing of elections.

CHAIRMAN: Thank you, Delegate Miller. Is there further discussion?

DELEGATE WEATHERWAX: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Weatherwax.

DELEGATE WEATHERWAX: I rise to speak against the amendment to delete section 3, dealing with campaign funds and campaign spending, and also to address some of the arguments that have been raised. The language before you, of course, does not set out a detailed plan. It is intended as a beginning and as a directive to the legislature to begin in the public financing and spending limit areas.

With reference to some of the problems, public financing is designed as indicated, to remove the concern of money in politics, or to try to reduce it. Again, we do not offer this as the panacea, the cure-all, but it is a beginning and it will reduce money as an influence--money leading to the possibility of corruption, in that a candidate who receives money will then be required to give favors after elected--and also to improve the image of the candidate.

There has been discussion about raids on the public treasury. I believe perhaps the figures--although I do not have contrary figures--I believe the figures that were stated before are exaggerated figures. Again as I have indicated, a beginning. The cost of campaigning has accelerated immensely; the reason for that perhaps is partially inflationary, but I think that we should put a stop to it. So there are two major concerns--one the high cost, and second, of course, the possibility of corruption. I think that as a matter of public value, by beginning in this way, the public may be educated into realizing that the financing of campaigns for political office is a good value, and that we should begin to instill within the members of the public--to show them that in fact this is a good value.

There is disagreement with respect to an incumbent's bill, that this is in fact--would be an incumbent's bill. I feel that incumbency will remain a fact; if that individual has been a good legislator, then he will continue to be an incumbent and will be able to argue that. As I indicated previously, this is a beginning and I think that we should take steps. There, of course, have been some questions as to the spending limitations, and I would hope that you remember that contribution limitations, which is a subject which will be coming up next, is all part of this three-part package to remove money from politics: the contribution limitations, the disclosure requirements which are presently in the statutes, and the public financing. Presently under Buckley v. Valeo, spending limitations are permitted when in fact voluntary financing is undertaken. I believe there is a possibility that Buckley v. Valeo should be examined by the State and by the courts again as to whether or not in fact there is an infringement on the First Amendment right. I believe in balancing the two problems of the First Amendment right to free speech, that the infringement is not that great, and that in fact political corruption is an evil which should be corrected. I would urge the delegates to defeat this amendment to delete.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair recognizes Delegate Villaverde and then Delegate Sterling.

DELEGATE VILLAVERDE: Thank you. I think this is going to be another unprecedented decision to make, I think, what this Convention is going to come up with and the public is going to be very, very happy in the situation we are affording them. The public, I think, and some previous delegates have some misconceptions insofar as the committee proposal here.

Partial public financing has been used effectively on a national level--this is really not new--and the committee proposal would provide for its use throughout the State. The proposal does not attempt to tell the legislature what the financial formula should be; it simply says very directly that the legislature shall establish a fund for partial public financing of campaigns.

The legislature has had the power--it could have taken the step through appropriate legislation to provide partial public financing for candidates. So far it has not done so. It may have feared lack of public support, the accusation that public funds should not be so used. If we establish in the State Constitution that they shall provide such funds, then there will be no question that the people want partial public financing.

The question is, why partial? All recommendations from citizen groups provide that the candidate must have sufficient local support to offer a viable candidacy, and frivolous candidates would be excluded. On the other hand, the principle of "matching funds" is one of the oldest principles of support used by foundations, government and private organizations. The level should be sufficiently high to exclude those without a real committee organization and fund-raising capacity, but it should not be so high that citizens of competence who do have local support are excluded. Setting appropriate levels will require hearings and expert testimony by the legislature; we're not under the impression that the task of coming up with good legislation will be easy. The important thing to recognize is that this is a gradual process, leaving the exact percentage of funding

to the legislature, and thus it can be incorporated on the basis of availability of funds initially and extended to cover more offices as experience is gained.

The means of financing is left up to the legislature. By using general funds, the legislature lets every taxpayer know that he is a participant in the campaign. Everyone participates, everyone is involved. The only basis for selection of who gets help from matching funds is a candidate's ability to come up with matching funds.

Spending limits for candidates cannot be imposed unless public financing is used. And as mentioned by our committee chairman, the U.S. supreme court in 1976 in the Buckley v. Valeo case stated that the government could not restrict free speech by imposing spending limits on candidates for public office. This meant that limitations previously imposed by the Hawaii Revised Statutes were unconstitutional. Clearly then the only means to get limitations on spending is a public finance measure. The supreme court has upheld expenditure limitations under the public finance provision, and I had this experience in 1970 and 1972; after that it was unconstitutional. At the time the candidate was not permitted to spend more than 25 cents or 50 cents, depending on the office he was seeking.

I would emphasize that the details of incorporating this concept are to be left up to the legislature as they properly should be, that implementation may be gradual and dependent upon the availability of funds and experience in administration. But this is a necessary measure if wider participation in the elective and voting process is to be hoped for. Thus I urge that you defeat any attempt to eliminate section 3 of Committee Proposal No. 16.

CHAIRMAN: Thank you, Delegate Villaverde. Is there further discussion? The Chair recognizes Delegate Sterling.

DELEGATE STERLING: I rise to speak for the amendment. I concur with the chairman of the committee that this is very important legislation. The idea of limiting campaign spending is one of the most progressive reforms that has come out of our political system in recent years. However, it comes out as a reform because of the people's disgust with politicians, not with the country--the complete disgust with politicians and how they handle themselves. That is the reason for this reform. I think you might take it from the August issue of Reader's Digest. We talk of the Gallup poll, that this is a major reform according to the Gallup poll; it will cost for congressional candidates approximately \$2.00 per adult citizen. And I don't think we've gone into this thing far enough because by giving it--if this is the result of people's disgust with politicians, not with our country--we're going to give it back to the legislature because we're acting contrary to the idea of the reform.

Besides that, let me read from the Gallup report: "Would government funding of campaigns encourage a horde of minor, frivolous candidates? Perhaps, but the problem has been dealt with successfully in Great Britain. There, candidates must put up a substantial money deposit, which must be forfeited if they do not draw at least 12.5 percent of the vote." My point is this--I concur with this and with the chairman that this is a needed reform. However, I can't see putting it back into the hands of the legislature, at whom it's directed. And I for one would like to see some sort of restriction, if we're going to go for this on a constitutional level, similar to that in Great Britain: if you don't poll a percentage of the vote, then you forfeit what you have put up as a money deposit.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Crozier is recognized.

DELEGATE CROZIER: Yes, Mr. Chairman. I have an inquiry--maybe somebody from the committee can answer.

CHAIRMAN: State your point.

DELEGATE CROZIER: With the proposal--the "legislature shall establish a campaign fund" and so forth--right now for a person to run for the house I think all he needs is 15 signatures, but now we're going to be dealing with money. What would be the expected number of signatures for a candidate to receive if he has proved that he is a viable candidate? Would it still be 15? Or would they now have to jack it up to 500, or so forth and so on?

CHAIRMAN: Thank you, Delegate Crozier. Delegate Weatherwax, would you care to respond to that?

DELEGATE WEATHERWAX: I don't really know the exact number or any proposed legislation. As indicated previously, I think there may have been a bill that was before the last legislature which was put forward by the Campaign Spending Commission, but I have no idea as to what the exact number of required signatures would be.

CHAIRMAN: Thank you, Delegate Weatherwax. Delegate Crozier, does that answer your question?

DELEGATE BLAKE: Mr. Chairman, I have a question.

CHAIRMAN: Yes, Delegate Blake.

DELEGATE BLAKE: I may have been out of the state at the time but I understand there is a spending limitation. Will somebody please advise me whether there was one, or whether this was ruled unconstitutional.

CHAIRMAN: Delegate Villaverde, do you wish to answer that?

DELEGATE VILLAVERDE: Yes, let me see if I can. In 1970--if you were here in 1970 and 1972--well, in 1970 and 1972 the candidates were required not to spend in excess of 25 cents--I recall I ran for the state house--and I think it was 50 cents for the higher office, the gubernatorial race. And it was based on the registered voters in that particular district that you were running from. Now, it was proved unconstitutional as a result of this Buckley v. Valeo case, where it did not have some sort of public financing in order to be constitutional. And that was the key--in order to be constitutional, you had to have public financing. And with this method of partial public financing, it will be constitutional.

CHAIRMAN: Would you state whether it was statutory--was it not? Does that answer your question, Delegate Blake?

DELEGATE BLAKE: What court--what rank of court made this decision?

CHAIRMAN: Delegate Villaverde, the question was, what court rendered this decision? What level of the judiciary?

DELEGATE VILLAVERDE: The Buckley v. Valeo case was from the U.S. supreme court.

DELEGATE BLAKE: The U.S. supreme court, or the ninth circuit court?

DELEGATE VILLAVERDE: The U.S. supreme court.

CHAIRMAN: Thank you, Delegate Villaverde. Delegate Blake, does that answer your question? Or maybe Delegate Weatherwax would like to add to that.

DELEGATE WEATHERWAX: Maybe I can assist Delegate Blake. The U.S. supreme court was ruling on the federal election law, and the federal election law had spending limitations in it different from the state spending limitations, as far as amount is concerned. However, the State had spending limitations, and it was never ruled in a court here in Hawaii as to the state law--that it would be unconstitutional. The legislature may have repealed it based on the attorney general's opinion but it's never been litigated as to the state spending, whether or not in fact Hawaii may have had a unique situation as to spending limitations and particularly unique characteristics of our community--that has never been determined.

CHAIRMAN: Thank you, Delegate Weatherwax. Delegate Blake, does that answer your question?

DELEGATE BLAKE: That's a good answer, but the U.S. supreme court has reversed its decisions over a hundred times so far, so I'm just curious about that answer. Thank you.

CHAIRMAN: Is there further discussion on the amendment? Delegate O'Toole.

DELEGATE O'TOOLE: Yes, I just wanted to add one more thing. The court decision also was not unanimous by a long shot. It was a pretty close decision; plus some of the justices concurred in some parts and differed in other parts.

CHAIRMAN: Thank you, Delegate O'Toole. Delegate Burgess is recognized.

DELEGATE BURGESS: Mr. Chairman, I speak in favor of the amendment. The second sentence of the section, under the present law, is clearly unconstitutional. Buckley v. Valeo said very clearly that you cannot place a limit on the campaign spending of candidates that interferes with their freedom of speech. Now to put a provision like that that we know is unconstitutional in our Constitution telling the legislature to do something that clearly now would be of no force or effect--

DELEGATE HALE: Point of order.

CHAIRMAN: Delegate Hale, state your point of order.

DELEGATE HALE: I think the delegate is talking about the wrong one. We are on No. 7, and I understand that it's section 3 we're talking about deleting, not section 4.

CHAIRMAN: Delegate Hale, the delegate is in fact speaking against the amendment on the campaign spending limit, which is in order. Amendment No. 7 relates to deletion of section 3, which relates in turn to campaign funds and campaign spending. Proceed, Delegate Burgess.

DELEGATE BURGESS: Yes, I'm speaking in favor of deleting section 3 from Committee Proposal No. 16. The second sentence of section 3 says the legislature "shall provide a limit on the campaign spending of candidates." That directs our legislature, immediately upon the effectiveness of this amendment to the Constitution if it's adopted by the voters--directs them to do something that at present has been held to be unconstitutional, and I think that is unwise. I think that this provision--the first and the second sentences add absolutely nothing to the legislature's ability to enact legislation if it sees fit, or if in the future Buckley v. Valeo is modified in any way, or to attempt if the legislature, without any authorization in the Constitution, is able at its next session. And I'm not arguing that public financing of campaigns is not a good idea; I think it has great merit and I think the legislature should address itself to that problem in the future--and as soon as possible in the future--but I see no need for it in the Constitution. Particularly I think it is unwise to put in a provision directing our legislature to do something that is right now unconstitutional, and particularly I would agree with Delegate Sterling when he says, if we're going to do it, let's do it. Let's not ourselves take all the glory by saying--well, look what we've done, we've created for you voters a public financing of campaigns, and we put all the bad part over on the legislature by saying--all right, you guys, figure out some way to do it and some way to pay for it. I think that's hypocritical. I think if we're going to do it, let's take the bull by the horns and figure out how we can do it. Let's think through how much it's going to cost, and then let's take the responsibility and make a responsible decision. But if we're not willing to do that--and I suspect that we're not--I would say let's not add this because it adds nothing to the legislature's ability to solve the problem.

CHAIRMAN: Thank you, Delegate Burgess. The Chair recognizes Delegate Blake and after that, Delegate Campbell.

DELEGATE BLAKE: Mr. Chairman, I speak for the amendment and the reason I speak for the amendment is I like the title here, "Campaign Fund and Campaign Spending"; but I too feel that if we're going to do something, let's do it, take the bull by the horns and go to work on it. Let's not take the thing here and toss it to the legislature and tell them--you go ahead and do it. Why should they be the dirty boys? If we're going to do a job, let's do it here.

And I'm concerned also about these words here, "partial public financing of campaigns." Now exactly what does this mean? Just how much can a candidate spend? I mean, I think if we're going to face the facts, let's face them. Let's not run circles

around our legislators because they too have pressures on them, and if we're big enough let's face the facts and face them square and straight. I was surprised in talking to a state senator--he told me he has to raise about \$25,000 to \$26,000 to win an election in this county. I was amazed when I heard that. And then looking at the present race for governor--it would probably be in excess of \$1 million a piece. And you can see for yourself when money is being spent like this, you just figure for yourself, you want a share and you've got to spend this kind of money or you are forced to spend this kind of money. You don't have your own mind, your mind is sold--let me tell you that--and so is your soul.

I speak as a person sitting in a seat--when money was placed before me, and I had to say no--and that money was put someplace else, and I lost the race, I'm sure because of two big contributors expecting me to accept something, and I said--no, I won't do it. And I firmly believe that--I like the idea of this here, and I like the idea of the committee thinking about this thing. But please, if we're going to do it, let's not fool ourselves, let's not fool the public. Let's get down and mean business--if we're going to take the bull by the horns, then take the bull by the horns, not by the tail.

CHAIRMAN: Thank you, Delegate Blake. The Chair recognizes Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to speak against the amendment. First of all, I would like to address myself to the question of whether or not this first section, both sentences--whether this entire section is or is not constitutional. It is my understanding of the decision of Buckley v. Valeo that if you have a campaign spending fund which is set up--in other words, if you have public financing of campaigns, then you may institute some campaign spending [limits] with respect to those individuals who seek to avail themselves of that campaign spending fund. In respect then to those individuals, there is nothing unconstitutional about the provision in the second sentence of the proposal.

Secondly, I would like to address myself to the concern of the delegate from the Island of Kauai, who says that if we want to take hold of this issue, we should take it all the way and take it with vigor and do it thoroughly. I think if we could have, we would have, in the committee. I think the problem is that we do not know how much the State would be able to actually give to this kind of effort, and in the beginning what we were seeking to do was to put a wedge in the door and open up the way for the eventual partial public financing of campaigns. We do not know how much money will actually be raised by this [amendment]. We left the option open to the legislature because we do not know whether it would be more convenient for them to use a tactical system or to use general funds. We felt that the legislature could make that more conveniently than for us to institute a mandate for them which possibly could not be followed. And we were instructed--or told, I should say--by the director of the Campaign Spending Commission that the most important thing to do was to begin to build a fund, and ultimately we could seek the kind of improvements in that fund as time went on. So that was what our aim was.

I would like to address myself finally to what I consider perhaps the most important thrust that we sought in the committee when we adopted this provision. It is true, as the worthy delegate from the Waikiki area said, that costs for campaigns are becoming more and more staggering--and do we, as delegates and as representatives of the people, want the people to absorb this kind of enormous burden? Shouldn't the candidates themselves do this? My answer to that is that if we think these tremendous sums being spent, these tremendous sums being contributed, are not sums for which we are going to ultimately pay because of poor government, because of corruption, and because of undue influence on legislators in office, we are fooling ourselves. And what we were trying to do by instituting this entire plan was to avoid that to the extent that it is possible. Secondly, we believe that it is important not to foot the entire bill but to make this a partial measure, so that each candidate who sought to avail himself of this would bear the burden of part of the cost, and that is why it addresses itself to partial funding. For that reason, I respectfully request my fellow delegates to vote against this amendment.

CHAIRMAN: Thank you, Delegate Campbell. The Chair recognizes Delegate Barr.

DELEGATE BARR: Mr. Chairman, your delegate from the Island of love and

happiness, and occasionally their antithesis, would like to speak in favor of this amendment. I'm very concerned--in fact I'd like to offer first a generalization that may not be very useful, because I think all of our committee reports are done, but I've noticed an interesting thing in the committee reports and that is, the longer they speak about something, the less they know about it.

I would submit that this committee report has some very bad information in it, and I would just like to suggest some of that to you by reading some sentences in here--actually just phrases: "Your Committee is aware of the widespread belief that..."; "Your Committee also believes that many believe that..."; "They"--referring to the public--"believe that..."; "They"--referring to the public--"feel that..."; "...many are willing to believe"--presumably many in the public; "So long as the public believes"--

DELEGATE LES IHARA: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Ihara, state your point of order.

DELEGATE LES IHARA: I see no reason--I see no way that this speech going on right now has to be issued before us.

DELEGATE BARR: If the delegate will listen, he will learn why it has something to do with the subject.

CHAIRMAN: Delegate Barr, your comments will be taken up in due time; allow the Chair to rule on the point of order. Delegate Ihara, what was your point of order again?

DELEGATE LES IHARA: I fail to understand why the reading of those passages has anything to do with this particular amendment.

CHAIRMAN: Delegate Ihara, I appreciate your concern, and on the face of it the discussion ought to be relevant. However, I believe that the delegate will soon get around to that and I will so caution him, but I do thank you for raising the point. Delegate Barr, we await your tying together of all--

DELEGATE BARR: I wanted to read them all, I didn't want to leave any out. Although the delegate does have a point--the committee report does only marginally relate to the topic that we're talking about. Anyway, it says, "...many feel that..."; "many"--referring to the public--"many are willing to believe that..."; "the public believes..." and so on. I guess I don't really--in deference to Delegate Ihara, I won't read them all. There are several more references like that.

I have checked with several delegates and nowhere have any empirical studies, opinion surveys or any other information about what the public thinks, or what the public believes, been used in connection with these proposals. So that, Delegate Ihara, is why it's relevant.

CHAIRMAN: Delegate Barr, will you address your remarks to the Chair and to the body, not to a particular delegate.

DELEGATE BARR: Yes, by all means. Okay, the report also has some other very interesting information in it. It says, "Your Committee seeks to alleviate the need for money by addressing itself to the public interest of preventing the reality of corruption and the appearance of corruption..." Again I submit that the committee had available to it no information about the reality of corruption. If they did, I sure hope they gave it to the attorney general. Another reference in the report--"It would have the further beneficial effect of freeing him"--the candidate, or her--"from much time spent chasing the dollar, time which would be spent better doing something else."

DELEGATE STEGMAIER: Point of order.

CHAIRMAN: State your point of order.

DELEGATE STEGMAIER: I just don't understand the relevance of this kind of criticism to what we're supposed to be addressing right now, which is the proposal.

CHAIRMAN: Delegate Stegmaier, the Chair has ruled that the argument is in favor,

I believe, of deleting section 3, and the delegate is addressing himself to what he feels is the lack of reasonableness of the committee report, and although perhaps you and I and others may not yet be able to perceive the logic of what he is saying, his failure to tie it all together would only redound to his discredit. So I think we should allow him to continue.

DELEGATE DiBIANCO: Point of inquiry.

CHAIRMAN: Yes, Delegate DiBianco, state your point.

DELEGATE DiBIANCO: Could we have the Chairman read to that side of the room the First Amendment, so that they will understand that the question of relevance is something that doesn't depend upon an individual delegate's determination of what he likes to hear and what he doesn't want to hear?

CHAIRMAN: Delegate DiBianco, your point of order--I was unable to determine, but Delegate Barr, will you proceed. Remember that the question before us is the support of Amendment No. 7, which is to delete section 3.

DELEGATE BARR: Right, and I was looking at the justifications of section 3, and I think the interruptions, asking me what this has to do with the amendment, are instructive.

CHAIRMAN: The Chair will state, Delegate Barr, not on your time, that the Chair finds it disturbing to have the delegates disturb on points of order when you are about to wrap up your comments. We'll judge them on the basis of that.

DELEGATE BARR: I'm not sure that I was about to wrap up my comments, Mr. Chairman.

CHAIRMAN: Proceed.

DELEGATE BARR: But certainly I think it's instructive that they keep asking what has the report--why is it relevant to the amendment. That is instructive.

CHAIRMAN: Please proceed.

DELEGATE BARR: Okay, anyway, as to the matter of campaign techniques, one of the single most effective things to do is to get people to give you money because there's a reasonable expectation that if they give you money, they will give you a vote. So I find it astonishing to say that it's wasting time chasing the dollar. I would submit that as a very important campaign technique--and that was the point, Delegate Stegmaier.

All right, there is also toward the end here a very instructive comment that the public treasury will be depleted if we do this very rapidly so we want to do it incrementally. The message I get from that is that, in fact, the total cost to the public of campaigning under this type of provision will in the long run be greater than it is now, not less. But apparently that's not to be a concern; we're only concerned that some campaigns spend a lot, and not that the total is too much.

Anyway, I would also like to suggest to you, Mr. Chairman, that as I read this whole thing I think it's hypocritical. If this Convention were really concerned about campaign expenses, we would have adopted single-member districts, so it is ridiculous to say that that's an argument. I would further suggest that there are studies that show that in different states, depending on the state, from 3 to 6 percent of the population contribute to campaigns in what we're talking about doing, and I oppose this philosophically--it's forcing a larger number of people to contribute in order to have these campaign funds. Now if we don't force them and it's voluntary--we've already got that system. So if it's different from what we've got, I take it we're going to force people to contribute and I would suggest, with 94 percent or more of the people not willing to do so, that that type of coercion is a bad, not a good--especially because it creates yet another government bureaucracy, and heaven knows we have enough of that.

I'm also concerned about a couple of other things. Incidentally, one thing in footnote to that--

CHAIRMAN: Delegate Barr, would you stop for a moment. The Chair would ask that the delegates extend to Delegate Barr the courtesy of the attention of the body. Proceed.

DELEGATE BARR: Yes, in connection with that thing about contributions, in effect what we're asking for is a tax increase, and I hope if this goes through we're up front with the voters about that, because if the public is going to spend more money, I take it they're going to have to get it from somewhere and taxes seem to be the best way to get it. In fact, I'm not sure of any other.

In any case, I would also like to suggest--what happens if a candidate refuses to accept this money? Does that mean he is denied the right to run? Does that mean he can run but he can't spend any money at all? We're all presuming that the candidates want this. I, as a matter of philosophy, think I'm a pretty good candidate, to be very egotistical with you all; but I, as a matter of philosophy, can't imagine demanding of you that you give me any money. Now if you'd like to contribute to my campaign--terrific, I'm willing to take your money, but when you do it voluntarily. I certainly do not want government, on my behalf, to step in and take your money and give it to me as a candidate, no matter how wonderful I think I am. I think that should be up to you, and that part really distresses me, that if I don't accept the money I may not be able to spend any money at all on my campaign.

Well, there are several other things that bother me; the one thing that bothers me most, however, was the statement I heard--and I will, Mr. Chairman, avoid using the delegate's name--that the whole effort is to remove money from politics. I find that the most astonishing statement I have ever heard. I speak in favor of this amendment.

CHAIRMAN: Thank you, Delegate Barr. Is there further discussion on this matter? Delegate Barnes is recognized.

DELEGATE BARNES: Mr. Chairman, I'm afraid that the golden-tongued train from the Island of Maui may have finally become a little derailed. So I would like to speak against this amendment and in favor of the committee report, among other things.

I think that this committee was--I can't speak for the committee, pardon me--but to put some accuracy into the situation, it seems to me in the BORSE committee it was said that we have a problem with some of the highest spending dollars per vote in the nation here, for our governor's race and of course one particular candidate in the U.S. congressional race. And I personally feel that this three-part package is an excellent way to approach that problem.

This committee report--and we were lucky to benefit from a chairman of our committee who has extensive experience in this area, and I believe that this committee report reflects that, and reflects our sincere concern with this problem. I perceive these three provisions as providing a voluntary way for encouraging candidates to accept public financing and thereby accept the limitations on spending that would come with that--spending and contribution. The one problem, of course, may be that a few candidates will choose not to come under that partial public financing, and it was expressed to me by the movant of this amendment that she felt that perhaps these candidates would be tainted or something if they would be perceived as being linked with special interests, but I feel that the existing disclosure provision will take care of that. In other words, they have to clearly spell out where all the contributions come from, so people truly are free to choose or not choose this partial public financing.

So for those reasons I encourage all Panasonics, Sonys and whatever to vote against this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Barnes. Is there further discussion? Delegate Hale is recognized.

DELEGATE HALE: I'm very happy to be able to speak against this amendment because I think we're, for the first time, really opening up this Convention, and I hope that we can all use our intelligence in voting on this particular problem. I speak against this amendment because I for one am thoroughly convinced that the cost of campaigning has risen so high that it is just not possible to be--it will not be possible to be an honest politician if this trend continues. I'd just like to give a few figures that have enabled me to see that this is a very, very important problem, and all we're asking in your support from the committee is to put this on the ballot so the people can decide if they would like to have their tax money used for public financing.

On the Island of Hawaii, which has about 75,000 people altogether--men, women, children and babies--in the 1976 mayoralty campaign our incumbent mayor spent \$79,409.54, which is more than a dollar per person for everybody on that Island. The three candidates together who ran for that office in the primary and general spent \$163,486.00, which is over \$2.00 per person for every man, woman and child on our Island. Now I ask you, where is this money coming from? And I can tell you from personal experience that a great deal of that money is coming from people who have a personal interest in county government.

Fourteen years before that, I ran for an office that was comparable to that, and I spent approximately \$1,500. It's just ridiculous the way the cost of campaigning has gone up, but this is something that snowballs, that builds upon itself. In every election as somebody spends more the opponents have to spend more, and it just becomes an unmanageable area. I'd like to point out that in 1974 when the spending limit was effective in this State, in the gubernatorial campaign the Republicans spent \$290,000, Ariyoshi spent \$275,000 and Fasi spent \$161,000. And now we're talking about these same two candidates, Ariyoshi and Fasi, spending \$1 million to \$2 million apiece. This is ridiculous. This is because the spending limit was taken off by the supreme court, and because of the competition in this area there's just no limit. And you and I and the average citizen, as pointed out by the delegate from Maui, are not making this contribution. Who is making it? I ask you to ask yourselves and I think you can find the answer.

The point of this--and it was the intention of the bill of rights committee, I feel, at least it was my intention as a member of that committee--that we would give direction to the legislature, to tell them this is the real problem; and it's also an opportunity for the people of this State to recognize this problem and to vote upon it because we're only recommending this as an amendment to the Constitution. If the people don't want public financing, if they feel that they don't want the public money spent this way in order to limit the tremendous costs of campaigns, I feel we should vote this proposal down. But I urge you to vote this amendment down now, and let the people give us some direction in this area. It is a complicated problem; we don't know the figures, we don't know the problems, and this is one area in which I for one feel that we have to turn this over and leave it to the legislature. But we're giving them the direction in which we want them to go and by this--although we realize that possibly a candidate who does not accept public financing may challenge the constitutionality of this, as to whether or not we can put a campaign spending limit on it. We discussed this very freely in the committee, and it was our feeling that the vote on Buckley v. Valeo was so close, and that the supreme court changes its decision every few years and this is an area in which we had no certainty that it was going to be unconstitutional for very long. We feel, and we ask your support, please--to give the public an opportunity to vote on this to see whether they would like to help keep the cost of campaigning down, keep our politicians honest and make government really represent all the people and not just money interests in this State.

CHAIRMAN: Thank you, Delegate Hale. Is there further discussion?

DELEGATE BURGESS: Point of information.

CHAIRMAN: State your point.

DELEGATE BURGESS: I would like to ask perhaps the chairman of the committee, if this provision is not in the Constitution, would the legislature in any way be impaired in its ability to set up public campaign funding or to set limits on spending?

CHAIRMAN: Delegate Weatherwax, would you yield to answering that question?

DELEGATE WEATHERWAX: Like many of the other proposals that this body has considered, I don't think the legislature is foreclosed. However, I think the added impact of the Constitution--and as Delegate Hale has indicated, in fact, that the body politics itself has made an indication of its concerns--would weigh very strongly in a court challenge.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair recognizes Delegate Peterson.

DELEGATE PETERSON: Thank you, Mr. Chairman. As I have listened to the arguments, I've noted five which I would like to speak about: the first is that the legislature should draw up the plans; the second is, this program would reduce the influence of

money on politics; the third is, partial public financing has been used on a national level; the fourth is that matching funds would be appropriated; and the last is that campaign spending should be limited.

I'd like to address each of these quickly. The first is the legislature should draw up the plans. My answer is that in drawing up restrictions, it is naive to expect the legislature to favor challengers. Any public financing plan drawn up by the legislature will favor incumbents.

The second argument is that this should reduce the influence of money on politics; in fact, for some elections politicians wouldn't even have to ask supporters for money. If politicians cannot attract adequate funds, why should government take from me to give a politician to whom I would not myself contribute? It is possible that my money would be used to support a candidate whom I would oppose, whom I would vote against.

The third issue is that partial public financing has been used on a national level. This is true. However, there has been abuse. No receipts are available to support the spending of much of it. There is some evidence that they're still trying to work out problems that happened in the last presidential election. After a politician wins, what may be done to punish his prior misuse of funds? In other words, public financing as it is already being used, has problems.

The fourth issue is that matching funds might be appropriate. Incumbents may multiply their advantage because they find it much easier to raise funds. When these funds are matched, the incumbent's advantage is multiplied. In other words, incumbents have leverage.

The fifth issue relates to the limitation on campaign spending. If two candidates may spend only the same amount, who is more likely to win--the newcomer or the incumbent? The incumbent has already campaigned in one election; this person has already been in the news, in the reports of the election winners, he's been on the lawmaking stage, made contacts with citizens, spoken before public groups, been able to give jobs, contracts and other privileges not available to newcomers.

In conclusion, equal money favors incumbents. One issue that was raised by one of the first speakers, which has not been discussed since then, is that spending by a group, without a candidate's approval, is not counted against any limit. Independent groups have placed newspaper articles and TV programs for presidential elections without the knowledge or consent of the candidates. Unions, business groups or special interest groups may continue to spend all they wish, as long as the candidate is not consulted.

In summary, any public financing plan drawn up by the legislature will favor incumbents. I wish to have my money spent by candidates whom I support. Public financing has had problems. Incumbents have leverage, and equal money favors incumbents. The perpetuation of political power by granting to politicians the funds for campaign spending and letting them then make the rules creates a much greater potential problem than it is attempting to resolve. I therefore speak in favor of this amendment and urge you to vote for it.

CHAIRMAN: Thank you, Delegate Peterson. Is there any delegate who wishes to speak for the first time?

DELEGATE EASTVOLD: Yes, Mr. Chairman.

CHAIRMAN: Delegate Eastvold, followed by Delegate Cabral.

DELEGATE EASTVOLD: Yes, I would like to speak in favor of the amendment to delete section 3. I don't think we're scrutinizing this portion of the committee proposal well enough, and I believe there are a few items that should be brought out a little more clearly. Yet we've continuously heard, not only from the committee chairman but other members of the BORSE committee, that this is going as a package to the public. However, there is a possibility--and I see a great possibility--that the second portion of this package will be found unconstitutional, that portion that states: "The legislature shall provide a limit on the campaign spending of candidates." Together they form a nice dream, which

we'd like to find within our political system; however, when--and I submit that it will be found unconstitutional--when that is found unconstitutional, they will delete this last sentence and we'll be stuck with the first one, which will solve no problems whatsoever except for using public funds for financing those candidates who cannot find funds elsewhere, and they will be burned with the limitations.

In the committee report it says: "The limitation on campaign spending is not without constitutional problems. The limitation on spending would be constitutionally justified if linked to public financing but Buckley v. Valeo... presents a constitutional hurdle to limiting expenditures for those not receiving public financing." This was pointed out, I agree, by our committee chairman; however: "Your Committee is fully aware that litigation will be necessary to determine the validity of any limits on spending by those who do not receive public financing, but your Committee believes that" etc. They are admitting that litigation is going to have to take place.

I'd like to also point out that when I was on the committee, I asked the committee counsel what would be the possibility of such litigation, and which way would the supreme court find this again. And he said that from all the evidence that was presented to us thus far, it would be found unconstitutional once again. If that is to be the case, we are going to be stuck with the first sentence of this so-called package, and it would not be a package any longer; it's going to cause more problems than it's going to solve.

If we go into this thinking we're going in with a gamble, I'd say our odds are about 100 to 1 that it's going to pass. We're going to be more of a fisher or sucker than most gamblers would like to look, and I'd lay odds with anybody that it will be found to be unconstitutional. And by so doing, we're defeating the very purpose of what we're attempting to do, and that is to set a limit on the funds that can be spent by various political candidates. We're going to be stuck with, then, a situation--we're going to have two types of candidates: one that desires to have public financing, and by so doing he's going to be limited; the other type of candidate is one that does not desire public financing and is not going to be limited. Therefore, you're defeating the very purpose of what you're intending to do. You're going to have higher costs, or at least you're going to have the *status quo*, and what you're going to end up with is a bureaucracy, as my fine delegate from the Valley Isle of Maui has pointed out--that you're going to end up with a bureaucracy with high administrative costs, trying to determine who is going to get this partial financing of campaigns and who isn't, who's going to qualify, who is not. We're going to end up spending more on administrative costs and it's probably going to be left over for candidates to divvy up.

I would actually have to submit that I believe we should leave this to the legislature. It was when it was constitutional, they did have limitations on campaign spending. There's no reason in the world why we should put this in our own Constitution, especially since it will most likely be found unconstitutional. And if any of you have any questions about that, I would ask you to ask counsel as to what their opinion is, and I'm sure they'll agree fully with me. I guess basically I would like to ask that you all vote in favor of this amendment--and remember, it's going in as a package and it will come out as an individual statement that will hinder rather than favor the public.

CHAIRMAN: Thank you, Delegate Eastvold. The Chair recognizes Delegate Cabral, to be followed by Delegate Shon.

DELEGATE CABRAL: Thank you, Mr. Chairman. I still cannot fathom when a rose is a ruse and a ruse is a rose, and I do speak in favor of this amendment to delete section 3 of the committee proposal. It appears to me that members of the legislature have cleverly induced members of this body to accept a hot dog, one that they would act on by themselves. Yet, constantly I've heard throughout this Convention, espousal of "this should be left up to the legislature," "it's not part of the constitutional kinds of provisions that we should address." And yet it appears very much so that we are addressing something that has been skirted by the legislature.

In regard to public sentiment and reaction, if the constituents from my area and their attitudes are indicative of the voters of the State of Hawaii, then I would say that the reaction is going to be quite negative. In campaigning throughout my area, I found that better than 90 percent of those I had canvassed and surveyed on a one-to-one basis indicated that they were not in favor of this kind of constitutional provision. For one,

I cannot see where we should sell the public, the taxpayers, with the responsibility of financing political campaigns because obviously we realize that it's dirty. And I cannot accept that, and neither can my constituents. I feel that if we are going to eradicate any kind of wrongdoing, shady kinds of campaigning and so forth, then they ought to be done with the proper kind of legislation, and not the kind of legislation we are attempting to do, to force the legislators to enact enabling kinds of statutory provisions that would saddle the general public with this kind of responsibility.

I therefore speak in favor of this amendment to delete section 3. While I wholeheartedly support the concept of trying to control campaign spending and setting campaign limits, I do not perceive that this is the proper approach to do so. Therefore I urge all of you to consider this very seriously as being very hypocritical of what we are trying to do and put over on the general public.

CHAIRMAN: Thank you, Delegate Cabral. The Chair recognizes Delegate Shon.

DELEGATE SHON: Thank you. I rise to speak against this amendment, and I do not believe that I'm being hypocritical. I think what we have before us is the marketplace syndrome--that is, those who are wealthy, those who are plugged in, those who have connections to the sources of wealth, they are taken care of. But those who are not--why, they should compete as well as anyone else. After all, all is fair--everything being equal. But everything is not equal. When we are electing public officials, we're not electing everyone who has the same income, or the same opportunities to gather financing for their campaigns. Supposedly we're electing people to serve, and the qualifications for service I have never seen written down in any Constitution or any law--that the qualifications must be that you are successful, wealthy, have access to resources to finance your campaign in a luxurious way. Supposedly the qualifications to run for office have to do with character, opinion, willingness to serve.

I would ask you to consider that under the present system, those who have the most wealth are favored. Under the proposed committee proposal, those who do not have an awful lot of wealth, an awful lot of connections, are given a fighting chance. I come from a district where in order to communicate with most of the voters you have to mail. Now perhaps if you come from the "patient mountain" or somewhere else, you can walk door to door and this is a great advantage; but Hawaii is changing, it is urbanizing. There are more and more buildings that are locked up, more and more places where you cannot go door to door, where it is an invasion of privacy to knock on someone's door. And we have to face this reality, we have to face it in a way that attempts to equalize the opportunity for all those who might be qualified to serve in public office. And the way it is now, it is not equal. This idea of imposing a burden on the taxpayer--I do not understand that because, as one of the delegates who spoke earlier mentioned, every time someone is elected whose campaign has been financed, not by his constituents but by a very special-interest-oriented group--every time someone is elected in that manner, I submit to you, the constituents of that representative have been compromised.

I ask you to support the existing proposal on the basis that it gives those who do not have a great deal of wealth a fighting chance, it provides the potential for a minimum amount of financing. And without financing, folks, there is no campaign. So I ask you to reject this amendment.

CHAIRMAN: Thank you, Delegate Shon. The Chair recognizes Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment. I just wanted to point out one thing. The last sentence, since it is declared unconstitutional, will be declared unconstitutional in its application. What that means is that to the extent that it is constitutional in a sense that it applies to people who have extensive public financing, it will remain as part of the law. So I don't think that we have to worry about it ever being deleted, and that the first part would in and of itself be the only measure that we have.

CHAIRMAN: Thank you, Delegate Waihee. The Chair recognizes Delegate Chung.

DELEGATE CHUNG: Thank you, Mr. Chairman. I am against the proposed amendment. I feel that this section 3 on campaign fund and campaign spending is one of the best proposals to happen in Hawaii. You all know Dan Tuttle. I look upon him as an

eminent person on politics in Hawaii, and he himself back in the '60s envisioned that there would have to be some public financing of campaigns because of the rising cost of campaigning. He felt that this would be one of the most progressive and far-reaching policy developments, particularly for Hawaii.

Involving public financing will mean two things: counteracting the apathy of people in politics and, when we involve the people's dollars and cents, they will tend to become more vitally interested in issues and the progress of the candidates. There's nothing like having involvement to develop their continued interest. And this proposal will do just that.

The previous speaker, I feel, was jumping to conclusions regarding possible evils--what incumbents may gain because of more money, as against newcomers--when we haven't even given the legislature a chance to work on the rules or establish any prescription by law, as this proposal calls for. We're assuming too much, and also we're assuming that the legislators may not do their job properly. By golly, let's have faith in them. We just passed an amendment, an open primary, and hopefully we'll have better legislators--I'm sure we will. And no sooner do we give them--give ourselves a chance to have better legislators, now we are doubting the future. The subdivisions are erroneous. We all know that the driving force in politics is not either party--Democrats or Republicans; it is the third party, the unseen party--the pressure group. Let's not kid ourselves--and hopefully by having public support of campaign spending, this might help to ease the pressure of these groups, which binds all around us, locally and nationally. I urge all delegates to vote against the amendment because I honestly and sincerely believe that this proposal is one of the best things that can happen in Hawai'i nei.

CHAIRMAN: Thank you, Delegate Chung. Delegate Hironaka is recognized.

DELEGATE HIRONAKA: Yes, Mr. Chairman, I'd like to speak against the amendment, and I'd like to do it in this manner. I'm a member of the BORSE committee and when this proposal was brought up, my immediate reaction was like that of one of the delegates talking about the figures. I thought--wow, it's going to cost the taxpayers a fantastic amount. I started multiplying, you know, the number of candidates possibly running and I thought--wow, this is just outrageous. But as I listened to the discussion in the committee--and we did have a really long discussion, and it was a really educational discussion--in the end, I think, quite a number of us who were against this in the beginning changed our minds. And that's how it got voted out of the committee.

First of all, I think our biggest concern was that of campaign spending, and unfortunately--like when we were determining the board of education, because of the ruling on apportionment we had to go take an unpopular, or a less desirable, way to satisfy that. Again, we have the federal courts telling us that it is unconstitutional to put up limited campaign spending, and the only way we can do it is if somehow there is some public financing--that's the only way you can get away with it. And not only that, but we don't have to do it to all the other races. Like we just have the presidential right now and it's optional; when you file your IRS return, if you don't want to check the "yes," you can put "no" and a dollar from your taxes doesn't go to the presidential election. And I can see that this could be just a beginning--at least this is what we discussed in the committee, that this would be just a beginning--and possibly this may not even be resubmitted for the next 4 to 6 years, or maybe in the meantime the supreme court may reverse its decision. But somehow, to just get this started, if we put this in the Constitution--and that's the reason we didn't put the details into it--that you just at least give the legislature some start to get this ball rolling--and maybe it may even start with just the governor's race. But this is the one that the public is screaming--wow, a million dollars going to be spent for campaigning this year for the governor's race, let's cut that down. Well, we can't do it unless somebody can come up with a better proposal somehow that we can do it with. I'd buy that, but as I see it that is the only way we can do something about it--is to take free public financing, and this would only be partial. Then we can put a limit--let's say, just on the governor's race to start with. But to get the ball rolling--and hopefully, of course, that the supreme court reverses its decision someday.

I realize that putting something like this to the voters in the general election is going to take some real big voter education, I think, just as much as some of the other proposals that we are going to present to the public. But I think that if we do it right, I think the cue is going to be a limit on campaign spending. I don't think anybody wants to take money out of his pocket or from the State to finance elections, but if this is the way, in a small

way--we're only going to put a small amount--if this is going to be something to stop this astronomical spending in campaigns, at least maybe in just the governor's race, I think the people are going to buy it.

CHAIRMAN: Thank you, Delegate Hironaka. Are there any other delegates who wish to speak for the first time? Delegate Ontai is recognized.

DELEGATE ONTAI: To my colleague from the asphalt jungle of Waikiki, I'd be happy to trade my wide open spaces in Waianae, where we have dogs and more dogs and more dogs, for the asphalt jungle of Waikiki, any day. Let me say that in the 1976 elections--I'm against the amendment, and I'm for the proposal as written by the committee--I'll give you an example, in my district in the 1976 election for the house of representatives, one candidate who was an incumbent, got a contribution totaling \$35,000--house of representatives, slightly less than 14,000 voters. That comes to about \$3.00 per voter, which makes the mayor of the Big Island look like a piker. That is the result of no laws, and everybody on his own. The newcomer has tremendous disadvantages when a person can raise \$35,000. Of course, you wonder how they raise it. That's the next big question but that's another subject in itself. So you do have tremendous discrepancies and you don't realize it, those of you who have not run for office or haven't been near the scenes at some of these elections. Perhaps every one of you today is running for your life. You probably realize for the first time the advantages incumbents have and the importance of money to try to catch up with him, and you're lucky if you even come near unless you started a long time ago, and perhaps even then you couldn't catch up with him. It's just built in by the system, with no laws, no rules, wide open. It's going to happen, keep happening, and these funds today astound a person when you actually get to the scene.

I'm for the proposal as written by the committee and I'm against the amendment. I agree there's nothing perfect that we could draw up tonight; I don't think we're all here tonight to draw up something you might consider perfect that will suit everybody. But again, it's almost like the saying, the best of the two--or as some others put it in the negative, the lesser of two evils--and we have to make a choice.

CHAIRMAN: Thank you, Delegate Ontai. Delegate Funakoshi speaking for the first time.

DELEGATE FUNAKOSHI: Mr. Chairman, I speak against this amendment. The committee discussed this at length and we felt that the newcomer would have a better chance if given the opportunity of public financing. Although as my fellow delegate here said if public financing was not used by the incumbents, the newcomer would still have the opportunity of having such assistance, which would double, or whatever, the money the legislature would appropriate.

As far as the check-off system went on income tax, I was against that because it would come out of the state income tax. However, it could still be on a voluntary basis where a person getting a refund might give a dollar from his refund toward this thing and it might not be for another 10 years or 20 years, but still at that point you would have the opportunity to run for office if you lack the funds. Therefore, I speak against this amendment.

CHAIRMAN: Thank you, Delegate Funakoshi. Is there any other delegate who wishes to speak for the first time? If not, the Chair recognizes Delegate Weatherwax.

DELEGATE WEATHERWAX: Mr. Chairman, just a few other items. I believe there has been considerable exaggeration presented by those who are in favor of the amendment to delete the committee proposal. One of these exaggerations, first of all, is that there would be a huge bureaucracy created to administer this program. I think there is right now the Campaign Spending Commission which could probably in all cases handle the financing, or at least the beginning steps, and I don't think we need to be fearful of another layer or a great bureaucracy coming about.

There's also the delegate who took the stand that it is his opinion, and he is willing to put his bottom dollar or bet, that in fact the provision will be found unconstitutional. At this point I think we're both speculating about that, but there are a few considerations that we might look at. The U.S. supreme court in Buckley talked about First Amendment rights and what it did was, it overturned an appellate court; the appellate court had found the provisions constitutional on all three bases--the contribution limitations in the

Federal Election Campaign Act, the disclosure requirements. And they were upheld by the appellate court--granted it is a lower court--but the rationale was that in fact in one of the cases that the spending of money need not necessarily be equated with free speech. The supreme court felt otherwise, but it is also considering the federal campaigning and there is a wide scope there. And that's why I brought out the idea that there is some uniqueness, perhaps, at the lower levels and in the State, that may be different from the federal election area where it is not necessarily so that we need to equate the spending of money with the free speech argument. And this goes to the idea of the hope of those individuals who wish to support the spending limit and public financing as well as the contribution limits, and that's to get back to the grass roots; and we're hopeful that that will be effected by limiting contributions and the spending limits. Bringing the entire level of money, the involvement of costs, down would also hopefully require the candidate to utilize manpower and to walk the district and have a more grass-roots emphasis.

There was some concern about minor and frivolous candidates. Again we cannot guarantee that, but we have to leave that to the legislature and trust they will and not condemn them as always being self-interested, that in fact they will take some action and be hopeful on that basis.

I would also indicate that there has been a statement at the federal level, but there are two states that have presently begun--I believe, 2 years ago, perhaps longer--one is New Jersey, and I can't recall the other, maybe Wisconsin. I may be inaccurate on that, but I believe on a statewide level there has been a beginning--to begin with public financing.

And of course, to the good delegate from the land which has love and its antithesis, I believe, to his demands for statistics and proof of political corruption, I must admit that the committee did not search out and have every detailed case on political corruption arising from money, but I think that he's very politically astute and realizes that there is political corruption from money in this State as well as many other states across the nation. I would urge that you support the committee proposal and vote against the amendment.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair will recognize Delegate Sutton and invite the attention of the members of the Committee of the Whole to Rule 41, which calls for the extending of courtesy of not speaking on the floor while delegates are engaged in their presentations.

DELEGATE SUTTON: Thank you, Mr. Chairman. I'd like to offer a quick aside, a little bit of a lighter note. My family has an old motto--if at first you don't succeed, try, try, try again. This could be a motto of many nonincumbents if this is passed--that is one point. On the other side, as one politician put it to me, I'm really tired of selling out. That's something I don't really think about, and I still might want to consider in the future, if I gain a great fortune, buy myself a television station. These are other options that are available to the rich in the future that still want to run for politics, and the media will be their method.

Well, I see both the good and the bad points of these two sections actually, because they do relate directly to each other. I have to speak against the amendment for in my youth I still have a lot of feeling that things can change.

CHAIRMAN: Thank you. The Chair recognizes Delegate Taira.

DELEGATE TAIRA: Yes, thank you, Mr. Chairman. I'd like to yield to Delegate Dyer so that, if she so chooses, she can close debate on this subject.

CHAIRMAN: Did you wish to suggest that she have the floor?

DELEGATE TAIRA: I'd like to yield to Delegate Dyer.

CHAIRMAN: I'm sure many share your sentiments; however, there are other delegates who may wish to speak--Delegate Blake has indicated so and is afforded this opportunity if he so cares. Delegate Blake, would you care to address the body as you had earlier requested?

DELEGATE BLAKE: Yes, this is my second time. Only recently the taxation and

finance committee did carefully study the state debt, limitations on spending, and only about a week ago this delegate asked this body to increase the county revenue sharing by a measly \$7 million. And now we're speaking of another, probably \$1 million appropriation to finance elections. I firmly believe that we should be consistent in the decisions we have already passed. Now we're speaking of funds that will probably not be available and would only be made available when we voted it down only a week ago.

As I stated earlier, I like what's stated here in the amendment. However, I would like to see this group here, instead of passing the buck to the state legislature like they've been passing the buck to us, why don't we do it a little different. Why don't we take the problems ourselves, to a certain extent, and what I want to see here is what the penalties will be if a candidate exceeds what he should be spending. Now, irrespective of how this thing passes and goes to the state legislature, there's many ways of skinning the cat to get more funds. I know this--I know it can be done. There are many ways that funds can be spent to enhance a person's campaign, and I'd like all of you to really think about this. I'm concerned about the spending limitations.

I just made out a quick list here of what it would cost, just what the governor should spend for election--maybe a half million to one million is a little too high. Senators--no more than \$15,000, representatives--no more than \$8,000. The mayor of the City and County of Honolulu--that would run about \$300,000, the neighbor island mayors--\$20,000 to \$25,000, the councils--anywhere from \$8,000 to \$10,000. And that's ample funds for any campaign, if it's done right. But I know that the money spent--it's ridiculous how some of the funds are spent, and if we don't put a cap on this thing--if we don't put a limitation on this thing here, the newcomer will never have a chance unless he breaks through the fog and is able to get through.

And as I stated earlier, I'm all for this--what's being presented by the committee--but let's be big enough. If we want to do it, let's not just toss it to the legislature. You put them in a very uncomfortable position, because they're the ones who run for office and you're asking them to write this thing up. I don't think that's fair. We spoke about different committees--the selection committee for judges, some other committees--we've done this, so why don't we go into it further and do something more here than pass it to the state legislature and see what they do about it. So let's get out, and if we're going to do it, let's do the job. It's not going to be that difficult a job. I'm really concerned about the spending limitation, what the penalties are going to be--just a telephone call? just a letter? No. If a person exceeds the spending limitation, soak him \$5,000 or \$10,000. That's the only way he's going to do it. It's like our fishing laws, you go out and fish--for a \$5.00 or \$10.00 fine you catch all the fish you want. Illegally, yes. So if we're going to do a job, let's be big enough, let's be grown up, let's face the facts the way they're supposed to be faced. I think everyone here either is a parent or will be a parent very shortly; if you're going to teach your children what's right from wrong, let's start facing the facts right now.

CHAIRMAN: Thank you, Delegate Blake. The Chair wishes to inform the committee that we have heard from 22 speakers so far on this subject and the Chair will very shortly call upon Delegate Dyer to give her last remarks. However, the Chair will recognize the fact that delegates are entitled to speak twice, first for 10 minutes and second for five minutes, and I respect the fact that most delegates have averaged 3 minutes. Even at that rate it has taken a great deal of time, so I would like to ask your forbearance and, prior to recognizing Delegate Hale for the second time, the Chair recognizes Delegate Souki to state a point of information, I believe.

DELEGATE SOUKI: Mr. Chairman, was the good delegate from Kauai, the previous speaker, speaking for or against the amendment?

CHAIRMAN: I believe he was speaking against the amendment. It seems obvious to me. Delegate Blake, would you please restate that?

DELEGATE BLAKE: I was speaking for the amendment--except that I said this is a good plan if it is done right.

CHAIRMAN: Is that true, Delegate Blake? The amendment would delete section 3 and you're for that? Delegate Hale, you have the floor.

DELEGATE HALE: Mr. Chairman, you've had 22 people, I'll be the 23rd. I would

like to point out a few things. The reason the committee could not go into dollar limitations is, what the dollar is worth today it may not be worth tomorrow at all, and we cannot put in the Constitution dollar limitations at this stage. I think all of us are aware of inflation, and our economy being what it is the dollar is meaningless, and this is why when you get down to the actual dollar amount, the actual amount of money that's going to be, that you've got to leave this up to the legislature--and we had a long, hard discussion about this--but overwhelmingly the committee was for the concept of public financing, and that's all we're really doing. We're voting on the concept of public financing, we're leaving the details up to the legislature and we're making sure that the people have a chance to voice their opinion on this concept. And therefore I speak against the amendment, because I am for letting the people decide whether they want public financing or not. I don't see how we can write the details into the Constitution.

CHAIRMAN: Thank you.

DELEGATE VILLAVERDE: I'd like to speak for the second and last time.

CHAIRMAN: Delegate Villaverde, proceed.

DELEGATE VILLAVERDE: Yes, again I speak against the amendment. We've had all kinds of arguments, some unworthy and some worthy--I think most were worthy. And it's been questioned insofar as--you know, I mentioned it's going to be unprecedented for Hawaii, but there are many other states who have and who are in the process of going into either entire public financing or partial public financing. There are states that have these problems, they realize the same problems we do, and it all adds up to there's too much money going out for campaigns. I'd like to reiterate that the supreme court decision has made it available and has made it possible for any state to go into this particular program of public financing--Hawaii, partial public financing, and I think the voters will accept this. And I'll mention the states--these are Idaho, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Jersey, North Carolina, Oregon, Rhode Island, Utah, Wisconsin. These are states that have, or are going into public financing.

In addition to making a case for public financing, I'd like to sort of envision that the legislature will make an analysis of contributions and expenditures in previous elections and learn by these states in this particular program. And Hawaii is capable of doing so. Now a spending ceiling curbs--via this passage or as allowed by the supreme court--a spending ceiling curbs the escalating costs of campaigning and magnifies the importance of matching moneys as the state blows up the fund. I don't envision it next year or the following year but--like Delegate Hironaka said, it's going to take a little time--but we are in the right direction if we do it now.

Also, I feel that the legislature cannot set up a fund, like I mentioned earlier, before a program is authorized under this present law, but give them time and we're going to have something. But one thing we will do is, we will mandate the legislature to set up a fund which would allow building of this to provide support for a program which will be created eventually. We have experienced this in our tax returns--I'm sure we're all taxpayers here--and that it is working; and the presidential level has been successful in this area, and also that the federal excuse is that money which will not go to the President went to the Congress, and there are figures in 1976 to this effect. And I feel that if the delegate from Kauai is sort of gung ho about, you know, that we'd better do something, I think we're doing something here in providing the direction that the legislature has been having a difficult time in developing; and with this kind of, you might say, possible imposition, we're going to have something very successful. And I therefore speak against this particular amendment and urge the rest of you delegates who have doubts to give yourself a chance, because we are giving the people a chance, the voters, who have so long contributed--maybe by habit or maybe by potential political patronage--giving so much to campaign funding and I'm sure this time we can make it a little smaller than before.

CHAIRMAN: Thank you, Delegate Villaverde. There being no other speaker, and since Delegate Dyer has yielded her opportunity to speak last, the question before the body is Amendment No. 7 to Committee Proposal No. 16, to amend it by deleting section 3. All in favor indicate by raising your hand. Opposed? The noes have it, the amendment fails. The Chair calls a 5-minute recess.

At 10:12 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:22 p.m.

CHAIRMAN: The Committee of the Whole will come to order. The Chair recognizes Delegate Barr with respect to Amendment No. 8, to delete section 4 of Committee Proposal No. 16.

DELEGATE BARR: Mr. Chairman, in view of the fact that my last speech won such great support, I'll make this one very brief. I move that Committee Proposal No. 16 be amended by deleting section 4, as proposed in Amendment No. 8.

CHAIRMAN: Is there a second?

DELEGATE BURGESS: I second it.

CHAIRMAN: It has been moved and seconded that Amendment No. 8 be approved. Proceed to address your amendment.

DELEGATE BARR: Mr. Chairman, I just want to make sure that everyone knows what this does. This is the section on the limitation on campaign contributions, and essentially what it does is give constitutional status to the State having the power to limit the amount of money that can be contributed to a campaign. I would like to suggest that if this isn't unconstitutional under federal law, it ought to be. The First Amendment that allows freedom of speech, freedom of assembly, freedom generally of expression is far too precious to be tampered with in this way. I rest my case.

CHAIRMAN: Thank you, Delegate Barr. The Chair recognizes Delegate Chong.

DELEGATE CHONG: Thank you, Mr. Chairman. I speak in favor of this amendment. I'm in favor of limiting campaign spending. I am not, however, in favor of limiting contributions. I see this section opening Pandora's box, and again the denial of a person's right and privilege to contribute to the candidate of his choice. Throughout this Convention, we have feared the incumbent legislator, the legislature, special interest groups and even ourselves, Con Con delegates, fellow colleagues. Now we fear the contributors to a candidate's campaign.

I can understand the concerns of many delegates--seemingly by limiting contributions, the fear of special influence is eliminated. Obviously I have more faith in our elected officials and the electors than many here. If I wish to contribute \$1.00 or \$1,000 to the candidate of my choice, the option should be mine as well as any other private citizen's. The right should not be denied. A question that was not raised in committee--and I apologize for not thinking of it then--is, what about a manual labor contribution? Suppose there was no money, no monetary contributions, only manual labor. How do you place a monetary value on a manual labor contribution? Sign-holding, door-to-door canvassing, passing out brochures--\$2.65 an hour in a newcomer's race? \$8.25 in an incumbent's race? That could really add up to quite a sum at the end of a campaign. Certainly one who contributes his time and effort to a campaign would have as much to be feared as one who contributes money. I'm sure there could be far more unforeseen limitations in a campaign. Influences come from every corner of our State; special interest groups are the backbone of our society--be it Life of the Land, Save the Whales, Stop the H-3, the neighborhood boards, community associations, or one or two persons sincere in their dedication to a cause. Are we going to limit influence from a political campaign also?

CHAIRMAN: The Chair recognizes Delegate Pulham and then Delegate McCall.

DELEGATE PULHAM: Thank you, Mr. Chairman. Your delegate from the south slope of the lone mountain would rise to speak in opposition to this particular amendment--and I hesitate to incur the wrath of the delegate from the lovely Isle, but I don't think we can get so far afield as has been so far alluded to in the brief time this has been on, and I didn't speak on the other motion at all and I'll speak very briefly now.

To me this addresses itself to the obvious evils which lurk in large campaign contributions. I am perfectly willing to trust the legislature to work this thing out to where it is fair

to all, but there is no way that I can equate limiting this type of contribution with denying someone his rights. Somewhere along the line we have to think about responsibilities also, and we have to think about the responsibilities of those people who accept these large contributions--and in many cases the contributions from organizations, as well as individuals, not even remotely connected with the area from which that candidate comes. We all know--especially those of us who have to campaign on the outside islands--when huge amounts of money are poured in from Oahu to elect people on the outside islands--that's not the way I would like to see politics run in Hawaii, and I hope that the remainder of this delegation will go along with that. Let's let the legislature put some kind of a lid on this sort of thing.

CHAIRMAN: Thank you, Delegate Pulham. The Chair recognizes Delegate McCall.

DELEGATE MCCALL: I speak in support of the motion to amend, and I think we can only look at the federal situation as to our limit on contributions and make some sort of a major estimate on how successful that is. I think we can all recognize that money spent on the federal level is going up and up despite the limitation on campaign contributions. I have a feeling if we do this we'll just drive it underground. I have a feeling that our present campaign contribution declarations by candidates are quite adequate and show where the money comes from. If you drive it underground, you won't know where the money comes from. I was just going to make my speech very short by saying amen to the first few speakers and I think that's about all I have to say.

CHAIRMAN: Thank you, Delegate McCall. The Chair recognizes Delegate Hagino.

DELEGATE HAGINO: Mr. Chairman, I rise to speak against the amendment to delete section 4, which places limits on campaign contributions to political candidates and campaign organizations. Like section 3, it attempts to reduce the influence of money on the political process. The specter of corruption, real or imagined, looms over the political system. We are all aware that contributors who give large sums of money to candidates share similar points of view. It is easy enough in this post-Watergate atmosphere to charge that a decision which is beneficial to the interests of large contributors was motivated not by public interest but by a desire to keep these rich contributors and special interest groups happy.

I believe that section 4 is a decisive attempt to prevent the potential appearance of impropriety from clouding the decision-making process. It moves toward eliminating the possibility of buying off officeholders. Again, I urge my fellow delegates to vote no on this amendment.

CHAIRMAN: Thank you, Delegate Hagino. The Chair recognizes Delegate Burgess, followed by Delegate Souki. Delegate Burgess--do you rise to a point of information, Delegate Souki?

DELEGATE SOUKI: No, I wish to speak against the amendment.

CHAIRMAN: Oh, okay, but I did recognize Delegate Burgess.

DELEGATE BURGESS: I yield to Delegate Souki.

CHAIRMAN: Proceed, Delegate Souki.

DELEGATE SOUKI: Thank you, my good friend. I wish to speak against my colleague and delegate from Maui on Amendment No. 8, because I believe that the BORSE committee provided this Convention with probably one of the best amendments to the Constitution that we'll ever have. And I think the BORSE committee and chairman should be applauded for doing a real good job. So I speak against the amendment.

CHAIRMAN: Thank you, Delegate Souki. The Chair recognizes Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, your delegate from the slopes of Tantalus joins with his fellow delegate from the slopes of Haleakala in supporting this worthy amendment. I think there is something in the heights that gives us a higher view of what a Constitution is and what it should be, and I would favor this amendment--not because I don't agree that the legislature should address itself to the question of a limitation on campaign

spending and contributions. All those things, like many of the other things we've discussed here at this Convention, are worthy causes but they are not appropriate subjects for a Constitution.

My fellow delegate from Haleakala said that if this is not in violation or unconstitutional under federal law, it should be. I would like to give him the good news that it may well be. In April of this year the U.S. supreme court, in First National Bank of Boston v. [Francis X.] Bellotti, declared unconstitutional a Massachusetts law which prohibits corporations from making payments, expenditures or contributions for the purpose of effecting the vote on referenda matter; and Justice White in his dissenting opinion says that by holding that Massachusetts may not prohibit corporate expenditures for contributions made in connection with referenda involving issues having no material connection with the corporate business, the court not only invalidates the statute which has been on the books in one form or another for many years but also casts considerable doubt upon the constitutionality of legislation passed by some 31 states restricting corporate political activity, as well as upon the Federal Corrupt Practices Act. So we find ourselves again putting into a constitution a mandate to the legislature, or a direction to the legislature, to take some action which is currently at least of questionable constitutionality. We are not making a constitution when we do this, we are legislating. Not only are we legislating but we are legislating in a very irresponsible way, because we are telling them to do something but we are not taking the responsibility of figuring out how it should be done, and we're not taking the responsibility of making the hard decisions which should go with legislation--that is, how much does it cost, how can you do it in a way that is practical, how can you do it in a way that is constitutional. Again we are venturing into areas where we do not belong, and I would urge you to stay away from those areas.

CHAIRMAN: Thank you, Delegate Burgess. There being no further speakers, Delegate Barr is called upon to speak last.

DELEGATE WEATHERWAX: Mr. Chairman.

CHAIRMAN: I'm sorry, the Chair recognizes Delegate Weatherwax.

DELEGATE WEATHERWAX: I'd like to speak against the amendment to delete section 4 of Committee Proposal No. 16. The movant has made a statement that he believes it should be unconstitutional. Buckley v. Valeo definitely addressed these contribution limitations in the Federal Election Campaign Act and found them definitely constitutional and not a violation of the First Amendment, or the right to free association.

Hawaii has a contribution limitation but in a very indirect fashion. The contribution limitation comes in the form of a restriction on the number of fund-raisers you can have, so the concept is not a totally new concept; and although Hawaii has not enacted a specific contribution limitation other than the fund-raiser limitation, I would urge that this is a necessary item in the package dealing with the image of money being politically corrupting and goes well in hand because it reads as the other end (which would be the donor) and all three, as I indicated before--the disclosure requirements, the spending limitation and the contribution limitations--are a package and tend to reduce the influence of money.

A concern was raised by one of the delegates with reference to what was called non-monetary contributions, and in the federal act it was specifically excluded as being a contribution. So too the same type of nonmonetary contribution in the spending limitation, so that they're both equal and the spending limit as well as the contribution limitation normally are not accounted for, or there is no limit on nonmonetary contributions. So legislation is capable of handling that particular problem, but I would urge you to vote this amendment down.

CHAIRMAN: Thank you, Delegate Weatherwax. Delegate Ihara, you have the floor.

DELEGATE LES IHARA: Thank you, Mr. Chairman. Mr. Chairman, I rise to speak against this amendment because I feel it is important that we in Hawaii take a crucial step toward equalizing opportunity for participation in a political campaign. Every time I read newspaper articles about estimated expenditures for the current statewide election, I shudder to think that our children may not be in a position to dream the impossible dream of one day being governor, mayor, or a U.S. senator or even maybe a state representative. In my studies of this issue, I looked at the precedent set by the federal election campaign law

where contributions were limited. In the federal election campaign law and its amendments, the limitations on contributions were (1) individuals were limited to a total of \$25,000 per calendar year; (2) each contributor could give no more than \$1,000 per candidate for each election; (3) political committees were limited to giving \$5,000 per candidate per election, and (4) individuals were limited to giving \$20,000 to a national political party. I believe that even the most politically active among us do not have enough to contribute in these aggregate amounts. I therefore see no real problem in terms of placing these kinds of limitations on contributors. I also believe that the state legislature will exercise the same kind of discussion it did when it passed the 1973 campaign spending law. Reasonable limitations, I believe, will be set.

In terms of the constitutionality of contribution limitations, the U.S. supreme court in Buckley v. Valeo generally upheld the setting of these limitations. I believe that we'll be taking a giant step by defeating this amendment and supporting the committee proposal. I believe it will reduce the influence of big money on the outcome of elections, and I want our children to be able to keep dreaming they may one day serve the rest of Hawaii. I urge you to vote against this amendment.

CHAIRMAN: Thank you, Delegate Ihara. Delegate Barr.

DELEGATE BARR: Thank you, Mr. Chairman. I will make a couple of closing remarks. I hadn't really intended to, but I would like to call the delegates' attention to a couple of things in the committee report--and I really don't intend to be spiteful but they're there, and I would like to call them to your attention.

On page 9 of the committee report, in the first paragraph there's one thing I would like to comment on. At the end, the last sentence says: "Your Committee believes that it is within the context of a 'person-to-person,' grass-roots campaign that the issues are better and more intelligently discussed." It seems to me that in most of the campaigns that I have participated in--and I think those who are experienced in campaigning will recognize this point--the one thing that the candidate lives in fear of is that his people going door to door--or her people going door to door--will start putting words in the candidate's mouth, will start making commitments for the candidate, will start arguing issues with the voters. He'd like them to smile, give them the brochure, ask them for the vote, then bail out and get to the next person. So that's not a solution to the problem at all.

Now the next paragraph--and I hope you're on page 9 now, because I don't want you to think I'm misquoting this--I know this is a typographical error, but I think it is symbolic of the problem. It says: "These proposals are aimed at reducing the effective influence of money on the political process. By doing so, it is the belief of your Committee that those without financial resources will be encouraged to participate in the process because such participation can not be meaningful." I rest my case.

CHAIRMAN: The question before the body is the approval of Amendment No. 8, which would delete section 4. All in favor raise your hand. All opposed? The motion is defeated. The amendment dies. The Chair calls for a short recess.

At 10:45 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:48 p.m.

CHAIRMAN: The Committee of the Whole will come to order. We will take now the remaining amendments that have been offered and we will ask you to take from that group two amendments which the authors have requested be withdrawn at this time: the first is on indirect initiative by Delegate Stegmaier and the other indirect initiative by Delegate Hamilton. These two should be removed at the request of their authors.

DELEGATE SUTTON: Point of information.

CHAIRMAN: Yes, Delegate Sutton, state your point of information.

DELEGATE SUTTON: Was not Delegate Hale's removed earlier also?

CHAIRMAN: No. All the remaining amendments will be numbered at this time in

accordance with the schedule I will now announce. First, Amendment No. 9 on indirect initiative, offered by Delegate Chong. Everybody have that? Take next Amendment No. 10, the direct initiative amendment offered by Delegate Liu.

DELEGATE LIU: Point of information, Mr. Chairman.

CHAIRMAN: Yes, Delegate Liu, state your point of information.

DELEGATE LIU: My proposal is on indirect initiative.

CHAIRMAN: Oh, yes, I'm sorry. The Chair revises that to the initiative amendment--the one with all the names, at the head of which is Delegate Liu--that will be Amendment No. 10. Next, take one of the two amendments offered by Delegate Eastvold entitled "Initiative," which starts: "Committee Proposal No. 16 is amended by adding a new section to read"--simply that. And it continues: "1. Article II is amended by adding a new section to read"-- There are no parentheses in the text, if that helps distinguish between them. This is in fact the direct initiative proposal, so that would be Amendment No. 11. The next amendment, No. 12, also offered by Delegate Eastvold, is the constitutional amendment; it says: "Revisions of or amendments to this Constitution . . ." This has within its text several parentheses--"direct submission to the voters," "submission to the legislature," etc. That will be No. 12. Next in order is an initiative amendment offered by Delegate Hale, Amendment No. 13. Next, Amendment No. 14 will be the referendum amendment offered by Delegate Barnes. Next is Amendment No. 15 also offered by Delegate Barnes, "Referendum for Land Use, Zoning and Local Issues." You should have one amendment remaining, which will be Amendment No. 16, "Recall of Elected Public Officers," offered by Delegate Hanaïke. Are there any questions?

DELEGATE LAURA CHING: Mr. Chairman, point of personal privilege.

CHAIRMAN: Delegate Ching, state your point.

DELEGATE LAURA CHING: Could we have the air conditioner turned up? It's awfully warm in here, especially with all the cigarette-smoking around the place.

CHAIRMAN: Your personal privilege is noted and I notice that the windows have been opened and the staff has heard your remarks. Okay, the Chair will at this time invite your attention to Amendment No. 9 and recognize Delegate Chong to move for its approval. Delegate Chong.

DELEGATE YAMASHITA: Mr. Chairman.

CHAIRMAN: Yes, Delegate Yamashita.

DELEGATE YAMASHITA: Point of personal privilege.

CHAIRMAN: State your point.

DELEGATE YAMASHITA: May I address this body?

CHAIRMAN: What is the nature of your privilege?

DELEGATE YAMASHITA: I'd like to tell you about my privilege. It would be hard to--

CHAIRMAN: The reason I ask you that is simply that the Chair has, because of the frequent use of this privilege, received from the parliamentarian a list of things, which I might mention at this time--not necessarily directed toward you but so that all the delegates will know--insofar as the use of personal privilege is concerned, that whatever distresses or affects the delegate personally would be in order as a subject of the privilege. It could be either an action or a remark.

DELEGATE YAMASHITA: This is a remark.

CHAIRMAN: Okay then, please state your point.

DELEGATE YAMASHITA: Thank you. I already feel tension in the air, so therefore

at this time on the floor--not speaking for or against the amendment before us, or the amendments before us. Although my stand will be reflected by my vote, I feel that it is important to reflect in the record, and before the public, the correct interpretations of the upcoming votes.

CHAIRMAN: Delegate Yamashita, the point of what I meant earlier was that if something has been said which has either aggrieved you or caused a misunderstanding to you personally, then you can state the privilege to answer it so that you're not misinterpreted. However, from what you're saying, apparently nothing has yet been done or said that would affect you. Is there something that has already taken place that does distress you, that you wanted to make your remarks on?

DELEGATE YAMASHITA: No, it's just what is going to be coming up.

CHAIRMAN: I tell you what--in order to comply with the personal privilege requirement, or qualification, my suggestion is that if, in the course of the debate as it takes place, you sense this discomfort or whatever, then at that time the Chair will entertain your personal privilege; but in anticipation of something happening, it would not be in order to do so at this time. And since we are going into an area which is filled with concern, and I will state that the parliamentarian did give me a note--and in addition to what we already know, about disturbances such as voices that are too loud and interfere with discussion, and the air conditioner and things of that sort--that matters that relate to questions that have been brought up concerning a member's integrity or the safety to that person or his property, or her property, or some other type of grievance will be allowed under personal privilege--and not to be used for observations as to expressing your own point of view on a subject. So the Chair will try to adhere to that. Delegate Taira.

DELEGATE TAIRA: Yes, Mr. Chairman, I might be wrong but I believe our young colleague to my left here was only trying to enter something into the record so that his philosophies taken on the issues coming up will be very clearly stated for our journal records. So that when the appropriate time comes, Mr. Chairman, even though he may be a little bit off the issue at that time, that you will allow him that privilege.

CHAIRMAN: Your point is well taken, Delegate Taira, and as we proceed and as these proceedings are felt by the delegate to affect him, I will call upon him at that time.

DELEGATE YAMASHITA: Mr. Chairman.

CHAIRMAN: Delegate Yamashita.

DELEGATE YAMASHITA: I just wanted to say a few words--the remarks that I wanted to make to avoid any distress later on.

CHAIRMAN: Unfortunately, Delegate Yamashita, there was not--

DELEGATE BURGESS: Point of order.

CHAIRMAN: Please state your point, Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, the delegate who wishes to speak has certainly not abused the privilege. In fact, we seldom hear from him. If he wants to say something that is important and it is not allowed, he will be grieved; please temper your ruling with reason.

CHAIRMAN: The Chair will declare in this case, as I will throughout this meeting--rule as fairly as he can from time to time and take into account the feelings of the delegates. But in order that this may be discussed and we can start on the right foot, I would now ask that we have a 1-minute recess.

At 11:02 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:03 p.m.

CHAIRMAN: The Committee of the Whole will come to order. In keeping with the

biblical saying that to every thing there is a time and for every purpose a season under heaven, there is within the parliamentary arsenal a tool which lends itself to suit this; and it is not personal privilege as we had earlier discussed, but instead Delegate Yamashita is recognized.

DELEGATE YAMASHITA: Mr. Chairman--may I get over this very quickly--Mr. Chairman, I request permission to read a paper.

CHAIRMAN: If there are no objections, please proceed.

DELEGATE YAMASHITA: I will not at this time on the floor speak for or against the amendments before us, although my stand will be reflected by my vote. I feel that it is important, however, to reflect in the record and before the public the correct interpretation of the vote, that each delegate, whether for or against, is clearly voting his conscience on this most difficult and admittedly popular issue.

I want to stress, however, that we should not focus upon what I feel to have been at times unfair encouragement of those delegates running for office to vote for the initiative, or pay the price at the polls in the October primary. The public has been led to believe that any delegate candidate who votes against initiative is voting irresponsibly. I take issue with this, with the implication that taking an open and unpopular stand on initiative by these delegate candidates is an indication of contempt and misjustice of the public. This is wrong, for I feel that should a delegate candidate take an open position of responsible decision-making--

DELEGATE LIU: Mr. Chairman, point of order.

CHAIRMAN: Delegate Liu, state your point.

DELEGATE LIU: I believe the speaker is not merely addressing general comments but is speaking to the issue and is attempting to influence the outcome of this issue, and I would object at this time to his speaking on this point.

CHAIRMAN: Delegate Liu, your point is well taken. Unfortunately, Delegate Yamashita, although your remarks are permitted under the request to read a paper, by the nature of that, you are in fact addressing yourself to questions that could better be answered or handled within the debate on the issue. And at the time of the debate the Chair will find your remarks, whatever they may be, in order, but not at this time.

DELEGATE YAMASHITA: Okay, thank you, Mr. Chairman, I'll take it up later.

CHAIRMAN: The Chair now calls upon Delegate Barnard.

DELEGATE BARNARD: Mr. Chairperson, with your permission I would like to present a petition to the President and to the chairperson of the Committee on Bill of Rights, Suffrage and Elections. The petition reads: "We, the undersigned concerned citizens of Hawaii, are against any amendment to the State of Hawaii Constitution that permits initiative, referendum and recall." This petition was signed by over 18,000 citizens of this State, including myself, within a 1-1/2-day period. It is with great pride that I take this opportunity to present this petition, because I feel that Hawaii is one of the most, if not the most, progressive state in this country. I do not get anything I want from our state legislature, but I always feel that I can get something if I'm willing to work hard and if I approach members of the legislature in a polite and respectful manner. The fact that so many people signed this petition in so short a period again states that there are many citizens of this State who, like me, are not disillusioned with a representative form of government.

DELEGATE DiBIANCO: Point of order, Mr. Chairman.

CHAIRMAN: Yes, Delegate DiBianco, state your point.

DELEGATE DiBIANCO: Isn't the delegate now doing exactly what Delegate Yamashita was doing? And also while I'm on my feet, I would like to ask whether the Committee of the Whole is empowered to accept petitions of this kind.

CHAIRMAN: On your first point, since the delegate was recognized to speak in favor,

and in connection therewith to present whatever evidence she has, the Chair was aware that this might occur and had previously checked with the parliamentarian, who advised the Chair that this would be in order as a part of her argument in favor of the amendment. If a motion has not already been made to approve the amendment, then the Chair is not in order and apologizes and would like to ask the proposer of the amendment to make such a motion in connection with it so that such may be--I'm sorry for failing to do that.

DELEGATE PENEBACKER: Mr. Chairman, point of information.

CHAIRMAN: Yes, Delegate Penebacker, state your point.

DELEGATE PENEBACKER: Was it not also, when the petition was submitted to this body, announced that it was being submitted to the President's office on the floor of this Convention?

DELEGATE CHONG: May I answer that?

CHAIRMAN: Delegate Penebacker, Delegate Chong will answer that.

DELEGATE CHONG: Yes, I did, and that it was to be reflected in the Journal, and not in the Committee of the Whole.

CHAIRMAN: Thank you, Delegate Chong. While you're on your feet, why don't you so move to approve your amendment.

DELEGATE CHONG: I've been trying to for 10 minutes. Thank you, Mr. Chairman. It gives me great pleasure now at this late hour to introduce my Amendment No. 9, on indirect initiative.

CHAIRMAN: Is there a second?

DELEGATE LIU: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded. Delegate Chong, would you yield at this point your privilege of speaking first to allow Delegate Barnard to continue with her remarks, or would you like to speak first?

DELEGATE FUSHIKOSHI: Point of information.

CHAIRMAN: Yes, Delegate Fushikoshi, state your point.

DELEGATE FUSHIKOSHI: I just wanted to know--we did have the initiative signatures that were presented to this body. Now I'd like to know, to be fair with Delegate Barnard--that we should give her the prerogative to do the same.

CHAIRMAN: Your point of information is well taken. The Chair was trying through a subtle means to maneuver so we could get back to where we were, so that we could receive them and place them on file in the following manner. Delegate Chong, would you yield to Delegate Barnard at this point?

DELEGATE CHONG: Yes, to be polite.

CHAIRMAN: Delegate Barnard, would you proceed with what you had planned?

DELEGATE STERLING: Parliamentary procedure, Mr. Chairman.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: We accepted the order of the day--the order of business, and if we're still on the same day, after "Presentation of Petitions, Memorials and Communications," it states "None."

DELEGATE HALE: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Hale, would you wait a second while the Chair addresses

the point of order raised by Delegate Sterling. There is nowhere within our consideration this evening, as you point out correctly, any presentations of petitions, memorials or otherwise; however, at this time, the floor is open to discussion on the amendment offered by Delegate Chong, No. 9. The Chair has no idea what the delegates may wish to do pursuant to their arguments therefor. And all that is before us right now is that Delegate Chong has yielded her turn to speak first in favor of Delegate Barnard. Beyond that the Chair has no formal knowledge what Delegate Barnard might do, except what I might speculate.

DELEGATE HALE: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Hale, state your point.

DELEGATE HALE: Would you rule on whether or not it is proper to present a petition to the Committee of the Whole?

DELEGATE DE SOTO: Mr. Chairman, I rise to a point of order.

CHAIRMAN: We have one point of order which has already been raised, and the Chair cannot answer that yet because at this point, since we have gone back to the beginning and started again, there has been nothing proposed or presented to the body.

DELEGATE HALE: Point of order, Mr. Chairman--

CHAIRMAN: I think your point of order would be relevant at the time that the delegate attempts to do such a thing.

DELEGATE HALE: But the delegate has already attempted to do that.

CHAIRMAN: We have since that time gone back and started again; therefore, the Chair rules that although what you're talking about in anticipation may, in fact, become a question, it has not yet happened.

DELEGATE HALE: Then may I stand up at the time it becomes a question?

CHAIRMAN: You certainly may.

DELEGATE DE SOTO: Mr. Chairman, point of privilege.

CHAIRMAN: Delegate De Soto, state your point.

DELEGATE DE SOTO: I am very interested to hear that there are some people who are interested enough. You mean to tell me that this body is going to start fooling around with rules and everything and not hear the people who have taken the time to petition? I feel a personal grievance and if that petition calls for one thing or another--we all said that this is an open Convention. So I ask this delegation to quit fooling around, let's get on with the business.

CHAIRMAN: Thank you, Delegate De Soto.

DELEGATE CHONG: Mr. Chairman, point of order.

CHAIRMAN: Yes, Delegate Chong, state your point.

DELEGATE CHONG: Mr. Chairman, I am affording Delegate Barnard an opportunity to introduce--

CHAIRMAN: Delegate Chong, all the Chair asked is that--would you yield the floor to Delegate Barnard? What she does will remain to be seen. However, you're still entitled to speak your 10 minutes and I will call on you first thereafter and also last.

DELEGATE CHONG: Okay, I just wanted to say it before it gets lost. Thank you.

CHAIRMAN: Delegate Barnard, would you proceed with your speaking in favor of it?

DELEGATE BARNARD: My last sentence was simply that perhaps some state legislatures deserve to adopt initiative as it is a symbol of disillusionment with representative government, but I feel Hawaii does not deserve this symbol, and I'd like to present this petition at this time.

CHAIRMAN: Thank you, Delegate Barnard. Would the clerk please receive that and place it on the table. May we proceed, Delegate Chong?

DELEGATE CHONG: Thank you, Mr. Chairman. My amendment speaks to the indirect initiative, rather than direct initiative. At this point, I shall attempt to discuss the mechanics of this measure rather than the merits, as we are all aware of the popularity and merits of this issue.

The amendment before you proposes that 100 registered voters who voted in the preceding gubernatorial race be sponsors of an initiative measure, the ballot title, purpose, text and summary of the proposal to be no more than 150 words. An indirect measure may not embrace more than one subject. An indirect measure shall be submitted to the legislature by presenting the chief election officer a petition signed by 10 percent of the number of votes cast in each respective county in the last general election for governor.

Initiative measures, whether acted upon favorably or not, shall be submitted to the voters at the first general election thereafter, together with the amended version if any. If both are approved, the one receiving the greater number of affirmative votes shall prevail. All approved measures shall be effective immediately except measures requiring authorization of funds or providing for tax increases or reductions. Such measures shall take effect the following fiscal year. The legislature shall provide for a voter education publication, to be implemented by the chief election officer, to assure that each voter will have an opportunity to study the initiative matter.

The initiative may not be used to alter appropriations for current expenses of programs, to alter public employee collective-bargaining agreements or to provide for the direct initiative. Finally, public disclosure of funds shall be made by both the proponents and opponents of an initiative. And this is what this indirect initiative calls for.

CHAIRMAN: Thank you, Delegate Chong. The Chair recognizes Delegate Campbell, then Delegate Hale--Hamilton.

DELEGATE HALE: Point of personal privilege. Delegate Hamilton's name is Thomas Hale Hamilton and when he first came to the State years ago, we compared notes and found that we were not relatives. So please do not mix us up.

CHAIRMAN: Delegate Hale, the Chair must confess to a slight hang-up there. Whatever punishment you may agree to, I'll consider it.

DELEGATE HAMILTON: I certainly shall yield to the younger delegate to make the first statement, but I just want to remind you that I bear no hard feelings, Chairman Akahane.

CHAIRMAN: Is there further discussion on this? Delegate Campbell.

DELEGATE CAMPBELL: Mr. Chairman, in response to the delegate who presented the petition to this Convention and said that this was done to indicate that this was a symbol of nondisillusionment with our legislature, I would like to quote a gentleman by the name of William Munro who edited a book entitled The Initiative, Referendum and Recall, which was one of the National Municipal League series. And what he said was that "[p]opular distrust of the present system of lawmaking is undeniably widespread and deep. But it is not based upon the idea that the representatives of the people are incompetent to do their duty. Rather it arises from the notion that they are prevented from doing it. And these preventing influences, in the popular mind, are...organized interests--political machines and economic corporations--whose wishes do not usually run parallel to those of the electorate." And it might interest you to know that these words were written over 60 years ago.

There are several significant reasons why I believe we should adopt an initiative measure at this Convention. First, whenever sentimental and very significant issues are

involved, that the legislature, for whatever reason, is reluctant to vote on these matters. The action of initiative gives the average citizen an opportunity actively to participate in our democratic form of government.

Secondly, initiative leads to the development of a salutary relationship between the legislature and the people, because even if an initiative measure is unsuccessful, it will place the spotlight on what the community wants and then the legislature will adopt either comparable or alternate legislation. This is precisely what happened in California, as reported to us by Professor Van Dyke; he indicated that in 1972, with respect to voter approval of a measure protecting California's coastal zone--what happened was that the voters merely initiated the process, but thereafter the legislature and other agencies of the state became involved in working out the details. Thus it is possible for the initiative to create a complementary, healthy interaction between the people and their elected officials, without in any way derogating from the job that the legislature does.

Thirdly, initiative is a legislative power which I believe is already inherent in the people. In the past, the people had delegated this power in function to the legislature to exercise their political power for them; but from time to time they have found that the legislature has been unresponsive to their needs. Therefore, they have asked us to afford the opportunity to exercise this right themselves. I do not think we have any alternative as their elected representatives in this Constitutional Convention. The people have spoken and I believe it is our duty, as their elected representatives, to respond. All that we need to do is act responsibly in adopting an initiative proposal which would discourage abuse and assure maximum citizen participation.

And it is my feeling, Mr. Chairman and fellow delegates, that we have such a proposal before us. I sincerely urge you to assure that the will of the people be safeguarded, that the will of the people be answered. Please vote in favor of this initiative proposal.

CHAIRMAN: Thank you, Delegate Campbell. Delegate Hamilton.

DELEGATE HAMILTON: Mr. Chairman, I rise to speak in favor of the amendment. This has been an issue which for me has been very difficult to come to grips with. I've always had trouble with the problems of direct initiative because it's always seemed to me a rather poor substitute for the potential of representative democracy. And furthermore, in some years of observation, I've seldom known legislation which was not improved, from inception to passage, by being subjected to the legislative process of public hearings, debates, and sometimes compromise. But indirect initiative resolves most of these problems. It does not deny--or at least blatantly deny--the virtues of representative government, and it does not permit the ameliorative effect of the legislative process to come into play.

Thus, since I am a delegate and not a representative--a point I tried to make in my Labor Day invocation, but I'm not sure everyone was listening--I should have pointed out there would be questions on the mid-term--there is a great difference between being a delegate and a representative. I have been rather amazed since July 5 to find so many Burkean devotees among us. This has particularly distressed me because a recent biographer has called Burke an ambivalent conservative, and in other connections I find the twice-born Burkeans neither ambivalent nor conservative.

In any event, it seems to me we have a proposal here on which it is clear to me that a very substantial number of the voters who elected me want the right to express themselves. The proposal does not offend grievously any of my principles and, in terms of what I know about government, this has at least a chance of improving the democratic process; and thus I feel I must vote to let the citizens decide this issue. This is a conservative amendment in almost every way. It is so much so that there will be those who will contend that it is but a symbolic gesture, but since this Convention already has made a symbolic gesture toward home rule, it seems to me that it would not place too great a strain on our compassionate hearts to do the same for the voters.

As a matter of fact, this amendment is conservative by design, and here we follow not the advice of my mother but the advice of my godfather, who wanted to make you an offer you couldn't refuse. And so, my fellow delegates, I urge you to support this amendment; and I close by paraphrasing the words of Daniel Webster, as he pled the Dartmouth College case before the supreme court in 1819: "It is, Sir, but a small amendment, but there are those who love it."

CHAIRMAN: Thank you, Delegate Hamilton. The Chair recognizes Delegate Dyer, followed by Delegate Marumoto.

DELEGATE DYER: Mr. Chairman, I rise to speak in favor of the amendment. As many of you may know, during my Con Con campaign and for most of this Convention I have been undecided on initiative. I studied the issues and heard the many arguments for and against, but had not yet come to support one side or the other. Questionnaires and polls from my district indicated that a sizeable number of voters supported it and that there was a large group leaning toward supporting it. Most important was the small size of the opposition. For those leaning toward favoring it, the most significant reservation was the fear that it would be misused. While I shared my constituents' philosophical attraction to initiative, I also shared their concern for potential abuse.

I do not wish to go into the arguments in favor of initiative now. Our folders bulge with testimony for and against. But I do, Mr. Chairman, wish to discuss why I have come to support putting indirect initiative to the people to decide whether they want it or not.

While I believe that members of the house and the senate are generally the most appropriate source of legislation, I also think that the people should be able to have their ideas and proposals introduced into the legislature. A mechanism exists that does this--the introduction of "by request" bills, just as many of us have done here at the Convention. The problem with this, I discovered, is that such bills die a quick death, never making it out of committee or, in most cases, even to a hearing.

This is very perturbing--the ideas and proposals of citizens merit better treatment. They are rarely frivolous or unsuited to legislative action. I have concluded that indirect initiative is the best way to assure that these ideas get a fair hearing. Faced with the prospect of going over their heads to the ballot, legislators will concern themselves with what their constituents have proposed.

The second persuasive factor that swayed me to support initiative was the definite support offered by two public employee unions, SHOPO and the HSTA. I want to note that this was before they knew what type of limits there would be to its use. There were suggestions that this was an anti-labor proposal; the support by the membership of these unions is ample evidence that this is not the case. I think Detective Scanlan put it best in his testimony before the BORSE committee when he said, "What they have done here is to place our confidence in the people of our community rather than in the hands of the few who appear to control our legislative and governmental bodies." I do not think that their confidence is misplaced. Thank you.

CHAIRMAN: Thank you, Delegate Dyer. The Chair recognizes Delegate Marumoto.

DELEGATE MARUMOTO: Thank you, Mr. Chairman. I would like to make remarks in support of this amendment. I believe that if the amendment before us passes, our representative form of government shall not suffer. It shall neither wilt nor crumble. Rather, we will have provided it with another pillar to rest upon. I speak not as a novice or distant observer of the legislative process. As an aide and full-time researcher with the legislature over the years, I have had the rare opportunity to examine the dynamics of the legislature. It is a forum where ideas are generated, where debate takes place, where many people do care. However, there is also a tendency for this forum to take on the features of a fishbowl. People on the outside view the inner activity; from within, however, the outside world can take on a secondary importance to the pressing problems of internal politics. Committees are formed and chairmanships are parceled out, and woe be it to those who question his or her judgment. Should the committee chairman wish to support something not part of the majority game plan, it is an arduous task to keep the idea afloat. In such an atmosphere it becomes exceedingly difficult for the public at large to find the right points of pressure and hard for legislators themselves to judge the intensity and sincerity of those public voices they do hear.

This initiative amendment would provide a formalized route of channeling public sentiment to the legislature. Let us not forget that there is nothing to preclude the legislature from acting on an issue that is subject to an initiative drive before that drive is concluded. In a sense, this is similar to lobbyists putting on a concerted effort to influence the outcome of a particular piece of legislation, the difference being of course that lobbying by initiative is procedurally regulated and democratic in its purest form, whereas other

kinds of lobbying are much more representative of special interest groups and are less visible. To illustrate this point, may I remind you that the minimum number of voices behind this initiative measure would be 27,253, an aggregation which I challenge any organized interest to approach or equal.

This does mean that special interests or individuals might attempt to control the process on certain issues--but better perhaps that their identities be known to the public at large (a necessity under the disclosure section of this amendment) rather than to just a few people behind the scenes. Perhaps better, too, for issues that are controversial to be aired in their entirety among all, than to suppress discussion and thereby alienate further differing segments of society and breed general frustration among the people toward government.

I by no means view the initiative as the cure-all to all problems of communication between voter and elected representative. However, I do agree with the comments of an editor of The Wall Street Journal who wrote: "Initiatives are, next to war and revolution, the least efficient political tools. The citizenry, which expects its paid representatives to work things out, would rather be bowling or golfing than debating public finance. The initiative, though, is a wonderful thing to have when the political class systematically fails to do its job."* Representative democracies, to remain viable, must constantly strive to maintain high levels of responsiveness. I am not alone in my views, as they are shared by well-established and highly respected groups and individuals such as SHOPO, the teamsters and hotel workers union, senators Jean King, Mary George, Andy Anderson, the Big Isle Japanese Chamber of Commerce, Common Cause, League of Women Voters, and the list goes on and on. In short, it is felt that the indirect initiative can be a pillar of our legislative branch, for it provides a means by which the legislature must respond in some manner to the ideas and views of people who might be left out of political platforms of parties and organized interests and permit them to air their concerns before an electorate that ultimately bears the consequences of all legislative actions.

This evening, before the motion to introduce this amendment occurred, we had the acceptance of a petition with 18,000 names, in opposition to initiative. I feel that this petition implies acceptance of the principle that people can petition their government for redress. I feel that in that they delivered their petition to the Constitutional Convention is another implied consent that indirect initiative can work and can be effective. In effect, this petition against initiative is proof of indirect initiative.

CHAIRMAN: Thank you, Delegate Marumoto. The Chair recognizes Delegate Eastvold, followed by Delegate DiBianco.

DELEGATE EASTVOLD: Thank you, Mr. Chairman. I wish to speak in favor of this very hot and controversial issue. I'd like to start off with a quote: "[Democracy] is the worst system of government... [devised by the wit of man], says Winston Churchill, 'except all those other systems.'** I'm a strong advocate of democracy; I believe that it is probably the finest form of government that man has put together. Yet we must qualify ourselves as to whether we are--what form of democracy we are speaking of. Our own system is predominantly a representative form of democracy, as compared to a peer form of democracy which we are advocating tonight.

I have to submit the fact that I don't believe these two are contrary; in fact, my whole theory and my whole philosophy in this presentation is that these two forms of democracy are not in conflict but go hand in hand. And as I look at the direct democracy--the initiative that we are talking about--it is merely a spare tire for the people to look to, in case their motor vehicle of government falls apart or has a flat tire.

In all the discussions against and for initiative, I think there are three that have been used most persistently by opponents to initiative. The first is that of the representative form of government--it is doing a satisfactory job and there is no need for a direct form of democracy, as we are looking for in initiative. To save our committee chairman as far as reiterating what the committee has done with this particular proposal, I'd like

*Jude Wanniski, May 24, 1978, p. 18, col. 5.

**James Reston, Washington Column, The New York Times, Jan. 20, 1964.

to point out the fact that the "[p]roponents of initiative and referendum steadfastly believe"--I'm quoting from the committee report--"that the inclusion of such a system in the Constitution guarantees that the aims, goals and desires of the people will be safeguarded; that the legislature will be more responsive to the will of the people; and that the people will become much more involved in the legislative process." However, the committee turns around and says that opponents believe "that the present system is an effective, time-tested and rational form of government." Now if I go on to the next page, it says: "Historically, the movement toward initiative and referendum in the United States resulted from a disillusionment with representative institutions. Your Committee believes that such disillusionment is neither warranted nor exists with regard to the Hawaii state legislature."

Now this, the way it sounds--as though our legislature is in a perfect state, that there is no need for another safeguard to our representative form of government. However, I'd like to repeat a comment of the committee chairman in a prior discussion two amendments ago, that there is political corruption in this State. I strongly believe that this committee report in its own merit substantiates the great need for initiative. I'd like to quote a few comments that were made regarding our own political representative system: "One benefit of these proposals would be that talk of special interest groups and the influence they have may diminish." Therefore, I believe substantially in the fact that there are special interest groups that are affecting our representative form of government. Representatives are free to inform themselves intellectually and vote according to their perceptions of the public interest rather than the need to gather funds for their campaign. Again, it's implying the fact that there is in our present representative system, some kind of corruption, where the representatives are meeting not the needs of the public but the needs of their special interests that are favoring them with their campaign donations.

These reforms would permit the public to judge and issue on the merits without allowing accusations of undue influence of special interest groups to become a detracting factor. I too share the same hope, but I'm not so sure it can happen with just one amendment that we have to pass, or this one amendment that we shot down. I believe that the initiative form of government--the initiative, the direct initiative--would allow a second safeguard to the present representative form of government.

Our committee report also states: "Your Committee also believes that many believe that the political process is the exclusive domain of the rich. They believe that without adequate personal resources, one does not have the money to be a viable candidate or to have adequate input into the system." It also states that "...your Committee seeks to equalize opportunity for all to participate meaningfully in the political process.... Your Committee believes that it is within the context of a 'person-to-person,' grass-roots campaign that the issues are better and more intelligently discussed."

The arguments that this committee is using to advocate a campaign financing and campaign spending provision within our Constitution are the very arguments that we are using to ask for an indirect initiative. I'm not attacking the committee chairman personally, I am just basically looking at the merits of the committee proposal. On the one hand, they are saying that the representative form of government is in a poor state, that there is corruption in our State. On the other hand, they're saying that there is no need for indirect initiative because the representative form of government is perfect; therefore, we do not need indirect initiative.

I myself am proud of the fact that man has come through with a representative form of government and I say it is the most practical form of democracy. However, we're not talking about 2,000 proposals going out to the public and for them to make a decision on all 2,000 proposals. We're talking about indirect initiative, where on a national scale a maximum of three would be presented annually to our constituents, and three would allow them to take the full time to become educated on these three proposals and to make wise decisions.

Another strong argument against initiative has been the misuse of Proposition 13. I'd like to point out to those who do not truly--or have not studied Proposition 13, that Proposition 13 first of all was not an indirect initiative, nor was it a statutory initiative; it was a constitutional initiative. When we discuss Proposition 13, it's like trying to compare apples and oranges; and if we want to analyze Proposition 13, I strongly believe that the people were very, very correct in going for and voting in favor of Proposition 13. All they were asking for was to decrease, within their Constitution, the property taxes

that had so overwhelmingly gone out of sight. I don't want to get into the merits of that--the demerits of it. I would ask that if you have any questions about Proposition 13, I have all the statistics that you'd need to know about, and for those of you who think that unemployment has gone up, it's gone down in California since Proposition 13 has come into existence; plus the popular support has increased drastically even since it first passed.

The last argument against initiative that was so commonly used was that--I don't know how to say this but--it was kind of that the voter was not knowledgeable enough to make a decision. Yet I believe there's a little bit of hypocrisy in that, in the fact that here we are in the Constitutional Convention, we're coming out with such proposals on taxation, Hawaiian affairs, environment, and we are asking the people to make decisions on these. I see a little bit of hypocrisy in that we are saying on the one hand they can do it, and on the other hand they can't do it.

Another element of this voter knowledge is that there is a strong belief the voter would be influenced by emotions rather than decision-making. I myself would say that's probably the case with all of us. If any one of you can stand up and say that when you make a decision there is not a feeling of emotion when you finally make that decision, I would submit that I think we should make you our God. I don't think it's possible for a human being to make an unemotional decision and that it is actually a part of his own character.

There are many other arguments that have been used against initiative; most of them have not carried too much weight. I believe the three--representative versus direct democracy, emotions versus the perfect human being who does not have emotions, and Proposition 13 and its misuse--are basically the three arguments that have been against it. I had in the box, which I presented to the committee, many facts against and on behalf of initiative, and the facts lead toward the benefits of initiative, being in favor of initiative. I am hoping that all of you would favor initiative, and if you do have any questions, feel free to ask any that you may have. And I'm sure that you are trying to make a decision on this controversial issue. If you have any questions, feel free to ask me.

CHAIRMAN: Thank you, Delegate Eastvold.

DELEGATE WEATHERWAX: Mr. Chairman.

CHAIRMAN: Yes, Delegate Weatherwax is recognized.

DELEGATE WEATHERWAX: I rise to speak against the amendment, and I accept Delegate Eastvold's nomination for God. And I say that, not in jest particularly, because I think hopefully if you will listen to the few words I have to say--it may be longer than a few words--but you'll perhaps see the rationale as to why I would accept that nomination and as to defense of my position.

Let me begin, first of all, by starting long, long ago, long before this Con Con. Of course, many of us have shared the same experience; the word "initiative" had no charge in it at all, no emotion--as a matter of fact, to use the term in a song, it was something that was "in the back roads of my mind." And I first ran across "initiative"--I learned it in school, something in the textbooks, and of course it just passed, had no meaning whatsoever--but I spent 7 years in California going to school and that seems to be the haven of initiative. During the entire period that I was there, 7 years--maybe I was just dumb, but during the 7 years the only recollections I had with reference to the initiative were the billboards: vote "no" on proposition such and such. Or walking along the streets in the big city--you know, when you come from Hawaii, back in the 1960s, that was a big trip--so you're in San Francisco and someone thrusts a pamphlet in your hand and says read this. I never bothered to read it--perhaps it's my own fault, maybe I was too involved in many other things. So I never read the pamphlets that were handed to me.

So initiative comes into my life again at the Con Con. And I also want to clear up another thing: "initiative" came in another form--I think I had enough initiative to go to school and learn something. But the type of initiative that we're talking about here is the political concept, the idea, and when it came as a charge with respect to the Con Con--there was a lot of charge because it seemed that the push was that this initiative is the most important of all the issues in the Con Con, because "this is it, it's got to be done because it'll save the world"--that type of concept--and it will cure society's ills, and this is what I was getting from the public. Of course there were others who pushed that this

was not the idea of initiative, but some of the sell--and I use the word "sell" intentionally--was that it would save the world, make things right. Perhaps that may be true, I can't answer. But anyway, realizing there was a charge, I decided that I've got to--as many others here have, perhaps--look into the details, and read and study. And my perspective was not directly on the mechanics as we've been discussing them here, but trying from a philosophical approach--I tend to be philosophical many times, perhaps to my detriment. Anyway, books such as Hawaii Pono, The Greening of America, Escape from Freedom, Individualism Reconsidered, Direct Democracy, which is a book I snatched from the President via Common Cause. A certain pressure group spoke and I listened; the League of Women Voters advised us at the seminar about decentralization and also lacks in the government; many public hearings that I attended with my fellow committee members--and I was also very careful to watch--because I was concerned, and perhaps I may have been paranoid--but I was careful to watch what the program was that was coming and how I was being subjected to information, whether or not in fact--perhaps against, as I say, being paranoid, maybe I am, maybe I'm not--as to whether or not this was a campaign that was geared up particularly to accomplish something. But I don't think I can answer that that in fact is true--but perhaps it is. I don't think anyone was capable of planning a Proposition 13 to fit into this entire scheme. But I observed the signature petitions on both sides--I heard from newspapers, radio call-ins, televotes, all these things that were somewhat of an assault, being in the position of one having to decide, and I think many of us here have been subjected in the same way. But as I said, I cannot answer definitely that it was any type of organized campaign. The reason I examined that particular question was that I think the initiative process, once it comes into existence, whether or not in fact that same type of campaigning would come about, and perhaps the voter who has not had the opportunity to read and discuss and analyze and debate with others, and think about the issues--whether or not he would be capable of making the decision, either on initiative itself as we are required to do, or on issues that come before us in the initiative.

So here I am at the point where I have to make a decision and I finally make the decision, and I begin by asking, as taught, for the burden of proof (a legal term), that I have to be convinced; in other words, the burden here is for the proponents to show me that in fact change is necessary. But first of all, we begin as to where are we, and I looked to see why there is no initiative in the Constitution at this time; and Standing Committee Report No. 72 details many of the reasons, and I call that to your attention. There's discussion about the history of initiative, discussion about anti-legislative feelings, and I think that we have to face it: there is a sentiment in the public--perhaps not us here, we may voice here that while we have every confidence in the public, there is an anti-legislative feeling in the public--and I believe that if that's the case, the determination on whether initiative is good or bad should not come from that position.

Among other items that have been mentioned in the standing committee report--and I'm sure you've heard others--is the representative form of government. In examining all of these arguments, I found the legal arguments stated in the committee report remain quite valid for me today. The question of cost--initiative will cost additional money. Stability--whether in fact the promise of initiative as diffusing a hot situation. Perhaps initiative may be divisive of the community--perhaps by constantly assaulting the body politics with the issues of the day, with no surcease, no rest from that, perhaps that may be divisive. Perhaps maybe the apathy in the public is there because they are economically satisfied. And now when the economic situation is changing, there is unhappiness or unrest. But I've looked at them and I said that the changes, or the legal arguments, in that standing committee report continue to be valid for me. But people would then perhaps reply--well, Hawaii has changed and the institutions that we have, the representative form of government, is no longer--

CHAIRMAN: Delegate Weatherwax, I just wanted to interrupt you so we could start a new day.

DELEGATE WAIHEE: Mr. Chairman, I move that we rise and advise the Convention that we are making progress and we need more time.

DELEGATE TAIRA: I second the motion.

CHAIRMAN: It has been moved and seconded that we rise and report to the Convention that we have not completed our consideration of Committee Proposal No. 16, and that we would need more time to complete our work. All in favor say aye. Opposed, no. The ayes have it, the motion is carried.

At 11:55 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Tuesday, September 12, 1978 • Morning Session

The Committee of the Whole was called to order at 12:12 a.m.

Delegate Kaapu presided as Chairman.

CHAIRMAN: The Committee of the Whole will come to order. The Convention has referred Committee Proposal No. 16 to this committee. We will continue with Amendment No. 9, where we left off. Delegate Weatherwax, you have one more minute of your time to speak. Do you wish to proceed?

DELEGATE WEATHERWAX: Yes. The time gets away but let me see if I can finish up. I was trying to express the mood that I felt that perhaps the public was in with reference to there being an anti-legislative mood, there being an anti-government mood, because of the tax problems, and why then there appears to be a dissatisfaction with the legislature, and what appears to be the reason for the cry for initiative. But if that isn't the mood, or if that is not the rationale to have the initiative, then of course the other argument which is presented is the fact that--well, just to have it as a spare tire. While I feel that automotive allegories aren't the best, I feel perhaps it should be not as a spare tire but a spare tank of gas. The problem with a spare tank of gas is that you always run the risk of an explosion. And so admittedly you're talking about fear, and the fear is not invalid just because there's a perception of the fear--being what the initiative could do. So I think that in a society that perhaps possibly could move to intolerance, the initiative and the tyranny of the majority become a real concern for a great many people.

I think also there is the concept that, with reference to American society--and I believe Solzhenitsyn touched on this slightly when he talked about while Americans seem to want to pass a law every time there's a problem--they're going to pass a law and cure it that way. But I believe no matter what topic you're discussing here, what it all boils down to is the "belief" system: if you believe that the representative form of government is a good form of government, then you can make that representative form of government work; if you believe the initiative can work, then of course you're going to make the initiative work. But in the final analysis, I think that the indirect initiative boils down to the same as the direct initiative; and you're talking about safeguards--what are you safeguarding against? You're safeguarding against the people, so the argument "trust the people" is another emotional argument with a great number of buzzwords, and I hope to continue in my second portion.

CHAIRMAN: Thank you, Delegate Weatherwax. The Chair recognizes Delegate DiBianco, to be followed by Delegate Sterling.

DELEGATE DiBIANCO: Thank you, Mr. Chairman. I rise to speak in favor of the amendment. I was personally pleased to see the presentation of the petition of 18,500 signatures against the initiative since, as many of you know, there was a presentation of a petition approximately a month ago of slightly more than 20,000 signatures in favor of initiative. We therefore as convention delegates know that there are at least 40,000 people in the State who are registered voters who apparently think enough of the issue of initiative to want to sign a petition either for or against it. That of course is a significant factor, not whether slightly more signed for initiative or slightly more signed against initiative. The fact remains that it is an issue that is of great importance in the general community, and one which is worthy of our attention, and certainly worthy of being placed upon the ballot.

I think the issue of initiative itself is--basically what I feel it boils down to is whether or not the State of Hawaii is going to become a government of all the people, or whether its representative government is going to continue to be plagued by the factionalism that seems to have been the order of the day for the State of Hawaii throughout its history. It seems that throughout the history of this State--the political history of this State--one faction or another within one party or another has always managed to seize control of the

representative forces of this State, so that the government has always been responsive to that particular group. The people in that particular group have always felt that what was good for that group was good, period; what was bad for that group was therefore bad. And nobody has really been ultimately concerned with what was good for the State or bad for the State.

I don't think that passing an indirect, or direct initiative--which incidentally to me is something more preferable--but passing any form of initiative is going to mean that the day of jubilee is upon us, that somehow everything will be better from now on. But what it will mean is that everybody in the State will have access not only to their own government but also to each other, and I find that important. Everybody will have the opportunity to go out, circulate a petition and, if they can find significant support for it, be able to present that to the rest of the general public, of the voting public, in the succeeding November election. That is something we do not have at the present time. At the present time our representative government is based, as I indicated earlier, on a feudalistic notion that whichever group happens to be in power at the time is the group which will control the government; and if you are a member of that group, then government will be responsive to you. If you are not a member of that group, your inroads into government are much, much more difficult to make. Initiative tends to broaden the base of participatory democracy and it seems to me that by allowing all of the people to be heard by their government, it reaffirms what is in essence the definition of democracy--participation by all the people.

CHAIRMAN: Thank you very much, Delegate DiBianco. The Chair recognizes Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, I rise to speak in behalf of the amendment. The other day I believe we were treated to a beautiful prayer by Rabbi Nodel, where he prayed for each one of us to have great moral courage, and I made a note of this. Philosophically, as the chairman has said, philosophically speaking, one of the greatest dangers of any elected body is the delusion that no one else is capable of political decision, only itself. One of the greatest dangers of an elected body is in trying to perpetuate itself. This is one of the principal reasons, I believe, for the initiative, the indirect initiative that we're addressing ourselves to this evening.

Regarding the two petitions, in Article I of the Bill of Rights, Section 3, "... the right of the people peaceably to assemble and to petition the government for a redress of grievances." As the previous speaker has just indicated, 20,000 people have signed their grievances, and I believe we should respond to those grievances.

From the Reader's Digest article that was circulated by the councilwoman from Oahu, Mary George--it speaks about the judgment of the American people: "One is that"--let me read this--"that the judgment of the American people is extraordinarily sound. Another is that the public is almost always ahead of its leaders. The third is that the electorate has become better educated and more sophisticated politically than ever before." And in this article it speaks about great political reforms the majority of the Americans want. Let me read from this article again, quoting Dr. George Gallup: "Perhaps the most controversial innovation Americans advocate is the right to be consulted on important legislation. By a majority of 57 to 21 percent...in a recent Gallup poll, they supported a proposal introduced by [a good friend of Hawaii] Senators James Abourezk (D., S.D.) and Mark Hatfield (R., Ore.) that would allow Americans to initiate federal legislation when a group of voters equal to three percent of the number who voted in the last Presidential election sign a petition requesting such a vote [emphasis by author]. Although the procedure would be new to the federal government, it is a familiar practice in almost half the states.

"The initiative--or the threat of invoking one--should expedite passage of legislation bottled up in Congress for years. Were the measure in effect now, our Gallup surveys indicate"--and it goes on to state: "Mandatory busing to achieve racial balance in schools would be abolished by 65 percent of the voters. The Equal Rights Amendment for women ... would be approved by a majority 57 percent, including more men than women. Tough gun-control laws..." and so on.

The idea of Proposition 13 has surfaced in the debate this evening--or this morning. It's interesting when you study what happened on Proposition 13. Immediately the politicians against whom these reforms were aimed, cut the visible things; they cut the library service, police, fire--they did not cut down on the administrative costs. They also happened to have a \$5-billion surplus in the state of California. But the people, as the Gallup

poll states, the American people are "extraordinarily sound." They're ahead of their leaders, the electorate "has become better educated and more sophisticated politically than ever before." I have been for initiative during my campaign. Leilani, my wife, and I go home every weekend to attend church services. During the past 2 weeks, I've noticed a great change in who is for initiative. You could say who were for, honestly speaking--that it was mostly the haoles from Kailua; but in the last 2 weeks, we see the mauka people calling, having meetings, speaking about initiative and how badly they want it, particularly after what happened and the quick change in the local government situation here at the Constitutional Convention. This disturbed our people. They said--Leon, you've got to go for it, you've got to push it through, you represent all of us. And this is the kind of reaction I'm getting at home because what has happened--the quick change, the overnight change, if you want to call it that, on the local government issue--triggered somebody's mind. And I have to reflect that the reactions of my people at home were very much in favor of the initiative process.

CHAIRMAN: Thank you very much, Delegate Sterling. The Chair recognizes Delegate Liu.

DELEGATE LIU: Thank you, Mr. Chairman. Well, the day of the "big I" is here. I, as much as anyone in this Convention, have worked in favor of it. And I said that yesterday I was in favor of it, today I am in favor of it, and I think tomorrow I will be in favor of it too. But I think Delegate Weatherwax has summarized well the arguments against it; and the speeches in favor have summarized well the arguments in favor of the amendment before you.

I have a speech written out--I had a lot of speeches written out on this issue--but I think the time for talk is over, the time for words, to try and persuade, is over, and the time to vote is at hand. I don't know if I will be the last speaker on this, but perhaps you can think about doing it right now.

CHAIRMAN: Thank you very much, Delegate Liu. The Chair recognizes Delegate de Costa.

DELEGATE DE COSTA: Thank you, Mr. Chairman. We've had a lot of pros and cons on this issue, so I'll just tell you briefly why I don't want IR&R, or the way we go with this initiative. I come from a very small town on the west side of Kauai, which is Kekaha, and I'm a worker--I'm a grease monkey. When I ran for Con Con--it wasn't my idea to run, but the people there asked me because they wanted to protect some of our rights there in Kekaha. We're all working people, we work for a living--as I told you, I'm a grease monkey--and I ran against lawyers, schoolteachers. Okay, we got in. We got over here and I kept my promise. If you don't believe me, in my room--in my office here, I've got my campaign brochures here and I'm marking down the one's I'm losing--I mean, that I told the people I was for.

And this was one which I didn't want, which is initiative, because I told my people--we're all working people, we don't read too good, we don't write too good. This is a ballot from California, it's got all the proposals and everything--if you want to see it I'll have it in my office--and also a pamphlet here with 94 pages, and it's written only in English. Only in Hawaii I guess you know that we've got to put it in Filipino, Japanese, Chinese and whatever. So it's very small now but you know how thick it will be, and I don't expect my people there to read it. Because we had one time the Constitution there--or something inside--and I was working at the polls, and I see four people went through the books, all hippies. The rest of the local people came and asked us--is this good? is this bad? And I tell them a lot is good for me, but I don't know about them; they've got to take my word now--and as far as petitions, I didn't even tell my people to go sign petitions. We don't need them, we know how they feel back home. And true, I was backed by all the unions except SHOPO, but the cops on the west side were mad because they didn't endorse me--this is the God's truth. I haven't spoken much here and if I talk too much--well, shut me up, but this is something I can't stomach. I've been threatened, my family's been threatened--I got a phone call on Friday, they're going to bust me up if I don't vote for initiative. And by God, I'll be in my room if anybody wants to try--as long as it's not [Delegate] Cabral, he's pretty big. Anyway, this has been my campaign since I started. I can't go back and change my mind because of a couple of threats, I can't go back and tell my people these haoles over here told me how to vote. And it was haoles because they told me their names--and by

God, they don't sound Portuguese. I know damn well what Portuguese sound like. And I'm not trying to make a speech to change your minds, I know you've got them all made up, like I have mine. When I came here I had one purpose, to all the working people of Hawaii--and damn, I stick by that.

CHAIRMAN: Thank you, Delegate de Costa. The Chair calls on Delegate Cabral--you folks want to get together in his office?

DELEGATE CABRAL: That's all right, Delegate de Costa, we Portuguese--we stick [together] like bread and jelly. I came to this Convention tonight with a folder loaded with all kinds of testimony, pros and cons, on the question of initiative; and I think it would only be redundant for me to try to recite some of those arguments. Instead I think I'd like not to just use the body here and read a lot of speeches and testimony that have been presented on the subject. I'd just like to run through some of the articles in our present Constitution, and I think I'd like to start on the very first page of the Constitution, with our Preamble. As you all know, it says: "We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, and with an understanding heart toward all the peoples of the earth do hereby ordain and establish this constitution for the State of Hawaii." A very simple preamble, and I think it should be the precept which should guide this body.

Article XIV, Section 4, addresses the oath of office taken by all public officers and persons "before entering upon the duties of their respective offices." You all well know that oath because you took it, just as I did. Going back to Article I, Section 1 of the Bill of Rights, "Political Power": "All political power of this State is inherent in the people; and the responsibility for the exercise thereof rests with the people. All government is founded on this authority."

Section 2 of Article I, "Rights of Man": "All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property. These rights cannot endure unless the people recognize their corresponding obligations and responsibilities."

In Section 3: "No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

In Section 6 of Article I, "Rights of Citizens": "No citizen shall be disfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land."

I have heard throughout this Convention, and some of the arguments were while it takes--it's really the makeup and the character of the persons in governmental office that should have a distinct impact and effect on whether the people are going to have a true representative government or not. So I ask you this question. If character and personal integrity of the people in public office are the key to this particular subject--and I ask again--I hope all of you can look yourselves in the mirror and ask yourselves this question: Did you provide your fellow man with a full share of his rights as have been provided for in our State Constitution? I speak in favor of the amended proposal, and I think you all should too.

CHAIRMAN: Thank you, Delegate Cabral. The Chair recognizes Delegate Villaverde.

DELEGATE VILLAVERDE: I want to thank Delegate Barnard for the 18,000 signatures. I needed that. I also have been prompted by my running mate here--and I can mention his name, Delegate Lester Fushikoshi--and I think I can challenge anyone on this floor here that I think--and you can correct me on this afterwards--we were the only two who ran as a team. And yet I didn't know Lester here until about April or May, the outset of our campaign. If we put our votes together, we'd have totaled 2,411 votes and I believe a record maybe has been established, as the leading vote-getter was 1,982 votes.

Now, I rise to speak against initiative--this may be my last time--everything has

been said pro and con, perhaps too many times. However, I'd like to go through the reasons against initiative since there are many who think all I can say is--and these are my own words--how much is it going to cost? The rest of these words are not mine, until I tell you again, but this is one of the opposition's against initiative; this person lists the points here, and I'm not saying they're necessarily in sequence but I will read it as said. The first point to be made is that opponents of initiative are not just "the bad guys"--they can't be put in a stereotyped puka. They are people of goodwill who have studied the issues and believe initiative and other issues are both unnecessary and could be counter-productive for Hawaii. They are varied in age, political party and ethnic background. Many are worried about the results of initiative that they have seen on the mainland, such as the defeat of taxation bills for support of education, the introduction of gambling, capital punishment, or bills which would harm the rights of the poor and other minorities.

Second, we can view initiative as a fad that has passed its prime; it was very popular for states to adopt during one brief 20-year period (from 1898 to 1918), but since then the 29 states which do not have it have not chosen to adopt it. The reason is simple--it hasn't worked as promised. The results haven't measured up to the promises. Third, initiative legislation is a "take it or leave it," one-shot choice which almost inevitably means bad law. Representative democracy, with two houses, open hearings and opportunities for amendment, plus review by the attorney general before signing by the governor, gives us a much better chance for good laws. Fourth, citizen groups can be effective lobbyists, as can be seen by the really good laws we have in many areas. To mention only one classic example--we have no signboards, thanks to the continuous efforts of The Outdoor Circle. The Council of Presidents, the League of Women Voters, many many groups do have the respect of our government officials and do make a difference. The effort put into effective lobbying can be best directed toward our elected representatives so that they do the job they are paid to do.

Fifth, initiative won't overcome voter apathy. If we don't have people voting now, when they have an opportunity to talk with candidates and learn how they stand on issues, then it is most unlikely they will do the thorough study necessary to be informed on complex legal issues to take a vote on a "yes" or "no" choice which cannot be vetoed. The cure is education but no one has come up with a cure-all package. Sixth, because of the balance of population in Hawaii, a straight popular vote on initiative measures important to people on Oahu could overwhelm the neighbor islands. The legislature reflects a balance of population and county interests in the two houses. No "safeguards" can be designed effectively enough to prevent Oahu from controlling the popular vote. Seventh, initiative legislation encourages single-interest, one-cause people who may have tremendous energy for the one purpose that interests them but no understanding of the need for balance. Life is complex, nothing is simple. But initiative encourages people to believe you can solve all of your problems if you just vote "yes" to one issue. Finally, the cost factor, which I admit is minimal in a general election, is heavy for supporters or opponents of issues, and here the little guy really doesn't have a chance. Media campaigns on a statewide basis can cost millions. I am an advocate of public financing of campaigns and limitations on campaign spending. It is completely consistent that I keep asking--how much is initiative going to cost? The true costs will be in the effects of the poor legislation which cannot be amended or vetoed and which we'll have to live with until the voters learn. In a state with both a fragile environment and a fragile economy, the consequences are scary, and I confess to fear of the results.

The founders of the American Constitution thought things out carefully and deeply in building a system of representative democracy. The writers of our 1950 State Constitution thought deeply and studied the results of initiative on the states which had used it. Their reasons for rejecting initiative were based on hopes that Hawaii would have the best constitution when it became a state. We are a great State, thanks to their foresight. They made the right decision on this issue, let's keep it that way.

And in the cost factor--here's information that was given to me again, that the California effort to defeat the pension plan in Oregon was \$44,000--this was given to me by the delegate on my left, and I appreciate that fact. And yet there was another recently--because the taxpayers did not make available substantial private funds to oppose proposal four, which provided abnormally high payments to the aged. Leaving insufficient funds for other government purposes, it was necessary to spend \$900,000 to bring the matter again before the electorate and defeat it. And this did come from the same report.

The small size of the State of Hawaii, having a population of less than many large

cities and less complex than those of most of the states which have a very large number of counties, makes it possible for our legislators because of personal knowledge and contact to consider adequately and with reasonable promptness all the local and general problems which are likely to arise. And we met earlier--and these are some of your words, but first before going into that now, the question is, have we received a mandate from the people. And I question this--what mandate? But before elaborating--

CHAIRMAN: Delegate Villaverde, I was just going to mention that you have one more minute.

DELEGATE VILLAVERDE: Thank you. I just would like to say, in defining what mandate is--and I checked with three unabridged dictionaries, Webster's, Random House and American Heritage, which give the basic political meaning as a "clear directive of authorization to act in a particular way," given by the electorate to their representatives. There is no such thing as a mixed or muddled mandate. A mandate implies no difference of opinion, and I really hope that I'll have another time to speak again because I still have more from this person who gave me so much information. In the meantime, those who are in doubt--think about it.

CHAIRMAN: Thank you, Delegate Villaverde. The Chair recognizes Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to a point of personal privilege.

CHAIRMAN: Please state your point.

DELEGATE DE SOTO: Mr. Chairman, I want the record to reflect that I have been threatened by people who are in support of initiative and referendum. I was called at home while I lay sick in bed, which prompted my return to this hall. The threat came that "if you do not vote for initiative and referendum, we will go and dump your Hawaiian package." I want the record to reflect this lest there be some emotionalism. I have been threatened not once in the last five days, but five times. I have tried to keep an open mind with respect to this issue. I would also like the record to reflect that we too represent people from our geographic location from which elected, and we hope in all pure honesty and hope that we reflect the majority of their opinions. I want the record to also reflect that I have never, ever been approached by the HGEA or any other lobbyist to vote on this particular issue. The approach has come from other organizations, and I rise to tell this Convention that if anybody can threaten me on the phone and not have the na'au to come and face me personally, I don't think very much of these kinds of people. Mahalo.

CHAIRMAN: Thank you, Delegate De Soto. The Chair recognizes Delegate Chong.

DELEGATE CHONG: I'd just like to know if there are any more speeches; if not I'll speak so we may call for the question.

CHAIRMAN: If there are no further--does any delegate wish to speak before Delegate Chong speaks for the last time?

DELEGATE BLAKE: Mr. Chairman.

CHAIRMAN: Delegate Blake is recognized.

DELEGATE BLAKE: I rise to speak in favor of the amendment that is on the floor. Earlier this evening, Delegate Campbell enumerated three different points and I thought a couple of things--I'd like to read what she stated. She said on fundamental issues where there was a failure to take action, that the people should take action. Second, the spotlight is on the people and the legislature, and when they know the desires of the people, the legislature should work out the details--that's the second point. The third point she stated was on the legislative power of the people; time and time again legislators fail to respond to the needs of the people, and consequently the people have to ask.

Well, we don't have to go to California or to Oregon or any other state to find out. A few months back on Kauai--the County of Kauai, by the way, has voted into its charter the use of initiative and referendum, and the issue that brought about the first initiative probably to be voted on and referendum in the State of Hawaii would be in the County of

Kauai. The people were against highrises, and this was well versed and discussed at a number of meetings; in spite of this, the commission came back with--I can't recall exactly what they stated, but some technical terms on something new--that they were going to allow the buildings to 6 stories, and that's the way it stood. So many of the small people--and I've always said that initiative and referendum are a small man's tools, this is the only way he can speak to government when government fails, based on the points that were enumerated earlier by Delegate Campbell. So what has happened? The people went ahead and did file a petition; they did get the required number of signatures and met the deadline. Then the papers were presented--on an indirect initiative--were presented to the county council of Kauai. The council could have resolved the problem, and while all the discussion went on I was surprised that the council failed to meet with the committee and to arbitrate or to come to a point, or points, to meet what they were talking about. And consequently when I spoke to two of the councilmen, they stated, "We felt it was best to let the people decide."

So this November will have the first referendum in the State of Hawaii; the people of Kauai will vote on an issue that the representative government, a group of people who represent the people at the county level, failed to recognize as the wishes of the public, and because of which this initiative was started. When the council had a chance to pass an ordinance, they refused to do it; and what has happened since is that now it will go before the public for a vote.

And I restate, this is a small man's tool, and I gather the people of Hawaii are intelligent; and in answer to many comments I've heard on the floor during the past couple of days--who wants to push these things, and why do they want to push them--I'll tell you. A majority of the people who signed the petition on Kauai were local people, and they want a fair shake, that the county government will respect the desires of the people of Kauai. This is going to happen this November, and I ask all of you to seriously consider this amendment and to vote for it.

CHAIRMAN: Thank you, Delegate Blake. The Chair recognizes Delegate Shinno-- Delegate Ihara and then Delegate Shinno.

DELEGATE TERUO IHARA: I rise to speak against this amendment. I represent the upper Woodlawn, University and lower Manoa areas, District 13B; I'm one of the two delegates from that district. During the campaign this past spring, I, like most of you or all of you, walked the district, covering most of the homes and residences where there were no dogs and strangers were welcome. During many of these visits I was asked where I stood on IR&R, and my reply was that I opposed these three issues; I told them that I opposed these issues because I felt that any individual or any organization with unlimited funds could make a mockery of our democratic form of government.

In this line, I should relate to you my experience at one of the residences. The man who answered my knock was another candidate for the office of delegate and we exchanged some pleasantries; then he asked me what my position was on IR&R, and I told him I was negative. He looked at me, shook his head and said--Gee, I don't think you're going to be able to get elected. He had great sympathy for me. Well, all I can say is that he's not here and I'm here, and I came to the conclusion that many of the voters of that district did not really fully understand these issues and in some cases, after discussing my position with them, explaining why I felt that way, I have a feeling I changed the minds of some of these voters and left others with some doubts. My friend earlier--the candidate from my district--as I said, felt very, very sorry for me, but all I could tell him is that the people do not necessarily share the views he had--but then we'll have to wait until May 20. As I said earlier, I'm here and he's not. Therefore, my position on this issue of initiative is pretty firm, and I urge my fellow delegates to vote down this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Ihara. The Chair recognizes Delegate Shinno, to be followed by Delegate Crozier.

DELEGATE SHINNO: Mr. Chairman, I suppose by this time all my fellow delegates know it's obvious that I'm not a politician and I'm not an orator, and this somehow brings me back to Delegate Odanaka's "None of the Above." When the first Con Con candidates were filing papers, I had the same feeling, I didn't have any desire to vote for any of the above. So I rustled up friends and people I thought I'd like to give my support to, and

to my dismay I was very unsuccessful. And so I thought--Well, rather than none of the above I'll vote for myself; so I filed, not thinking that I would do any campaigning, but much to my surprise I got terrific support--campaign contributions and physical support. I'm getting kind of nervous, but if you'll bear with me-- Basically they wanted to do away with initiative and referendum. I was strongly supported in this area, and when I hear that all the people are for initiative and referendum, I can't buy it, because being a nonpolitician, for the first time I got involved--I guess my whole life was on the plantation--I never got involved in politics. But let the record show that I got in by a very tremendous margin. I'm definitely against initiative and referendum and I don't want to let my people down.

CHAIRMAN: Thank you, Delegate Shinno. The Chair recognizes Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I speak in favor of this amendment. First, since everybody started off with true confessions, let me also confess; I am also against IR&R but I am for indirect initiative. As soon as I decided to support indirect initiative, I went back to my community and had a meeting and notified the people as such.

Mr. Chairman, earlier one of the delegates talked about California and that while he was up there he saw the different problems that the people went through. I too was in California for a short period--let me preface that. I am a union member of the operating engineers, Local 3, right here in Honolulu. I am a super-proud union man and nobody is more unionized than I am--okay, just to let everybody know that. But while I was in California, I had the opportunity to attend two of my union meetings, and the difference between their union meetings and our union meetings here--our union meetings, we go there, sit around, half hour, go drink beer, that's it, pau. But in California they get into the meeting and then they start discussing the different initiative and referendum issues and these construction workers--bulldozer operators, crane operators--you folks put one level of intelligence that these guys have, but they know the issues. They get out there and they work for an issue or against the issue. They're concerned with the community and they're concerned because their jobs are on the line, and what happens from this is that when they get involved, when they get concerned, the union gets stronger. To get back to the philosophy, they believe in the philosophy of the union. They're not there just for convenience as some of us are here in Hawaii--and I'm talking about my union, I'm not talking about anybody else's union. So just from that standpoint alone, to strengthen my union and other types of unions, I speak for this amendment.

CHAIRMAN: Thank you, Delegate Crozier. The Chair recognizes Delegate Odanaka, followed by Delegate Hokama.

DELEGATE ODANAKA: I would like to speak in favor of this amendment. Despite the tension here, I really think that what we and the people have gone through together here is most significant. The discussion arising is the best positive argument that I can think of supporting indirect initiative. A good example of the kind of educational process we can expect from the use of initiative is the present campaign regarding this issue; there are undoubtedly thousands of people who didn't know what initiative was 3 months ago, who are discussing the issues, signing petitions for and against, and many are ready to make an intelligent decision when it comes to the ballot. This fantastic process has come about without a huge media campaign. The actions of petitioning and discussing have resulted in a tremendous learning experience for the people of Hawaii and myself.

I would like to remind the delegates that because of the healthy discussion on this issue, there may be as many people out there ready to vote against initiative as for it.

CHAIRMAN: Thank you. The Chair recognizes Delegate Hokama.

DELEGATE HOKAMA: Thank you, Mr. Chairman. I rise this morning to speak against this amendment. I'd like to have the body know that I too have had the privilege of working very closely with the legislature for the past 6 years, and through those times I've learned and observed and carefully scrutinized the workings of our state legislature.

Mr. Chairman, today legislative measures are often detailed and technical, and the average voter has neither the staff nor the time to study fully the impact or significance of a proposal. There is a concern that most of the people do not have sufficient knowledge to make a proper decision when dealing with complex matters, and the limitation of space

on the ballots make accurate estimation extremely difficult. The average voter has no opportunity to amend or modify the proposal and must either vote yes or no. Numerous, often highly technical issues may confuse and overburden the voter. I for one believe that our legislators are better judges of the merits of legislation because of their familiarity with the issues and the number of times they spend evaluating alternatives.

Legislators have a better, overall view of problems, enabling them to consider the full effect on all state programs and goals. Special interest groups, by their very nature, stand to lack this broad a perspective and push for their own self-interest. I say--what is wrong with the present representative system we enjoy today? We elect representatives to the legislature; they draft, discuss and decide on legislation, with adequate input from and for the public. They spend the necessary time considering the good and the bad in fact of a proposed measure, and receive the necessary expertise from the research staff, their attorneys and other support services provided by and to the legislature.

The present representative form of government has its problems--no one is here to deny that fact--but can it be better dealt with through a replacement of the people's representatives? through an initiative process that does not afford the positive factors of legislative debate, exchange of ideas, compromising, and a clearing of issues? Even our United States Constitution does not provide for a direct form of government. Access to the legislative process in Hawaii has provided some of the best legislation in this nation. We were the first state to enact a prepaid health care law, the first state to participate in providing health care to the poor through Medicaid, and the first state to end back-alley abortions by legalizing such service. Hawaii was as well the first state to ratify the Equal Rights Amendment. We have a good state, we have a responsive representative political system. Initiative may appear to some an easy answer to their concerns; I for one say it is not. What is needed is commitment, involvement and education of both the public and our elected officials. The answer to social and political reform is dependent upon voter education and participation, providing continuity, coordination and responsibility. For that, Mr. Chairman, I strongly urge this Convention to vote down this amendment.

CHAIRMAN: Thank you, Delegate Hokama. The Chair recognizes Delegate Harris, then Delegate Waihee.

DELEGATE HARRIS: Thank you. I'd like to speak in favor of this amendment. I haven't prepared a speech like some of the speakers, I won't quote Webster or even Winston Churchill; but I will quote what I believe is a superior force--and in fact maybe for us the supreme force--and that is the people of Hawaii. I think we should remember that our Constitution is a document which delineates the power within our society. We've spent many hours in this delegation carefully balancing the power between the three branches of government, but I think we must remember that the ultimate power in this State rests with the people; and I contend that the people in this State have spoken out overwhelmingly in favor of direct democracy.

Public opinion polls show that as many as 86 percent of the public of this State want some form of initiative, and I believe the proposal we have before us today is a very good compromise. It takes the good parts of initiative and blends them and answers, I think, all the arguments against initiative that we've heard this evening. We've been shown a stack of petitions tonight of 18,000 voters against IR&R. I'd remind you that for the 18,000 voters on those petitions, there are another 110,000 voters out there who support some form of initiative, and I think we have to realize that we have been given a clear mandate from the people of Hawaii to put on the ballot some form of initiative. And I really believe that if we ignore this clear mandate, we're going to experience a public aftershock that will rock the political structure of this State to its very foundation.

CHAIRMAN: Thank you, Delegate Harris. Delegate Waihee is recognized.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment, and in doing so I'll paraphrase a fellow delegate and say that I was against initiative yesterday, am against initiative today, and will probably be against it tomorrow. I think all of us have heard the arguments on this issue, pro and con, and I think really it's about time we took a vote on it. For that matter, I would request that we vote on this issue some time soon.

CHAIRMAN: If there is no delegate who wishes to speak at this moment, the Chair would--oh, there is, Delegate Chung.

DELEGATE CHUNG: I feel compelled to say a few words, Mr. Chairman. Thank you. Perhaps I should start by saying that I'm against the amendment for various reasons. I'm concerned about the possible high costs. Before I go further, I would like to compliment the League of Women Voters of Hawaii for their publication on the facts and issues, which all of us have a copy of; and I feel that this document is one of the finest pieces I've come across on the issue. It has 23 different bibliographies which cover a wide variety of subjects and also, in a very short but important way, it summarizes the issues clearly and without emotion. And I'd like to share some of these with all the delegates.

How one feels about the subject seems to depend more on one's philosophy of government than on the merits or deficiencies inherent in IR&R. Those who see it as a panacea for the ills of government will most likely be disappointed. The initiative process evokes strong feelings on both sides; it is jealously guarded by many and looked upon with suspicion by others. The most compelling argument against it seems to be that it can sometimes be more unpredictable, costly and time-consuming than the enactment of laws by the legislature. It certainly can be less effective or less efficient. Some arguments for it state that it makes the voice of the people more efficient and serves as a last resort when government is or seems to be unresponsive. It lets people who are interested have an opportunity to directly influence the laws which govern them, both positive and negative.

During the Oregon battle over nuclear power plants in the 1976 elections--and this is an example of costs--opponents spent \$275,000 and had the help of 2,000 volunteers. The proponents of nuclear power plants, who won, spent approximately \$1 million or roughly a dollar per vote cast on the measure--an example of high cost. A major argument against any type of direct legislation is that it weakens the legislators. Opponents say that a legislature should lead as well as reflect public opinion. In many cases the public has shown itself to be cautious, conservative and frugal. It makes legislators hesitant and allows a legislator to shirk his responsibility.

I have here a copy of a letter--I guess all of you have this--dated September 11, 1978, Dear So and So: "Early in 1975 several communities in the State of Hawaii had problems with taxes and many other things concerning lifestyle in Hawaii and a right to voice an opinion on how government should serve our people. They were told by our representatives"--and I won't mention any names--they were told by these legislators to hold off "until we can present our cases to the 1978 Constitutional Convention"--again an evasion of direct responsibility.

As I mentioned--I won't go through this whole document--this is why I have some concerns, real genuine concerns based on these facts. My other concern is this, which Delegate De Soto had mentioned: in all my years I have never been threatened, not once, by any of the kids I worked with at Koolau boys home--that I worked with for 23 years. But suddenly I get some threats--"Mr. Chung, if you don't vote for IR&R, we ain't going to vote for you in the 24th district." I don't have to fall for anything like that. With those things--if this happened to you, you would really get mad. I see value in public participation, in open government, but I say we do it through our legislators. If the legislators are unresponsive, we have one thing to do and that is to get them out. Earlier we talked about passing a bill to make campaigns and the legislators more open so that in the future we can have better legislators. I feel this is the way to take. True representation of the people based on our solid foundation of government from its very inception is on the party system, on the legislators and the different branches of government. This is the way we've operated ever since the inception of Hawaii. True, everything hasn't been perfect. But I don't think we have reached a crisis, and therefore I would like to say these few words--particularly I want to say that I've got the guts to say no simply because I don't want to be threatened by anybody.

CHAIRMAN: Thank you, Delegate Chung.

DELEGATE TAKITANI: Mr. Chairman, point of personal privilege.

CHAIRMAN: The Chair recognizes Delegate Takitani.

DELEGATE TAKITANI: So far this evening we've heard three claims of threats, and all against those who have come out against initiative. I have come out for it and, just to make things clear, I received threats that if I do vote for it I don't get elected [to the state house]; and not only that, I'm going to be ineffective if I get elected. But I guess that's part of the job, so I think threats have nothing to do with this.

CHAIRMAN: Thank you, Delegate Takitani. Delegate DiBianco, did you--

DELEGATE DiBIANCO: I was calling for the question.

DELEGATE HALE: You cannot in the Committee of the Whole.

CHAIRMAN: Well, I think you're making the same suggestion that other delegates have made that we should have the last speaker. I recognize Delegate Hale.

DELEGATE HALE: Mr. Chairman, I wasn't going to speak because I felt that when I get to speak, perhaps I'll make the wrong--but we've heard so many speeches tonight that I would feel very remiss if I didn't make one last plea for your consideration of this indirect initiative. For those of you who are new to politics, I would just like to tell you from long years of experience and exposure that threats are a part of the political life and, as Harry Truman said, "If you can't stand the heat, get out of the kitchen." But that's not to be taken as a personal thing against anyone. It's just a fact of political life and I think threats for or against are irrelevant. It is after 1:00 a.m., we have a large audience, I think every delegate is here, and this is the first time in this session at this time of night that we've had this kind of concern. I think it points out to all of us the importance of this issue, and I'm sure that each one of us is going to vote his or her conscience in this matter tonight, threat or no threat.

I would just like to say a few things. There seems to be fear that if we vote initiative in, we are in some way degrading the representative process and degrading the legislature. I maintain that initiative, indirect initiative as proposed in this particular amendment, is certainly not degrading the legislature. This proposes going to the legislature with any idea or any petition that the people have, and the legislature will be able to do all the things that the people who say they are opposed to initiative say should be done; the legislature will be able to investigate the problem, will be able to amend the legislation, will be able to present a better proposal to the people. That is what is being proposed to night--indirect initiative, whereby the people's wishes are taken to the legislature and the legislature's version and the people's version are then put on the ballot. I don't think anyone here really wants to leave the impression with the public that they don't trust the public, although some of the things that have been said here tonight would seem to indicate that. I don't think any of us would be here tonight if we didn't trust the public because we were all elected by the public. And we used various and sundry techniques to get elected, but I don't think any of us really believe that we fooled people into electing us or that the people who voted for us were not intelligent--and that was the majority, or the overwhelming plurality of the people in each district from which each one of us comes.

I would like you to please just consider this in the context of indirect initiative--letting the legislature decide, letting the legislature do all the research and putting this before the people, in the same way that all the things we've been debating here for the last 3-1/2 months are going to be put on the ballot for the people to vote upon as to whether they want their Constitution amended. And if we don't have faith that the people can decide these 30 or 40 issues that are going to be put before them in the November election, then we really have been wasting our time; and I don't think any one of you believes we have been wasting our time. Or that you want to go to the public and say--please vote on all these amendments that we are offering you, but we will not give you a chance to vote upon initiative because we don't think you're intelligent enough to do the job. And I ask you, each one of you, to examine your conscience. Can you really go back and tell people that? I for one cannot. I campaigned on initiative, my people were 97 percent for initiative, and if I have to go back and tell them that they're not going to be allowed to vote on initiative, I'm going to be tremendously disappointed in this Convention.

I ask you, please, look at your conscience, think of your people, think of your voters, and at least give them an opportunity to vote whether they really want this or whether they don't. That's all we're asking.

CHAIRMAN: Thank you, Delegate Hale. Delegate Kojima is recognized.

DELEGATE KOJIMA: I rise to speak against the amendment. I don't know what "supreme force" my colleague from the north shore of Kauai was speaking about, but I do know about the supreme force of Kauai from the kinds of votes we got. Believe it or not,

Delegate de Costa had the most votes on Kauai--1,353. Delegate Shinno, the second highest of the six of us--1,340. And I, third--1,329. And here the three of us are leading the other three from Kauai, and we are speaking against initiative. We think we represent the position of the people of Kauai, so I speak against initiative.

CHAIRMAN: Thank you, Delegate Kojima. Delegate Ontai.

DELEGATE ONTAI: I speak in favor of this amendment. A famous humorist once said--in dealing with the people, if you can't dazzle them with brilliance, baffle them with BS. Tonight I will do neither. My IQ is not up to par, I have no brilliance, and my repertoire of BS is exhausted. So I'll make it kind of short.

In my district, based on my poor man's poll, it seems that two out of three of the people I talked to are in favor of initiative, so I speak by the way I was elected. This amendment before us tonight is so watered down that there is no rhyme or reason why any person or group should treat it like a big bad bogeyman that runs in the night and tries to eat people up. I read it again and I'm not sure it can do much. Most of the opponents of this watered-down version of initiative--it seems like they are sort of prophets of doom. I don't see any real fear, the fears are probably more imaginary.

Our great President [Franklin] Roosevelt once said, "[T]he only thing we have to fear is fear itself." And my position tonight is, have no fear. The people of Hawaii are not stupid; I trust them, especially on this watered-down version of initiative. They will not cut off their noses to spite their faces--I don't think. Yes, we can all disregard the overwhelming public opinion polls, we can tell them to go to hell. Yes, we can look the public square in the eye and say, so what, go take a flying leap to the moon. However, unfortunately we all cannot run away from ourselves; unfortunately we all have friends and relatives to live with; and unfortunately every morning most of us have to look in the mirror to comb our hair and we have to look at ourselves.

In closing I will say today the people of Hawaii have no recourse for unresponsive legislation and legislature. This watered-down version of initiative is the only weapon the public has left to keep the foxes in line, to guard the chicken coop when they get out of line.

CHAIRMAN: Thank you, Delegate Ontai. The Chair recognizes Delegate Barr.

DELEGATE BARR: Mr. Chairman, your delegate from the island of justice, truth and beauty, and occasionally their antitheses, begs leave to speak on this subject but to identify at the end of the speech whether he is for or against the amendment. I also would ask that if one delegate is not too certain what my remarks have to do with the subject, please bear in mind that at this time of night I may not be too certain either.

I recall the remarks of the chairman of the style committee about the difference between a representative and a delegate, and notwithstanding those remarks I think a delegate plays essentially a representative role. But there has been a tension in democracy throughout its history on exactly what is the role of a representative. Is it to discover and reflect the views of those he represents? Or is it rather that he was elected to use his best judgment on the matters that are brought before him. I imagine in practice it is usually both. However, my own bias is in favor of using my best judgment--and I say this in the face of also being under pressures, as the rest of you are, pressures that have been about 4 to 1 in favor of initiative. In this connection, incidentally, I recall John F. Kennedy's book, Profiles in Courage. You may remember that's the book in which he had several separate essays identifying some American political figures who went against the tide out of commitment, out of principle; and in spite of the courage, every single one of the stories ended in the person's political career ending. And since mine is just starting, I am only sorry that JFK did not see fit to have one chapter in there of somebody who went on to success.

In any case, one of my mentors is a man that I think is appropriate to be reflected in our record, Dr. Karl C. Leebrick. Dr. Leebrick was dean of the College of Arts and Sciences at Syracuse, he was president of Kent State University, he was vice-president and acting president of the University of Hawaii during World War II. Shortly thereafter he went to the South Pacific and helped set up several--the Trust Territory of Micronesia, the Japanese constitution, the Filipino constitution and also the Nationalist Chinese consti-

tution; and he came back to Hawaii and was president of Maunaolu College, which is where I first worked when I came to Hawaii, and where I met him. Dr. Leebrick at 93 was senior citizen of the year on Maui this year, and at 93 is still one of the sharpest individuals I know. He called me the day after the election to congratulate me on my victory and immediately brought up the subject of initiative. He said, "Allen, back in 1918 I was one of the leaders in California in bringing about initiative on the ballot. And I want to tell you that probably it won't make a whole lot of difference if you get it and probably it won't make a whole lot of difference if you don't get it. But my own thing is that it was a disappointment to me how it worked out in California."

Well, based on that I have thought long and hard on this subject of initiative, and I would like to suggest that the final measure of my making my decision was to look at the measure of representative government itself. I submit to you that the measure of representative government is how that government treats its minorities. The ambitious, literate and organization-prone middle-income groups in our society can usually get what they want from government. If they don't get it through initiative, they can get it through other means--backing candidates of their choice, whatever. In fact, I submit to you that our current problems with our representative government reflect much more a failure of our citizens than a failure of our government. I submit that it's a failure of this great middle-income group.

Okay, then I ask myself the question--what will initiative do for the minorities? I doubt it will be used by them; I doubt that many of our more oppressed minorities understand exactly what it's about. I can easily see it being used against them, by the majority. Well, I'm probably beginning to reveal to you where I'm going to go on this issue. I think that the pressures for and against initiative right here at this Convention are evidence of one of its greatest problems, and that is that it distorts priorities. The comment was made moments ago about how we're all here and we've got an audience at an unreasonable hour of the morning; and yet I submit that the Hawaiian affairs package was much more important than this issue, that we had taxation and finance matters that were much more important than this issue, that we have environmental matters that are much more important than this issue and, from my own point of view, single-member districts and the open primary and several other things are much more important than this issue. We have distorted our priorities by the emphasis on this issue.

Indeed, in my view initiative is antithetical to representative government, however much it gives the illusion of direct democracy. In effect we already have indirect initiative, the thing that is being proposed here; groups and citizens regularly bring their issues to the legislature. We are not always happy with the results, but I submit that that's the natural result of one-party government and not because of the absence of initiative. However much it may hurt some of my friends, and whatever the price to me politically--I wish JFK had written that one more chapter--I must take a stand against initiative as a false hope. I think the sooner we face that it's a false hope, the sooner we can get on with renewing effective representative government. Thank you.

CHAIRMAN: Thank you, Delegate Barr. Are we ready for Delegate Chong to--

DELEGATE CAMPBELL: Mr. Chairman.

CHAIRMAN: Yes, Delegate Campbell.

DELEGATE CAMPBELL: One final thought. Mr. Chairman, your delegate from the salt lake which is now covered with earth would like to share one final thought with the members of this delegation. A couple of weeks ago, this Convention overwhelmingly adopted a memorable revision to the Preamble of our Constitution. That revision, in part, reads as follows: "We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire." I ask each of you to etch these words in your mind and your heart before you vote and then, if you really meant them, vote yes. Mahalo.

CHAIRMAN: Thank you, Delegate Campbell. The Chair recognizes--

DELEGATE CHANG: Point of information.

CHAIRMAN: Delegate Chang, state your point please.

DELEGATE CHANG: Mr. Chairman, I'm a delegate from the Nuuanu valley, that great land that is blessed by the winds that bring the nourishing water to our fair Hawaii, and I was elected because I was undecided on this issue. I had a great many questions then, and I have a great many questions now. And I have sat here and listened to the debates going back and forth between the proponents and opponents of this issue, and I wish to say that the statement made by the chairman of the bill of rights committee, that the burden of proof is squarely on the shoulders of those who would advocate introducing this mechanism into our government, must be met. And I would say that statements relating to condensed stories in Reader's Digest and in the journals of government relating to mechanisms operating in other states will not do.

I will further state that the Preamble that we adopted several evenings ago calls for a control of Hawaii's destiny and for Hawaii's solutions to Hawaii's problems. And that brings me to the crux of my concern. I have yet to hear a problem explicated as it relates to Hawaii's government and the accessibility of Hawaii's government to its people. I know that California and other states have great population centers that are not in the cities that house their capitals and legislatures, and therefore the people in those states do not have access to their elected legislators and the operations of government are carried out great distances away from the people. And I realize also that the operations of government in those states are subject to county structures that we do not have operating in this State. Here in Hawaii we enjoy a seat of government that is in the same city that houses the great bulk of its population. We also have a government that has been historically oriented to meet the interests of the neighbor islands. Neighbor island legislators have always enjoyed great influence in our legislature.

Finally we have a style of politics and campaigning that emphasizes door-to-door canvassing by the candidates and legislators themselves, in acquiring the opinions of their constituents and in describing the operations and problems of government. Mr. Chairman, my point is that there doesn't seem to have been any discussion this evening, any description, of how there exists in Hawaii a problem with regard to the accessibility of government. Furthermore, there has not been any discussion of how this proposed mechanism would meet whatever problem exists; and finally, there has not been any discussion of what costs all the citizens would have to bear in order to initiate this new kind of mechanism to meet whatever problems exist.

So therefore, Mr. Chairman, this brief summary of those questions raised so articulately by Delegate Villaverde: what is the problem, does this solution solve the problem, and how much will it cost. I think this burden must be met before it receives my affirmative vote.

CHAIRMAN: Thank you, Delegate Chang. The Chair recognizes Delegate Peterson.

DELEGATE PETERSON: Mr. Chairman, I would like to put one of our delegate's concerns to rest. Ordinarily, on philosophical grounds I prefer representative government and would oppose initiative. I spoke earlier today on my concerns for proper checks and balances. The three branches of government were established so the executive, judiciary and legislature balance each other. In Hawaii, where political control of the executive, judicial and legislative branches is concentrated in the hands of one political party, initiative is one way for the people to check and balance their government. For this reason, I speak in favor of this amendment to provide indirect initiative.

CHAIRMAN: Thank you, Delegate Peterson. The Chair recognizes Delegate Hagino.

DELEGATE HAGINO: Mr. Chairman, I rise to speak against the amendment. I had not intended to speak but one of the previous delegates cited a phrase that is very dear to me--in the Preamble. When we first initiated this Preamble, we said we "reserve the right to control our destiny." Someone asked what that meant and one of the co-authors, Delegate Tamayori, clearly stated that what he meant was for the legislature to enact statutes, and it is in the records.

CHAIRMAN: Thank you, Delegate Hagino. The Chair recognizes Delegate Sutton.

DELEGATE SUTTON: I'd like to address myself to some of the concerns of the delegates from across the valley from myself. In a poll recently taken in the whole 15th district, approximately 80 percent responded in favor of initiative. Truly we have here a

basis for his answer, in that there is irresponsible representation for the electorate when the people who are elected do not listen to the concerns of the people when they put out such a large demand for an item such as initiative. Your Honor, I rest my case.

CHAIRMAN: Thank you, Delegate Sutton. The Chair recognizes Delegate Lacy.

DELEGATE LACY: Mr. Chairman, when I came into the Convention I spoke on behalf of my constituency on the basis of a direct initiative. I know that the strength of the feeling is such that today we have a compromise before us in an indirect initiative. It doesn't have all the things in it that I'd like, but I am satisfied that it is a reasonable compromise to give the people a chance to have an initiative on the ballot. But I think a good challenge was made by the chairman of the committee and by the delegate two or three speakers ago who said it hasn't been answered. So I'm going to answer the burden of proof and call upon the Hawaiian affairs group to listen closely. You told us many times, for the 3 or 4 days that we sat and listened, how you have tried so hard to get someone to listen to you, how you had gone to the legislature and they turned you back. You've been looking for help for years and years. You now have a delegate group here that listened. This is the people. We're going to put it on the ballot. That's what initiative is--to put it on the ballot. Let the people decide, and I believe they will decide in favor of what you've been after because you have a just cause. The number two burden of proof is home rule. Everyone who hollered about home rule--

DELEGATE DE SOTO: Mr. Chairman, point of order.

CHAIRMAN: Delegate De Soto, please state your point.

DELEGATE DE SOTO: I think that is an erroneous statement that was just made. I don't believe I ever at any time made statements to the effect that the Hawaiians have been to the legislature and were turned back. If people would remember with some feeling in their hearts and did some homework, history has done what was said about the Hawaiians. I'm getting tired of being the Ping-Pong of this Convention.

CHAIRMAN: I'm not too sure what point that was, but we will so note it. Delegate Lacy, please proceed.

DELEGATE LACY: On the property tax, the counties' desire to have a chance of a little more of their own destiny--and it took this body here, a group of people representing all the people of the Islands, to listen and to propose to put on the ballot for all the people to decide on whether that much of home rule would be given to the counties. Now these are two points in the burden of proof that initiative can and should be considered.

CHAIRMAN: Thank you, Delegate Lacy. The Chair recognizes Delegate Sterling.

DELEGATE STERLING: For the second time. I feel disgraced that we should talk about the cost of people's rights--the cost, the cost, how much does it cost in dollars? The Ford company says it costs too much to fix the gasoline tanks, so we should leave them as they are so people can get killed. Firestone says it's going to cost too much to fix all the tires, so let's not fix them. It's going to cost too much money to take care of people's rights, so let's not fix it. This is terrible.

CHAIRMAN: Thank you, Delegate Sterling. The Chair recognizes Delegate Souki for the first time.

DELEGATE SOUKI: Mr. Chairman, I wish to speak against the amendment. For one thing, the delegates here speak of this being a reasonable compromise, and I say to them: when we have an excellent state government that is recognized around the nation as one of the better in the nation, when we have good social and economic legislation, when there are people who want to come here and we have to set up controls to govern those who want to come, why should we compromise? We have a good legislative system--let's keep the system that we have.

CHAIRMAN: Thank you, Delegate Souki. The Chair recognizes Delegate Goodenow for the first time.

DELEGATE GOODENOW: I stand for direct initiative. I have spent the evening

listening. I have very little more that I could say. I campaigned on this issue--coming from Waikiki, they're very interested in having it. When I heard this indirect initiative, I thought--that would be wonderful, to be able to take even a crumb--and now I feel I don't know what's beneath the crumb, and I am very, very disappointed. But maybe something will happen....

CHAIRMAN: Thank you, Delegate Goodenow. Delegate Stegmaier is recognized for the first time.

DELEGATE STEGMAIER: Mr. Chairman, I have two things to say. One has to do with expectations; it seems to me that very damaging to a rational, objective look at the issue of initiative is my realization that everyone, including myself, has exaggerated its significance and its potential impact on our society. Fear and trepidation on the one hand and great hopes on the other hand are equally unrealistic expectations.

The other thing that I would like to communicate to you is to raise doubts about the frequently repeated theme that decision-making via direct democracy is such a dangerous thing. I'm beginning to discover now that we're making final decisions, that what we did here at the Constitutional Convention over the past months is going to contribute in a very positive way to our State. And I'd like to remind ourselves that it was the average voter who, through the process of direct democracy, chose to have this Constitutional Convention; and it is the wisdom, the fairness and the intelligence of these same voters that we shall now have to rely on to ratify our proposals again via the same process of direct democracy. Isn't it ironical that we are placing our trust in the voters of our State to act positively on our long list of very complex, sometimes controversial constitutional proposals, and yet at the same time we hesitate to allow these same voters to make a few decisions via this very moderate indirect initiative approach.

CHAIRMAN: Thank you, Delegate Stegmaier.

DELEGATE TAMAYORI: Mr. Chairman, point of personal privilege.

CHAIRMAN: Yes, Delegate Tamayori, state your point.

DELEGATE TAMAYORI: I'm getting a little tired and I feel that we have heard almost all the arguments. I don't think anyone is going to be swayed either way, and I think we should have the question.

CHAIRMAN: Your suggestion is certainly heard by all the delegates and they will respond as they see fit. Delegate Ihara, did you wish the floor for the first time?

DELEGATE DENNIS IHARA: Yes, if I may. Since everybody is exchanging war stories--and I hope the good delegate will bear with me--I went to school in California and being that the California experience is so close to us, I guess that's why we pick on it a lot. We've heard where California's legislature acted on an initiative proposal and passed the coastal zoning law. Well, fellow delegates, while I agree that some of those laws are good, allow me to elaborate on what happened to a friend of mine, who incidentally is a retired law professor and whose house sits on cliffside property right by the ocean side. This professor's neighbor built a swimming pool next door and the weight of the pool caused a landslide on my friend's property, and his land is beginning to slip away; but because of the very stringent zoning laws, the professor can't even repair his property.

Mr. Chairman, I'm concerned when our own legislature might be pressured to make such hasty laws that even a law professor would not act upon. A previous speaker also mentioned Proposition 13. Fellow delegates, a good friend of mine just returned from San Francisco a few days ago and he told me that governmental spending has been cut so drastically that even elderly programs have been cut. Fellow delegates, when assistance to the elderly and the needy is slashed, it will be a truly sad day for our State.

CHAIRMAN: Thank you, Delegate Ihara. The Chair recognizes Delegate O'Toole for the first time.

DELEGATE O'TOOLE: Mr. Chairman, I don't want to go into any more pros and cons. I think they've all been heard. I just wanted to point out one thing: many of the delegates

have stated that Hawaii ranks very high as far as the legislature is concerned. I'd like to remind you that California was rated--and I'm not sure which one--either number one or number two in that same list. Yet California is the home of Proposition 13, and I think many people in California will tell you that the California legislature is unresponsive to the people's needs, especially in the area of taxes. Property taxes have gone up, they've skyrocketed, and yet the legislature does something at exactly--just about the same time that Proposition 13 was put on the ballot--Proposition 8--so therefore, looking at the situation, it seems many times government does not react until they are completely forced to. Then they become responsive to the public's needs. For those reasons, as well as many of the reasons that were stated earlier, I would urge you to support indirect initiative.

CHAIRMAN: Thank you, Delegate O'Toole. The Chair now recognizes Delegate Hale speaking for the second time.

DELEGATE HALE: Mr. Chairman, I feel constrained to talk one more time because I look at this as a very historical moment. I can vividly recall the arguments in the 1950 constitutional convention--some of you weren't even born--and I would like to read just one paragraph from their minority report on initiative: "We urge their adoption"--and they're talking about initiative and referendum--"as a re-affirmation of our faith in the American [emphasis by authors] way of life. We are appreciative of the limitless value of experimentation. We recognize fully that our democracy prospers, not [emphasis by authors] on the premise that every individual is highly intelligent, but, rather on the basic assumption that no one person has the super-intelligence to decide for the people themselves what is best for them. We know that the people as a whole are competent to judge the wisdom of their acts as any particular group of people, any spokesmen of the people, or any individual." It was finally put to a vote in their Committee of the Whole and the motion lost; there were 19 ayes, 39 noes and 5 excused. But I would like to point out to you that the 19 ayes went on to become the leaders of this State as the Democratic party took over the legislature in 1954. And of the leaders that voted in 1950, we are very fortunate to have one delegate still here today who voted for initiative and referendum in 1950, Teruo Ihara. We have one other elected official in this State who is still in elected office today and that is Lieutenant Governor Nelson Doi. Now I think we're all aware that Lieutenant Governor Nelson Doi is not part of the clique that rules the Democratic party and rules the State of Hawaii today. But I would warn you to take [seriously] the history of 1950, in a convention that was dominated by Republicans who had been in control for 54 years; and a small group of very valued Democrats who dared to oppose the power at that time went on to become the leaders of that state. And I say that history does repeat itself, and that if you continue to vote down initiative and not give the people this opportunity, we're going to find perhaps that this legislature will not be responsive because they won't be in power and there'll be another group in power.

CHAIRMAN: Thank you, Delegate Hale. I believe that Delegate Chong is going to speak for the last time. Speak--you have the floor, Delegate Chong, as the last speaker.

DELEGATE CHONG: Are you sure?

CHAIRMAN: So be it.

DELEGATE CHONG: Thank you, thank you. Unfortunately we have been debating the issue--first I had 2 hours, I scratched that out and put 2-1/2 hours, scratched that out and put 3 hours. It could have been summed up in less than half that time. However, because of the popularity of the issue, many delegates wanted to be heard; another evidence of popularity is our packed gallery at this time of morning. I want to personally thank each and every delegate for his or her complete attention throughout this debate. I'd also like to congratulate the body for its 100-percent attendance. I hope that record will continue through the few days we have left. Mr. Chairman, you have been a fair referee throughout yesterday and this morning, and I thank you. I wish to call for the question and ask my fellow delegates to vote favorably on this amendment. Thank you.

CHAIRMAN: Thank you, Delegate Chong. The question before the body is--

DELEGATE CABRAL: Mr. Chairman, roll-call vote, please.

CHAIRMAN: Roll-call vote is being asked for. Do I hear 10 seconds? I hear 10 seconds. The proposal--

DELEGATE LIU: Mr. Chairman, will you ask the delegates to use the mike when they vote please?

CHAIRMAN: Yes, the request was for delegates to please use the mike as they call their vote, whether it be aye, nay or kanalua, so that the other delegates will be able to hear what is said. Delegate Chang, you rise on a point of urgency?

DELEGATE CHANG: Mr. Chairman, on this occasion may we request a more moderate tempo on the roll call?

CHAIRMAN: I'm sure the clerk has heard that. Another request is, the clerk makes a counter-request--that is, after you have so stated your vote, please turn the microphone off so that we not--Delegate Alcon.

DELEGATE ALCON: I rise on a point of privilege. May we start at the bottom of the list, please?

CHAIRMAN: Unfortunately, that action would be adverse to the proceedings. The proposal before the body is Amendment No. 9 on indirect initiative. Mr. Clerk, please call the roll.

Roll call being in order, the motion failed to carry by a vote of 47 ayes and 55 noes; with Delegates Alcon, Anae, Barnes, Blake, Blean, Burgess, Cabral, Campbell, Chong, Chu, Chun, Crozier, DiBianco, Dyer, Eastvold, Ellis, Fernandes Salling, Funakoshi, Goodenow, Hale, Hamilton, Hanaike, Harris, Hoe, Hornick, Ikeda, Kimball, Kono, Lacy, Marion Lee, Rachel Lee, Liu, Marumoto, Miller, Odanaka, Ontai, O'Toole, Peterson, Pulham, Shon, Stegmaier, Sterling, Stone, Sutton, Takitani, Uyehara and Wurdeman voting aye; and Delegates Andrews, Barnard, Barr, Chang, Calvin Ching, Donald Ching, Laura Ching, Haunani Ching, Chung, de Costa, De Soto, Fujimoto, Fukunaga, Fushikoshi, Hagino, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hokama, Dennis Ihara, Les Ihara, Teruo Ihara, Ishikawa, Iwamoto, Izu, Kaito, Kojima, Ledward, Lewis, McCall, Nakamura, Nishimoto, Nozaki, Okamura, Paty, Penebacker, Sakima, Sasaki, Shinno, Silva, Souki, Taira, Takahashi, Takehara, Takemoto, Tam, Tamayori, Villaverde, Waihee, Weatherwax, Yamashita, Yoshimura and Chairman Kaapu voting no.

CHAIRMAN: The vote is 47 ayes and 55 noes. The amendment fails. We will now take up Amendment No. 10.

DELEGATE LIU: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Liu.

DELEGATE LIU: It is with very heavy heart that I withdraw my amendment.

CHAIRMAN: The Chair will now invite your attention to Amendment No. 11, offered by Delegate Eastvold.

DELEGATE CROZIER: Point of information.

CHAIRMAN: Delegate Crozier, state your point.

DELEGATE CROZIER: What is the plan of the Chair? What time are we planning to work till tonight?

CHAIRMAN: The Chair, in answer to your question, plans to continue working until it is the pleasure of this body not to continue working, or else the work is complete.

DELEGATE SUTTON: Mr. Chairman.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: I move that we rise and report that we need more time.

CHAIRMAN: Is there a second?

DELEGATE GOODENOW: I second the motion.

CHAIRMAN: All in favor of rising say aye. Opposed, no. The noes have it. Do you wish to have a division?

DELEGATE CROZIER: May we have a division of the house, please?

CHAIRMAN: Okay, all those in favor of rising and reporting, rise please. Okay, you may be seated. Those opposed? You may be seated. There are 35 ayes and 58 noes, the noes have it, and we will continue. Delegate Crozier, you are recognized.

DELEGATE CROZIER: Yes, Mr. Chairman, I was just concerned for the other delegates, not for myself. I'm really enjoying this.

DELEGATE CHONG: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Chong.

DELEGATE CHONG: Thank you. After our long debate, can we take a 5-minute recess, please?

CHAIRMAN: The Chair would prefer not to at this time until we go through these amendments. I think you will see why as we proceed. Let's go for a little while longer, and the Chair will reconsider this matter very shortly. We take now Amendment No. 11, offered by Delegate Eastvold. Delegate Eastvold, you are recognized.

DELEGATE EASTVOLD: Mr Chairman, I move that we adopt Amendment No. 11.

DELEGATE HALE: I second it.

CHAIRMAN: It has been moved and seconded that we approve Amendment No. 11. Discussion? Please proceed, Delegate Eastvold.

DELEGATE EASTVOLD: Mr. Chairman, it is with a very heavy heart that I'd like to speak against my motion to adopt direct initiative. After listening to all the heavy arguments in favor of initiative, as compared to those against initiative, I have to say that the arguments against initiative have been very well brought out and I'd like to point out a few of these arguments. The first one is our representative form of government; it's doing such a fine job and it's for that reason that one of these delegates persuaded me to believe that there is no great need for a government that is responsive to the people. It was pointed out in our committee report that there is no corruption, that there really truly is no need to be honest with you on this campaign spending because our representatives are truly representing the people and not special interests.

Another argument that I listened to was that the public is truly stupid. After pondering a while and looking at the decision--they voted in ideas that are true. The very individual that they voted--that we should--at this Convention, I guess may be true. And when we look at the legislature that we have, I again say that is true. But I listened to the arguments on Proposition 13 and I think this has nothing to do with theirs, because their internal government affairs are completely different from ours. And even though only one proposition was really put on their ballot--and that was the constitutional initiative and had nothing really to do with this whole discussion on indirect initiative--I have to say I was so very well swayed by that argument that I now have to vote against direct initiative. The logic is there--I'm not sure where it is, but I think I can find it.

Another argument is that the voters are just too emotional. For God's sake, I can't understand why they are. I don't think--by the very fact that they are emotional, I don't think we should allow them to have the right to vote, as well as--and also, by sharing that very philosophy, I think it's about time we change our whole legislative structure and maybe set up a dictator. If there's no point in allowing them to vote on something, that they need so much knowledge to vote on their various elected officials, the very argument that they're too emotional and unknowledgeable--we must do away with this very thing. But of course that's in a different proposal and I intend to bring that up at a later date.

All these arguments that were presented against indirect initiative I've been highly swayed by, and it's for these reasons that I must now vote against my proposal for direct

initiative. And I think it's about time that we lay the cards right on the table for the people, to let them know where they do stand--that they are stupid, we do not have a responsive government, we have no intention of giving them a responsive government, and that the sooner they know that the better. And I hope the citizenry here realizes that that is the situation. And I'm very much in favor of that situation because I have also been swayed by--across the street; I have my little string that I'm attached to, and this \$2.5-million puppet show I really want to be a part of.

CHAIRMAN: Thank you, Delegate Eastvold. Delegate Goodenow.

DELEGATE GOODENOW: Point of personal privilege.

CHAIRMAN: Please state your point.

DELEGATE GOODENOW: I am uncomfortable. Personally I could stay here until 2:00 tomorrow afternoon if it would do any good; but I look at these as very important documents that we're going to be making decisions on, and I don't think that this group of delegates is in any condition--they're uncomfortable--to have to really think them out. And I think they've been presented by this committee and deserve proper thinking.

CHAIRMAN: Thank you, Delegate Goodenow. The Chair recognizes Delegate Anae on a point of personal privilege.

DELEGATE ANAE: Thank you. I rise to a point of personal privilege to say this: a loss is a loss. I hate like hell to see anybody make any excuses about it. If we're going to stand here and cry about our losses, then we're poor losers. I think part of the democratic process is that we take our licks too and don't cry about it. I urge the delegation that's trying to keep us any later than we should to reconsider.

CHAIRMAN: Thank you, Delegate Anae. Delegate De Soto, you're recognized.

DELEGATE DE SOTO: Mr. Chairman, I also rise to a point of privilege. I don't remember anyone who spoke against the initiative amendment saying that the public was stupid. I think that some people have a tacky way of putting words into somebody else's mouth. I feel that--you know, so many times we've stood here and we get slapped. You all heard my story about my grandson who couldn't have both Evel Knievel and the motor-cycle, because I didn't have enough money at that time. All I want to say is that if you're speaking for yourself, speak for yourself, don't speak for me, because I have never called the public stupid--or that I didn't want to give them anything.

CHAIRMAN: Thank you, Delegate De Soto. Is there any other delegate who wishes to speak--

DELEGATE DiBIANCO: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate DiBianco and then Delegate Sterling.

DELEGATE DiBIANCO: I was probably the first person to put a direct and an indirect initiative proposal into this Convention and, as one who campaigned almost exclusively on the matter of initiative, of course came to the Convention with the feeling that initiative, preferably in the direct form, was the most suitable procedure to present to the public on the November ballot. However, after careful consideration and listening to Delegate Eastvold, I too want to join in speaking against this particular amendment.

I think that the vote previous to this one does indicate that many of the delegates do have serious doubts about the intelligence of the people of the State. More importantly though, I am concerned about the expense of initiative. By my calculations here, rapidly figuring it out, it must cost upwards of \$8.00 to \$10.00 to xerox a petition, distribute it among the people of the State--that's at least two dinners, and I hate to see people deprived of that--but most important, I've come to a realization after my time here this summer at the Con Con, which I certainly don't feel by any stretch of the imagination was useless, that the State of Hawaii is perfect. So I therefore will vote against this amendment and will vote to keep Hawaii perfect.

CHAIRMAN: Thank you, Delegate DiBianco.

DELEGATE BURGESS: Point of order.

CHAIRMAN: Delegate Burgess, will you state your point.

DELEGATE BURGESS: Mr. Chairman, I don't believe there's any motion on the floor at this point. I believe Delegate Eastvold indicated he was speaking against this motion, so I think that's tantamount to a withdrawal. Am I mistaken?

CHAIRMAN: The Chair rules that Delegate Eastvold, prior to speaking against his amendment, did make a motion for its approval. That is correct, is it not? The Chair recognizes Delegate Sterling.

DELEGATE STERLING: I rise to speak against the proposal. I think it would be better perhaps--I'm quoting from the Reader's Digest report, that it was felt by Senator Abourezk, the man who tried to introduce the initiative proposal in federal legislation--that it "would help restore the kind of government that the framers of that document"--the Constitution--"actually had in mind--a government that owes nothing to political bosses, pressure groups or campaign contributors, guided only by the will of the people." But I think from what has been said here--I agree that it's better to leave it in the hands of the "political bosses, [the] pressure groups" and "campaign contributors."

CHAIRMAN: Thank you, Delegate Sterling.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Hale.

DELEGATE HALE: I speak for the amendment. I came to this Convention prepared to introduce a direct initiative proposal, but I waited because we were told by the Convention President that we would be told by the Legislative Reference Bureau when other proposals were coming up, and I thought I didn't want to waste paper and I didn't want to waste the time of the Legislative Reference Bureau to duplicate proposals. And when I saw proposals come in, I felt that I didn't have to do any, except that some of them seemed a little bit wordy, and so I took one and had the Legislative Reference Bureau rewrite it in what I thought was a more reasonable and logical fashion. That one has been filed.

However, I still am for initiative, I shall go back to my people and say that I fought to the last ditch. I'm not crying about losing--I really thought we would lose--but I do want the opportunity to vote on direct initiative, indirect initiative, initiative for constitutional amendments and referendum and recall. I think probably enough has been said and there's certainly no point in a roll-call vote, but I do want the opportunity to tell my people that I fought just as hard as I could to the last ditch for giving them the opportunity to propose legislation and to propose constitutional amendments.

CHAIRMAN: Is the body ready for a vote on this, or are we going to have a few more speeches? The question before the body, if I can restate it, is the direct initiative proposed--the question was raised here, what do we have before us and let me say what we have before us. We have the direct initiative amendment, No. 11, proposed originally by Delegate Eastvold. Delegate Silva, do you wish to be recognized?

DELEGATE SILVA: I yield.

DELEGATE DiBIANCO: Well, if the question was being called for, I was rising to ask for a roll-call vote.

CHAIRMAN: Are there 10 seconds? The Chair counts 10. Mr. Clerk, will you please be prepared for a roll-call vote on Amendment No. 11. That is the direct initiative proposal offered by Delegate Eastvold. Mr. Clerk, please call the roll.

Roll call being in order, the motion failed to carry by a vote of 29 ayes, 69 noes and 4 excused; with Delegates Barnes, Blean, Burgess, Cabral, Campbell, Chong, Chu, Chun, DiBianco, Eastvold, Fernandes Salling, Goodenow, Hale, Hanaike, Harris, Kimball, Lacy, Liu, Marumoto, Miller, Ontai, O'Toole, Peterson, Pulham, Shon, Stegmaier, Sterling, Sutton and Wurdeman voting aye; Delegates Alcon, Anae, Andrews, Barnard, Barr, Chang, Calvin Ching, Donald Ching, Laura Ching, Haunani Ching, Chung, Crozier, de Costa, De Soto,

Dyer, Fujimoto, Fukunaga, Funakoshi, Fushikoshi, Hagino, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hoe, Hokama, Hornick, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaito, Kojima, Kono, Ledward, Marion Lee, Lewis, McCall, Nakamura, Nishimoto, Nozaki, Odanaka, Okamura, Paty, Penebacker, Sakima, Sasaki, Shinno, Silva, Souki, Stone, Taira, Takahashi, Takehara, Takemoto, Takitani, Tam, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax, Yamashita, Yoshimura and Chairman Kaapu voting no; and Delegates Blake, Ellis, Hamilton and Rachel Lee being excused.

CHAIRMAN: The amendment is defeated. We take now Amendment No. 12 relating to initiative with respect to constitutional amendments, offered by Delegate Eastvold. The Chair recognizes Delegate Eastvold.

DELEGATE EASTVOLD: Mr. Chairman, I'll defer mine until after Delegate Hale's. I'll withdraw mine.

CHAIRMAN: The author of the amendment asks that it be deleted, or withdrawn.

DELEGATE HALE: He asked that it be deferred.

CHAIRMAN: Delegate Hale, you're rising to a point of information. In effect what he has done by withdrawing is making your proposal come up next, which is what I believe he intended. Is that so, Delegate Eastvold?

DELEGATE EASTVOLD: It is true.

CHAIRMAN: We're now with Amendment No. 13 and the Chair recognizes Delegate Hale.

DELEGATE HALE: I move for the adoption of Amendment No. 13.

CHAIRMAN: Is there a second?

DELEGATE CHONG: I second it.

CHAIRMAN: It has been moved and seconded that Amendment No. 13 be approved. Discussion?

DELEGATE HALE: Yes, I'll speak very briefly to it. This is direct initiative for constitutional amendments, and the reason I'm putting this in is that I personally have been very disappointed at some of the actions of this committee, and I would like to see the people have the power to propose amendments to our Constitution. It could be that if we gave the people this power, we could save the maybe \$5 million it may cost 10 years from now--with inflation and all--to hold another constitutional convention that still will not solve basic problems in the State. I urge your consideration of this amendment.

CHAIRMAN: Is there further discussion on this amendment? If not, the question before the body is the approval of Amendment No. 13. All in favor raise your hand--

DELEGATE GOODENOW: Was there a second?

CHAIRMAN: Yes. All in favor please raise your hands. Opposed? The amendment is defeated. We take now Amendment No. 14.

DELEGATE HALE: Mr. Chairman, a matter of inquiry. Would it be possible, for the record, so that I could tell my people, what was the vote?

CHAIRMAN: Certainly. Mr. Clerk, do you have the number on that last one?

CLERK: No, Mr. Chairman, the tally on--

DELEGATE HALE: May I ask for a division of the house, because I certainly would like a count.

CHAIRMAN: Okay. In order to settle this, all those in favor of Delegate Hale's

amendment please rise. Those opposed, by the same sign. You may be seated. The vote is 25 ayes, 65 noes, and the amendment is still defeated. We have now before us Amendment No. 14, which is on referendum, offered by Delegate Barnes. Delegate Barnes is recognized.

DELEGATE BARNES: I move for the adoption of Amendment No. 14.

DELEGATE DYER: I second the motion.

CHAIRMAN: It has been moved and seconded that Amendment No. 14 be approved. Delegate Barnes, you have the floor.

DELEGATE BARNES: Okay, I'll try and limit this to about 30 seconds. You've all seen Minority Report No. 15, stating that 34 states offer some form of referendum, 22 of those having a petition referendum. This is a petition referendum. And those states that have it have yet to repeal it. Its values include that it will allow the people to learn about the issues by publicizing them--an invaluable voter education tool.

An example that we set up here as a Hawaii example of referendum being used on the Big Island, for fluoridation, is at the bottom of page 2. I hope you've all had a chance to look at that. We believe that the Hawaii experience shows that: referendum can be effectively utilized to resolve issues that are highly controversial; voters do want an opportunity to actively participate in decision-making; and grass-root campaigns are effective and groups with the most money will not always win. The polls show that the people want this as much as they want initiative in the State of Hawaii, and they would like the chance to choose. So again, I urge your support for this referendum measure. It has an 8-percentage signature requirement, requirements can be lowered in initiative, and the usual--the other technical details I'll skip.

CHAIRMAN: Thank you, Delegate Barnes. Delegate Hale is recognized.

DELEGATE HALE: Mr. Chairman, I would like to speak briefly for referendum. I was very active in this campaign on our Island, and I saw real grass-root participation when our county council passed an ordinance to fluoridate all our water supply. People who had never, never actively participated in anybody's political campaign did participate, to the extent that we were able to get 30 percent of the voters to sign the petition when we only needed 15 percent. And when the vote came out, it was 4 to 1 to repeal the ordinance that the people--the county council had passed. And I'd like to point out the one thing that's important in referendum: at the next general election, all but one of those county councilmen were defeated--but that's not the point. If we had not had referendum, we would still have fluoridation on the books; so the argument that you can get rid of your legislators, or your representatives, if they do not do what the people want--you can kick them out next time--you can still be left with the marks of legislation that made them unpopular and that made the people kick them out. And all I'm asking is that in case--and I'm not saying that it would ever necessarily be used--but in case our legislature should pass a law that would be so unpopular the people could gather a petition--signatures--could put it on the ballot at the next election, and could override that law, that you give them this opportunity. This is not the same as initiative, and it is not saying anything bad about the representative form of government; but it does give the power to the people to have the laws that they want when they feel that their rights or their privileges or their ideas have been violated. And I do urge that you support this.

CHAIRMAN: Thank you, Delegate Hale. The Chair recognizes Delegate Hornick.

DELEGATE HORNICK: Mr. Chairman, I would like to see this issue discussed on its merits and because of the lateness of the hour, I would move that we rise and report to the President that we need more time to discuss this proposal.

CHAIRMAN: Is there a second?

DELEGATE VILLAVERDE: Mr. Chairman.

CHAIRMAN: Delegate Villaverde is recognized.

DELEGATE VILLAVERDE: I rise to a point of personal privilege.

CHAIRMAN: Yes, state your point.

DELEGATE VILLAVERDE: I think the delegate from the Big Island mentioned a particular situation regarding records and it makes me feel that I voted for the--

DELEGATE HALE: Mr. Chairman, personal privilege.

CHAIRMAN: Delegate Hale, the Chair will rule on this. The personal privilege has not been fully stated. I'll listen to it and determine. Proceed, Delegate Villaverde.

DELEGATE VILLAVERDE: Okay, I voted in that particular action and I don't believe that the voters knocked them off because of the issue of--I can't remember what she said now--fluoridation.

CHAIRMAN: Okay, the delegate felt offended or somehow aggrieved. There was a motion to rise and report to the President that we need more time. Was it seconded?

DELEGATE WURDEMAN: I second it.

CHAIRMAN: All those in favor of rising say aye. Opposed?

DELEGATE O'TOOLE: Mr. Chairman, point of personal privilege.

CHAIRMAN: Delegate O'Toole, the Chair will, before you state that, state that the noes have it--unless you wish to have a division of the house, which I'll be happy to call for. Okay, proceed, Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, referendum is one of the most important issues that faces this Convention. Yet it's 2:30 in the morning--one of the biggest campaign issues in the whole campaign is referendum, yet look what time it is and look how much discussion it's going to get.

CHAIRMAN: What is your point, Delegate O'Toole?

DELEGATE O'TOOLE: I would like to go along with Delegate Hornick's motion which has already been--I just wanted to express my total disbelief and I think I'm going to take a little statement from our delegate from Maui, that this has got to be the blackest day in Hawaii's history.

CHAIRMAN: Thank you, Delegate O'Toole. Before we get out of hand--can we have some decorum here so that the delegates' speeches will not be disturbed. The Chair was recognizing Delegate De Soto and then--

DELEGATE PENEBACKER: Mr. Chairman, personal privilege--I believe that's what you would call it.

CHAIRMAN: State your personal privilege.

DELEGATE PENEBACKER: I've been kind of PO'd back here. We've made reference to blacks all through this whole Convention. Now this derogatory remark about "blackest day." What's wrong with it being the whitest day in Hawaii?

CHAIRMAN: Your point is well noted.

DELEGATE CABRAL: I rise to a point of personal privilege, Mr. Chairman. I would prefer it to be known as a brown day.

CHAIRMAN: Your point is also registered, Delegate Cabral. Delegate Campbell, will you state whatever it is that you want to state?

DELEGATE CAMPBELL: Yes, Mr. Chairman. Irrespective of what color you designate it, I'm not very competent at this moment and I doubt very much whether anyone else is here. And if the delegate at large is going to force us to sit here, we'll sit here half asleep, non compos mentis, without contributing anything whatsoever to a significant issue. And I do think that's unfair. If we wanted to, and we didn't care, we could just walk out of here.

CHAIRMAN: Delegate Campbell, the Chair notes your personal privilege, your point, and would like to advise that the Chair proceeds at the will of this body, and if the majority of the delegates wish to continue their work, the Chair will so proceed.

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: State your point, Delegate Hale.

DELEGATE HALE: I would like to rise on a point of personal privilege, and I would like you to please direct this question to the majority leader because I'm very tired.

CHAIRMAN: Wait, Delegate Hale. Are you rising to--

DELEGATE HALE: I'm on personal privilege. I'm very, very tired--

CHAIRMAN: Wait, Delegate Hale--

DELEGATE HALE: --and in view of my age, Mr. Chairman--

CHAIRMAN: Delegate Hale, the Chair will rule what you're doing is out of order, since the Chair wished to determine whether you rise to a point of personal privilege or a point of information. Would you state which point you rise to?

DELEGATE HALE: I'm rising to a point of personal privilege.

CHAIRMAN: State your point.

DELEGATE HALE: I'm very, very tired, and now I'm rising to a point of information.

CHAIRMAN: The Chair recognized you on a point of personal privilege. The Chair now recognizes Delegate Silva because he was standing. You can't get two in a row like that.

DELEGATE SILVA: Thank you very much, Mr. Chairman. I was just waiting for the question for the majority, to find out what she wanted to find out.

CHAIRMAN: Delegate Hale, you're back in order. You want to raise another point?

DELEGATE HALE: Thank you. I'd like to ask for a point of information.

CHAIRMAN: State your point.

DELEGATE HALE: I would like for you to please, Mr. Chairman, to please beg the majority leader that we not take this issue and debate it for another 3 hours, that he allow us to go home and get some sleep so that we can debate it with intelligence and we can vote with our conscience and not because the puppet strings have been pulled. Please, Mr. Chairman, there is no cutting-off stage-- Will you please inform the majority leader that in the Committee of the Whole there is no calling the previous question, which means that we could be here for the rest of the night, which is ridiculous. And I think if we go home and get some sleep--

CHAIRMAN: Delegate Hale, you are now debating--

DELEGATE HALE: --so I'm asking you to please beg him to make the motion.

CHAIRMAN: The Chair will not yield to your request to beg anybody since the Chair earlier determined on whether we should rise and report, and the majority decided they were going to stay. So the Chair asks you delegates not to belabor this point on points of personal privileges, that which the body has already determined. Any delegate who rises to a point of personal privilege to question why we are staying here--I call your attention and invite it to the fact that we just voted on that matter. Now, if there is no further discussion on the proposed amendment before us, then we vote. If there is further discussion, we will proceed. Delegate Chong.

DELEGATE CHONG: Thank you, Mr. Chairman. I don't need to ask the majority leader, I just wanted to say good morning.

DELEGATE VILLAVERDE: Mr. Chairman.

CHAIRMAN: Delegate Villaverde is recognized.

DELEGATE VILLAVERDE: I rise to another point of personal privilege.

CHAIRMAN: Please state your point.

DELEGATE VILLAVERDE: I'm not a puppet.

CHAIRMAN: Your point is noted.

DELEGATE OKAMURA: Mr. Chairman.

CHAIRMAN: Delegate Okamura is recognized.

DELEGATE OKAMURA: I rise to speak against the amendment. The reason why I oppose this amendment is because of the possible abuse as in the case of initiative, abuse by special interest groups and cost factors. A good example is the legalized casino-gambling in Atlantic City, which was passed through the referendum process; and the owners of the casinos there spent \$1.3 million in 1976, and the issue passed. And they are attempting to do the same thing this year again in Miami, and it is expected to pass in Miami also. And for these reasons I oppose it.

CHAIRMAN: Thank you, Delegate Okamura. Is there further discussion on this issue?

DELEGATE DE SOTO: Mr. Chairman.

CHAIRMAN: Delegate De Soto is recognized.

DELEGATE DE SOTO: I rise to a point of inquiry.

CHAIRMAN: Certainly, state your point.

DELEGATE DE SOTO: On the third page of this amendment, the fourth paragraph, it says: "The petitioners shall bear all cost of the preparation and circulation of the petition . . ." Am I correct in assuming that if I wanted to initiate a petition that I would have to bear all the costs?

CHAIRMAN: The Chair will pose that question to the movant and perhaps he can provide that.

DELEGATE BARNES: That is correct. That's just the standard language for the referendum arrangements in California and Oregon.

DELEGATE DE SOTO: Mahalo. I will then rise, Mr. Chairman, to speak against this amendment. Another classic example of how the poor may not be able to participate--they couldn't get any money to start a petition. They don't have money. And any time when we--inadvertently I'm sure, and not on purpose in this case--overlook the poor people, then I feel a need to stand and talk about it. For that reason, I speak against this amendment.

CHAIRMAN: Is there further discussion?

DELEGATE HIRATA: Mr. Chairman.

CHAIRMAN: Yes, Delegate Hirata.

DELEGATE HIRATA: I rise to speak against this amendment. I know I will be accused by some of being anti-citizen participation because I oppose this amendment. However, I would like the record to clearly indicate that I strongly believe in citizen participation, but I feel that this is not the proper or most effective mechanism for that participation.

I have strong feelings against the concept of referendum, which relate directly to

citizen participation. The most important consideration in my study of the concept of referendum is people, the voter on the street. Look at the number of people who turned out to elect those of us sitting here. Only 40 percent--less than half--of the eligible voters bothered to vote. Voter registration records will show you that only a small number of those eligible to vote are actually on the voter rolls.

The proponents of this amendment will say that voter apathy will be diminished if the people could voice their concerns through the ballot box. I strongly disagree; the experience of other states has shown that referendum items are less likely to be voted on, even when they are on the same ballot as hotly contested races in regular elections. Perhaps some of this is due to the technical language which sometimes must be used in legislation. Even the most educated person, confronted with legislation without the constraints of time, may have some difficulty with proposed legislation dealing with the complex issues of today. This complexity is likely to be exacerbated in special interest areas, where only the technical experts truly comprehend the ramifications of a particular law. I think that we would be perpetrating a public "hoax" in the name of citizen participation if we made allowances for this kind of situation to arise.

It has been shown that cost is a concern for both the proponents and opponents of referendum. We should remember that laws which would be beneficial or advantageous to any group, particularly financially, will probably generate more vested interest. Consequently, the likelihood of high spending is greater.

Hawaii can be proud to have some of the best social legislation in the country. We have a progressive prepaid health care law that is a model many states have copied; we take care of the poor, aged and disabled through a fair welfare system; we were first to ratify the Equal Rights Amendment to the U.S. Constitution, and we gave people the right to choose safe and legal abortions. I fear that special interests, which are often more conservative than the legislature, may be inclined to "take their case" to the public. This route might prove to be an easier avenue for obtaining their goals than through normal legislative channels. Because the legislature has access to technical expertise, it would be more likely to assess the impact of passing a particular law on the overall welfare of the people of Hawaii. At the same time, special interest group advocates tend to place their special interests above the broader perspective or common good of the community.

A referendum provision would also make it easy for a legislature not to make the hard decisions. I think most of you will agree that a great deal of our work here could have been handled by the legislature. But because there was going to be a Con Con in 1978, many legislators found it easier to say, especially in an election year, "Go do it in the Constitution." Additionally, by providing this escape mechanism for the legislature, the public's ability to hold both the legislature and the governor accountable will be diluted. It diffuses the ability of the legislature and the governor to lead, to plan, to coordinate and to direct our future, because their decision-making capacity may be delayed or diminished by referendum.

Finally, our present legislative system is not inaccessible. I believe that most legislators are highly accessible, responsive, and represent the needs of their constituents. Through the legislative process each particular interest must compete with the interests of others, and amidst the discussion and debate the compelling interests of the total needs of all the people of the State can be balanced; the needs of rural areas and urban areas, the need to maintain a healthy economy and to care for the needy and aged, and the need to protect our future and to address the concerns of the day can each be more carefully balanced and weighed on its merits. The referendum system will simply allow people to focus their grievances in the ballot box, and the results may be weighted according to voter population rather than relative need.

I do not believe that we would be giving people a more cost-effective system of representative government by adopting a referendum system. I personally believe that the same amount of effort that would be spent on a petition drive could be spent lobbying at the legislature or helping to elect better public officials. By simple virtue of that interaction, the public will probably improve the quality of legislation and the legislature. The bottom line on this matter is good people, good candidates and a knowledgeable public, not the system. I hope some of you newcomers to the political arena will be elected in November; the system might be better off simply because you would be there. I urge all my fellow colleagues to vote against this amendment.

CHAIRMAN: Thank you, Delegate Hirata. The Chair recognizes Delegates Sterling, DiBianco, Crozier and Villaverde in that order.

DELEGATE STERLING: There being no further debate, let's call for the vote. It's going to be shot down anyway. We're going through a farce and a sham.

DELEGATE VILLAVERDE: Mr. Chairman--

CHAIRMAN: Wait, wait, let's not get carried away here. Everyone is entitled to say what they wish. We'll follow the rules. Delegate Sterling, I appreciate what you say. Who was next? Delegate DiBianco, state your discussion, or whatever.

DELEGATE DiBIANCO: I rise to speak in favor of the amendment. I don't want to lend too much dignity to what we're doing right now. I do want the record to reflect that at least 20 or 30 people have gotten up and left and that those who remain are--some of them sleeping, some of them reading, and doing various things. I don't think this is what the public bargained for when they elected us. Be that as it may, while I'm on my feet discussing this, I do want to clarify one thing, because it's a theme that I hear over and over and over again, which is that referendum and its fellow, initiative, are somehow going to be so detrimental or damaging to the poor. I seriously doubt if there are very many people in this room who grew up poorer than me, and I know that as I was growing up I felt more threatened by legislators, by politicians, by the big money interests than I ever did by petition campaigns. As a matter of fact, I looked and have always looked upon petition campaigns as one of the few ways that the poor could ever have a voice in things. You shouldn't confuse my status now as an attorney--and frankly a fairly well-to-do one--with the fact that I did grow up rather poor; and in those days, I did have an understanding of what the legislative process was like, and as far as I was concerned, the legislative process was for somebody else. It wasn't for me because I didn't have any money, I didn't have any influence and the people that I knew and the people that I lived among didn't have any money and therefore didn't have any influence.

Referendum is not a tool of special interest groups and when I hear it described as such it amazes me because this almost completely ignores the fact that initiative and referendum must go to the entire populace for its final decision, so it cannot possibly be a tool of the special interest groups, as much as our legislature, on the other hand, most obviously is. Our legislature has always been--whether it was Republicans or Democrats--one faction or another always has been very susceptible to the influences of various special interest groups. That's something that could never be said of the public, and therefore I urge you to vote in favor of the amendment.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Crozier is next and afterwards Delegate Villaverde.

DELEGATE CROZIER: Yes, Mr. Chairman, I'd like to make an amendment. I'd like to delete in the second paragraph--I'd like to delete the word "ninety" and put in "120" in its place, sir.

DELEGATE HALE: I second the motion.

CHAIRMAN: Okay, the amendment which has been moved and seconded, is that in the second paragraph on the first page, the second line, the word "ninety" shall be stricken and in its place "120"--is that right?

DELEGATE CROZIER: Yes, sir.

CHAIRMAN: Okay, you may speak now in favor of your amendment to the amendment.

DELEGATE CROZIER: Yes, Mr. Chairman. I would like to have 120 days in there because, by my calculations, that would make it the beginning of July instead of the beginning of August, and this would be before a lot of the candidates who would be running for reelection or election--before they officially sign up to run. This way with these items on there, the people would be paying attention for at least that first month--the people would be paying attention to that referendum, because once the campaigning goes on heavy for the legislators or candidates, they sometimes lose the intent of the referendum, or whatever issues in front of them. So for that reason, Mr. Chairman, I would like to speak for this amendment.

CHAIRMAN: Okay, the amendment is to have 120 days. If there is no discussion on that--if not, all those in favor, will you please raise your hand. Those opposed? Mr. Clerk, could you give me the count on that. There were 23 ayes and 41 noes. The amendment to the amendment fails and we're back on the amendment again.

DELEGATE VILLAVERDE: Mr. Chairman.

CHAIRMAN: Delegate Villaverde is recognized.

DELEGATE VILLAVERDE: I have three pages over here that I would like to do in less than 30 seconds. For the record, I'm obligated to 32 people over here. We have a good State and we have a responsive--I speak against the amendment--we have a responsive representative political system and referendum may appear to some as an easy answer to their concerns. It is not. What is needed is commitment, involvement and education of both the public and elected officials. The answer for social change advocates lies in voter education and participation, providing CC&R--that is, continuity, coordination and responsibility. Thank you, for the record.

CHAIRMAN: Thank you, Delegate Villaverde. Is there any further discussion? Delegate Blean, followed by Delegate Souki.

DELEGATE BLEAN: Yes, I am not naive enough to think that at this hour of the morning reason and rational arguments and passionate pleas are going to have any effect, and in fact I don't think that they would have any effect at any time during the summer. It's distressing to see so many people coming here with closed minds and leaving with locked minds. However, for the record, I would like to speak in favor of referendum, and I submit to you and the public and everybody else in this country that the way to preserve democracy is not to provide people with less of it.

CHAIRMAN: Thank you, Delegate Blean. The Chair recognizes Delegate Souki.

DELEGATE CHANG: Point of privilege, Mr. Chairman.

CHAIRMAN: State your point, Delegate Chang.

DELEGATE CHANG: Privilege. I know of your desire to preserve decorum in the body, Mr. Chairman, and for that reason I wish to point out that in Robert's Rules of Order Newly Revised, on page 331, General Robert admonishes against speaking adversely of any prior action taken by the body and not pending before the body.

CHAIRMAN: Thank you, Delegate Chang. Your point is well taken.

DELEGATE BLEAN: Mr. Chairman, point of inquiry. I think the prior action of the body speaks for itself.

CHAIRMAN: I think you've made your point. Delegate Souki, please proceed.

DELEGATE SOUKI: Thanks, Mr. Chairman. I wish to speak against the referendum, and I would want this to be for the record. I would wish to inform all the delegates here that we do have a good system of representation of the people, especially the poor people of this State, through the four community action agencies that we have that provide for petition to the state legislators and to the state legal aid. This provides the mechanisms for the poor, and I wish this to be also for the record--that to date they have been extremely effective.

CHAIRMAN: Thank you, Delegate Souki. The Chair recognizes Delegate Lacy.

DELEGATE LACY: I have a question, Mr. Chairman. If you would direct--I believe it would be two or three speakers ago--if Delegate Hirata may answer this. In his comments he was speaking of the referendum as one of the items that would permit the legislature to put off to the people some of their responsibility. I see nothing in this that indicates they have any right to submit anything to the people unless the people ask them for it.

CHAIRMAN: Delegate Hirata, would you care to respond to that question? No,

I guess, Delegate Lacy, the language here--perhaps the movant could answer the question. Delegate Barnes, will you--

DELEGATE BARNES: I don't know. I think everybody knows that this petition referendum--and that means it can only, you know--

CHAIRMAN: Delegate Lacy, would you like to proceed then?

DELEGATE LACY: My only comment is the information given out previously is in error then. Thank you.

CHAIRMAN: Thank you, Delegate Lacy. Delegate Dyer is recognized first, then Delegate Hale.

DELEGATE DYER: Mr. Chairman, I would like to speak for the amendment. The voters who answered my questionnaire were very favorable to referendum--I believe it was 73 percent. And I would like to have the record show that I am for referendum and I am going to be voting for referendum.

CHAIRMAN: Thank you, Delegate Dyer. The Chair recognizes Delegate Hale.

DELEGATE HALE: Yes, Mr. Chairman. I think I spoke once, and I'd like to speak one more time.

CHAIRMAN: Certainly, proceed.

DELEGATE HALE: The referendum that was referred to by Delegate Hirata is not the referendum in this amendment, and I don't think that we should try to confuse the delegates or the people. We're talking about petition referendum, where the legislature passes a law and the people get up a petition to put that law on the ballot, if the legislature does not see fit to rescind the law. And, you know, that's an entirely different thing. No ballot in any state is ever cluttered up with a petition referendum. Now, some states have direct referendum in which case the legislature can pass on the obligation to the voters. We are not proposing that. I don't think there's been any amendment or any proposal in this Constitutional Convention that proposes direct referendum by the legislature. What we're proposing is that if the people don't like a law they have some recourse, and I'm just utterly amazed--I just don't see how referendum of all things can be voted down by this Constitutional Convention when referendum is the name of the game for us. Everything we do is going to be subject to referendum by the people, and if in that process we don't give them any opportunity to review legislation passed by the legislature, I'm afraid that this State is due for a revolution, peaceful or not.

CHAIRMAN: Thank you, Delegate Hale. Is there further discussion? If not, the Chair recognizes Delegate Barnes to speak last if he cares to.

DELEGATE BARNES: Yes, thank you. Just a couple of brief comments and I have one more indulgence, and then we'll be through with this. As to the comment about the Atlantic City gambling situation, again a petition referendum has to initiate originally from the legislature, so whether gambling came to Atlantic City or not was originally--if you are talking about a referendum--would have been a decision by the legislature. So whether they had petition referendum or not would have made no difference whatsoever. It would have been merely the people having the ability to approve or not approve, gambling having already arrived.

I see that any comments as to the poor people would be a little late because the questioning delegate from Waianae is no longer here, I believe--is she still here? Okay, that was that it's just the cost of the paper and pencils to go around and petition, that's what you pay for. As soon as you qualify, though, the attorney general's office covers everything else from there on, so the cost is just a few dollars.

Finally, several states on the mainland have found that referendum is so effective--the petition referendum is so effective by its mere existence that the legislature actually reaches a point where on certain critical taxation issues they'll automatically submit it to the people even though they're not required to, because--just by the existence of initiative and the petition referendum. So for those reasons I encourage you to vote for this, and I ask for one more indulgence and that would be a roll-call vote for those of us who are left.

CHAIRMAN: Are there 10 seconds? There are 10 seconds.

DELEGATE TAM: Mr. Chairman.

CHAIRMAN: Delegate Tam, you are recognized.

DELEGATE TAM: I rise to a point of inquiry, or a point of information.

CHAIRMAN: Yes, state your point.

DELEGATE TAM: To the movant--does this proposal apply only to laws which pass a current legislature, or can this particular vehicle be used to approve, amend or repeal any law at any time?

CHAIRMAN: Delegate Barnes, would you care to respond to that?

DELEGATE BARNES: I'll pass on that.

CHAIRMAN: So, we have a roll-call vote now called for.

DELEGATE DE SOTO: Mr. Chairman, I rise to a point of inquiry.

CHAIRMAN: State your point.

DELEGATE DE SOTO: Whatever petition goes out to the people, would it all have to be in several languages so that minority groups are aware and can read it?

CHAIRMAN: The Chair will ask the movant to respond.

DELEGATE DYER: Mr. Chairman, I'd like to answer that if I may.

CHAIRMAN: Certainly, please answer if you will.

DELEGATE DYER: The Voting Rights Act Amendment of 1975 requires that all the proposals that come out of the Constitutional Convention be printed in languages that are, I believe, 5 percent of the population--anyway, it has to be printed in Japanese, Chinese and Ilocano [Filipino]. I'm not too sure about the Japanese on Maui, but I'm pretty sure it's Japanese, Chinese and Ilocano.

CHAIRMAN: Thank you, Delegate Dyer. The question, as I understand it, was--would the languages apply in the same manner as they apply to the ballots and everything else, and your answer I take to have been yes. Are you satisfied with that, Delegate De Soto?

DELEGATE HALE: Mr. Chairman.

CHAIRMAN: Yes, Delegate Hale.

DELEGATE HALE: May I answer the question that was asked by Delegate Tam? I think we can answer it by reading the referendum. It says here--

CHAIRMAN: If that's the case, Delegate Hale, if it requires the reading of the referendum--

DELEGATE HALE: No, just the second sentence. It says here "...for the approval, amendment or repeal of any law, section or part thereof; except for measures deemed necessary for the immediate preservation of the public place, health or safety, and for tax levies, bonds and other forms of revenue measures for the usual and current expenses of the State."

CHAIRMAN: Thank you, Delegate Hale. Roll call please, Mr. Clerk.

Roll call being in order, the motion failed to carry by a vote of 25 ayes, 56 noes and 21 excused; with Delegates Barnes, Barr, Blake, Blean, Burgess, Chu, De Soto, Dyer, Eastvold, Fernandes Salling, Hale, Hanaike, Hoe, Hornick, Kimball, Kono, Lacy,

Ontai, Peterson, Pulham, Stegmaier, Sterling, Sutton, Takitani and Wurdeman voting aye; Delegates Anae, Andrews, Barnard, Chang, Calvin Ching, Donald Ching, Laura Ching, Haunani Ching, Chung, Crozier, de Costa, Fujimoto, Fukunaga, Fushikoshi, Hagino, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hokama, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kojima, Ledward, Marion Lee, Lewis, McCall, Nakamura, Nishimoto, Nozaki, Okamura, Paty, Sakima, Sasaki, Shinno, Silva, Souki, Taira, Takahashi, Takehara, Takemoto, Tam, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax, Yamashita, Yoshimura and Chairman Kaapu voting no; and Delegates Alcon, Cabral, Campbell, Chong, Chun, DiBianco, Ellis, Funakoshi, Goodenow, Hamilton, Harris, Kaito, Rachel Lee, Liu, Marumoto, Miller, Odanaka, O'Toole, Penebacker, Shon and Stone being excused.

CHAIRMAN: The amendment has been defeated. Okay, Amendment No. 15. Delegate Barnes.

DELEGATE BARNES: Mr. Chairman, at this time I would move to withdraw Amendment No. 15.

CHAIRMAN: Amendment No. 15 is withdrawn. We go now to the last amendment, No. 16, on recall. Delegate Hanaïke.

DELEGATE HANAÏKE: Mr. Chairman, I move for the adoption of Amendment No. 16, entitled "Recall of Elected Public Officers."

DELEGATE DYER: I second the motion.

CHAIRMAN: It has been moved and seconded that Amendment No. 16 be approved. Delegate Hanaïke is recognized to speak on her amendment.

DELEGATE HANAÏKE: I'd like to speak in favor of this amendment. I'd like to direct your attention to Minority Report No. 14, the third paragraph: "If our government is to function efficiently and effectively, the people must be provided with appropriate means to hold its elected officers responsible for proper performance of duties. Our State Constitution now provides for the removal of the governor and lieutenant governor upon conviction of impeachment and for the expulsion of a legislator 'for misconduct, disorderly behavior or neglect of duty... [by] a two-thirds vote of all the members to which such house is entitled....' These provisions, however, can only be invoked by the legislature and would ordinarily be for crime or gross misconduct, not for mere inefficiency, insensitivity to public need or incompetence."

And I'd like to turn your attention also to the recall amendment. There are some points to be made here. In the first section: "There may be required twenty-five percent, but not more, of the number of electors who voted in the district at the preceding general election for governor to file a petition...." Some of the other aspects of this amendment are, on the second page: "No petition shall be circulated against any officer until the officer has actually held office six months... except... against a senator or representative in the legislature at any time after five days from the beginning of the first session after election." Also in this amendment, after one recall petition has been filed against an officer, you cannot attempt to recall him a second time for the duration of his or her term. Those are the highlights of this recall amendment. Also, while I'm on it, there is also a paragraph that allows for supplemental legislation to implement this article here.

Now, I've had an opportunity to talk to many people who oppose recall and I'd like to address some of the concerns and the arguments made. First, to those who think recall will be used by political opponents to unfairly harass elected officials, I'd like to give you an example. Let me point out that we have a recall provision in the Honolulu city charter and it hasn't been used against, for example, the mayor of Honolulu, who has as many political opponents as anyone, and I think you'll all agree that he's a very controversial person. Why hasn't recall been used against our mayor? I believe that it hasn't been used because even political opponents realize that the people of Hawaii are fair-minded and responsible people who would not tolerate abusing the recall process for political purposes.

To those who argue that the people could be swayed by the media or big business or big labor, let me point out that in Cleveland's recent recall election, the two major daily newspapers, the business establishment and the major labor unions supported the

recall of the mayor of Cleveland. They came very close but they did not succeed in recalling the mayor of Cleveland. I think Hawaii's voters are less susceptible of being swayed.

Moreover, I feel that this fear of recall being abused is not a good reason for voting against it. Anything can be abused. Representative government can be abused, freedom of speech can be abused, democracy itself can be abused. Should we do away with these things because there is a possibility of their being abused? Of course not. We rely upon the common sense, integrity and honesty of the American citizen to make things work for the best. Sometimes, of course, they don't work out for the best but by and large our trust in our fellow citizens has not been misplaced.

Sometimes, however, we citizens could make a mistake. We could elect to public office someone who is not worthy of such a public trust, someone who, without breaking the law and being subject to impeachment, abuses the power of his or her office. What remedy do we citizens have in such a situation? Only to wait until the next election. But 4 years, in the case of officials elected to 4-year terms, is a long, long time. Why should we have to put up with 2, 3, 4 or even 1 year of an elected official who should be removed? I ask you to consider this amendment.

CHAIRMAN: Thank you, Delegate Hanaike. The Chair recognizes Delegate Dyer.

DELEGATE DYER: Mr. Chairman, your delegate from the other side of the Pali would like to speak for the amendment. As a matter of fact, I introduced that proposal, including the recall of appointed officials as well as elected officials. Seventy-nine percent of the voters in my district who answered my questionnaire were for recall, and I will be voting for this amendment.

CHAIRMAN: Thank you, Delegate Dyer. The Chair recognizes Delegate Takehara.

DELEGATE TAKEHARA: Mr. Chairman, I rise to speak against this amendment to include the recall concept in this committee proposal. The reasons for my decision are as follows.

I believe that this proposal is unnecessary because the people already possess the power to remove public officials from office. Several constitutional provisions, supplemented by sections of the Hawaii Revised Statutes, provide for the removal of public officials whether they are elected or appointed. These officials may be removed from office for such things as neglecting their duties, conducting themselves in a disorderly manner, or abusing the power of their offices. The various disciplinary actions available range from the censure, suspension or expulsion of a legislator to the impeachment of the governor.

I feel this process will hinder more than help the citizens of our State. Rather than encouraging people to work collectively, recall will enhance existing problems by causing a division among the citizens. The affairs of the State are placed in limbo while the recall is in progress. This is borne out by the Cleveland experience, which occurred merely 2 months after officially being sworn into office and the 5 months that followed, when the city of Cleveland and the mayor were in a continual aura of political campaigning and uncertainty.

A representative form of government cannot work properly when voters neglect their duty to choose those candidates who are best able to handle the responsibilities and pressures of government. And in order to curb official misconduct, we as voters must take on the responsibility of learning about each candidate's platform and beliefs. Recall to me is only a "way out" for those who fail to inquire into a candidate's positions and abilities prior to election day. For these reasons I speak against the amendment.

CHAIRMAN: Thank you, Delegate Takehara. Is there any further discussion? Delegate Barr is recognized.

DELEGATE BARR: Mr. Chairman, your tired delegate from the still-vibrant mountains that will experience a beautiful sunrise not long from now would like the record to show that I could support recall if it applied to those with 4-year terms or longer, as in the case of judges; but with every elected public officer, including 2-year terms, I must oppose this amendment.

CHAIRMAN: Thank you, Delegate Barr. Would Delegate Hanaike like to speak last on this? Delegate Hirata.

DELEGATE HIRATA: I have a short speech against the amendment and, instead of taking up the time of this body, may I ask that it be reflected in the journal?

CHAIRMAN: Very gratefully, it will be.

[The following is written testimony as submitted by Delegate Hirata.]

DELEGATE HIRATA: I rise to speak against this amendment because I must voice some strong reservations about the recall concept and process. I oppose the recall process because the allegations or charges are not fully aired prior to the recall election. The elected official is not provided a "day in court" to prove or disprove the charges. Today there is less unanimity of ideas and causes. Thus public officials are subjected to a great deal more public abuse than they have in the past. There is greater potential for disagreement and the greater likelihood of the use of a recall provision as a means to retaliate for differences in opinion.

Please note at this juncture that I believe that elected officials are not beyond reproach in acts or deeds. But I do feel that findings of actual wrongdoing or misconduct should precede an expensive recall election. I also want to point out that a conscientious public official often has to make unpopular decisions. With a recall provision, the public could be incited to initiate a recall move by interested demagogues. I feel that the public might lose some able and conscientious public servants if a recall provision is adopted without any valid provision for finding of guilt. In fact, we already have adequate safeguards to remove public officials who have violated judicial, legislative or gubernatorial codes of conduct, through impeachment proceedings. I feel that recall, without any safeguards, is a weapon which is dangerous in the hands of well-organized special interest groups who may legally harass and intimidate public officials.

CHAIRMAN: Delegate Hanaike, would you like to speak last? Delegate Wurdeman is recognized.

DELEGATE WURDEMAN: Just for the record--for all the reasons people get voted into office they should also be voted out, and that should be left up to the voters. And I am for the amendment.

CHAIRMAN: Thank you, Delegate Wurdeman. Delegate Hanaike.

DELEGATE HANAIKE: I'd like to conclude with the conclusion of a speech I gave in the bill of rights committee a few months ago. In the final outcome, it is the people that suffer from an unrepresentative official. Recall allows a direct channel in which the people, the basis of all government, can remove an official not representing them to the best of their belief.

I would like to end this presentation by saying that I do not by any means believe that recall--or, for that matter, initiative or referendum--is the panacea for all our political ills; yet these do give to the electorate the power of action when desired, and they do place in the hands of the people the means by which they may protect themselves.

CHAIRMAN: Thank you, Delegate Hanaike. The question before the body is whether to approve Amendment No. 16, with relation to the recall of elected public officers.

DELEGATE HALE: Mr. Chairman, may I ask for a division of the house so we may get the count.

CHAIRMAN: Division of the house has been requested.

DELEGATE HANAIKE: Mr. Chairman, I ask for a roll-call vote.

CHAIRMAN: Are there 10 seconds? The Chair counts 10. Mr. Clerk, please call the roll.

Roll call being in order, the motion failed to carry by a vote of 21 ayes, 57 noes

and 24 excused; with Delegates Barnes, Blean, Chu, Chung, Dyer, Eastvold, Hale, Hanaike, Hoe, Kimball, Kojima, Kono, Lacy, Ontai, Peterson, Pulham, Souki, Stegmaier, Takitani, Wurdeman and Chairman Kaapu voting aye; Delegates Anae, Andrews, Barnard, Barr, Blake, Burgess, Chang, Calvin Ching, Donald Ching, Laura Ching, Haunani Ching, Crozier, de Costa, Fernandes Salling, Fujimoto, Fukunaga, Fushikoshi, Hagino, Hashimoto, Hayashida, Hino, Hirata, Hironaka, Hokama, Dennis Ihara, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Ledward, Marion Lee, Lewis, McCall, Nakamura, Nishimoto, Nozaki, Okamura, Paty, Sakima, Sasaki, Shinno, Silva, Sutton, Taira, Takahashi, Takehara, Takemoto, Tam, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax, Yamashita and Yoshimura voting no; and Delegates Alcon, Cabral, Campbell, Chong, Chun, De Soto, DiBianco, Ellis, Funakoshi, Goodenow, Hamilton, Harris, Hornick, Kaito, Rachel Lee, Liu, Marumoto, Miller, Odanaka, O'Toole, Penebacker, Shon, Sterling and Stone being excused.

CHAIRMAN: The amendment fails. Mr. Clerk, would you state the number of amendments which have been approved?

CLERK: Amendment numbers 3 and 6 have been approved.

DELEGATE WEATHERWAX: Mr. Chairman.

CHAIRMAN: Delegate Weatherwax.

DELEGATE WEATHERWAX: I move that we rise and report that the Committee of the Whole has adopted amendments 3 and 6 to Committee Proposal No. 16, and after the necessary copies are printed and distributed, we recommend the amendments be adopted by the Convention, and after their adoption Committee Proposal No. 16 as amended be adopted on Second Reading.

DELEGATE TAIRA: I second the motion.

CHAIRMAN: It has been moved and seconded that we rise and report that the Committee of the Whole has adopted amendments 3 and 6 to Committee Proposal No. 16, and after the necessary copies have been printed and distributed, we recommend that the amendments be adopted by the Convention, and after their adoption Committee Proposal No. 16 as amended be adopted on Second Reading. Is there any discussion? If not, all those in favor of reporting as stated say aye. Opposed, no. The ayes have it, the motion is carried.

At 3:22 a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on CONSERVATION, CONTROL AND DEVELOPMENT OF RESOURCES

Committee Proposal No. 17

(Article XI [X])

Chairman: **DELEGATE TOM OKAMURA**

Thursday, September 14, 1978 • Morning Session

The Committee of the Whole was called to order at 9:20 a.m.

Delegate Tom Okamura presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The Convention has referred Committee Proposal No. 17 to the Committee of the Whole for consideration. In addition to the committee proposal, we have a number of proposed amendments to consider. We will arrange the amendments in the following sequence: the amendment introduced by Delegate Chung, deleting lines 4 and 5 on page 2, in section 2 of the committee proposal--Delegate Chung.

DELEGATE CHUNG: Mr. Chairman, I wish to withdraw this amendment.

CHAIRMAN: This amendment is withdrawn. The next amendment, also introduced by Delegate Chung, relates to Article X, Section 2, entitled "Natural Resources; Management and Disposition." Delegate Chung.

DELEGATE CHUNG: Mr. Chairman, I wish to withdraw this also.

CHAIRMAN: Granted. This amendment is also withdrawn. The next amendment is that introduced by Delegate Yoshimura--Delegate Yoshimura.

DELEGATE YOSHIMURA: Mr. Chairman, I wish to withdraw this amendment.

CHAIRMAN: All right, this amendment is also withdrawn. The next amendment is introduced by Delegate Carol Fukunaga, entitled "Water Resources." This is Amendment No. 1. The next amendment is introduced by Delegate Crozier, entitled "Water Resources," and reads: "The State shall have the power to regulate and control all water." Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I would like to withdraw that amendment.

CHAIRMAN: All right, this amendment is also withdrawn. The next amendment is also introduced by Delegate Crozier, entitled "Water Resources"; this reads: "The State shall regulate and control all water." This is Amendment No. 2. The next, Amendment No. 3, is introduced by Delegates Souki and Tam and calls for the deletion of section 8. Amendment No. 4 is introduced by Delegate Les Ihara, entitled "Agricultural Lands." Delegate Ihara.

DELEGATE LES IHARA: Mr. Chairman, I'd like to withdraw that amendment.

CHAIRMAN: All right, that amendment is also withdrawn. The next amendment is introduced by Delegate Yoshimura, entitled "Agricultural Lands." Delegate Yoshimura.

DELEGATE YOSHIMURA: Mr. Chairman, I wish to withdraw this amendment.

CHAIRMAN: This amendment is also withdrawn. The next amendment is that introduced by Delegates Souki and Tam amending Committee Proposal No. 17 by deleting lines 18 through 23 on page 3. Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, we wish to withdraw this amendment.

CHAIRMAN: This amendment is also withdrawn. The next amendment is that introduced by Delegate Fukunaga, which adds a new section designated "Nuclear Energy." This is Amendment No. 4. Amendment No. 5, entitled "Energy Resources," is introduced by Delegate Crozier and states: "Nuclear fission power plants shall not be permitted within the boundaries of the State as set forth in Section 1 of Article XIII." That is Amendment No. 5. The next amendment is also introduced by Delegate Crozier, also entitled "Energy Resources," and this reads: "Nuclear power plants shall not be permitted within the boundaries of the State as set forth in Section 1 of Article XIII." Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I'd like to withdraw that amendment.

CHAIRMAN: This amendment is also withdrawn. The order for consideration for each proposed amendment will be followed. The Chair requests that as a courtesy the delegates who have been assigned the floor state on which side of the question they are speaking before debating. Delegates will be allowed to speak for 10 minutes the first time and 5 minutes the second time. Delegates will not be allowed to yield any of their time to another delegate and the mover of the primary amendment may request that he be allowed to speak last in debate. Because of the abuse of rising to a point of personal privilege, the following will be in effect: in this Committee of the Whole the rising to a point of personal privilege will be entertained if valid and in order; if in the judgment of the Chair the question of personal privilege is being abused by a delegate, the time used will be charged against the delegate as time used in debate. When a delegate rises to a point of order or to a point of information or inquiry, upon stating his point, the delegate shall resume his seat until the point raised has been disposed of.

The Chair asks your cooperation during debate and that you refrain from being repetitious. The Chair also requests that the delegates refrain from using delegates' names during debate and instead use some other designation, such as "the delegate from the 4th district" or "the delegate from Maui." The use of names will be allowed, however, during question and answer periods. The Chair requests also that delegates please state their question without preface of statement. Speakers must maintain a courteous tone and avoid injecting a personal note into debate. Speakers must never attack or make any allusion to the motives of members.

The question now before the body is Committee Proposal No. 17. The Chair recognizes Delegate Chang.

DELEGATE CHANG: I would like to make a few remarks relating to the committee proposal. Mr. Chairman and delegates, I am happy to present to you this morning the proposal and report of your standing Committee on Environment, Agriculture, Conservation and Land. We are proud of the committee proposal and report, the product of many hands and minds. As the report notes, 15 public hearings were held on 5 islands to consider 117 individual proposals. After many long hours of discussion and work sessions, the committee decided that these provisions were the vital constitutional issues to be presented to you.

All of the committee members contributed to the substance and phrasing of the document. The committee members will continue to contribute their effort and skill in shaping the Convention's proposal to the people. In discussing the various issues this morning, I will call upon members of the committee to speak when the matters relate to their area of interest or expertise.

Mr. Chairman, we are aware that there will be a number of amendments to the committee proposal discussed in this Committee of the Whole. This was expected. The committee product was formed by representatives of all interests in our community, and it was inevitable that controversy would result. This is the essence of democracy. We only ask that the delegates consider wisely the vital issues presented to them today and reflect upon the words that rang so loud and clear on the first day of the Convention: "O Hawaii, O sands of my birth, My native home, I rejoice in the blessings of heaven. O

Hawaii, aloha."* Reflect on your blessings, delegates. "Mau ke aloha, no Hawai'i."* I request a few remarks from Delegate Hoe on behalf of the committee.

CHAIRMAN: Delegate Hoe.

DELEGATE HOE: Mr. Chairman, I would like to speak only in regard to section 1 of the committee proposal and our deliberations on Section 1 of Article X. The committee proposal for this section is an important step toward making a balance between the use of our natural resources, which is necessary, and their preservation. In our present Constitution, the direction to care for our natural resources seems to be overweighted by the emphasis on development and utilization. Though the use of our natural resources is necessary, it must be done in such a manner as to ensure the optimum long-term benefits for the inhabitants of our State. Their development must be judicious. Their use must be consistent with their conservation, to maintain them for future availability.

When considering use and development of our natural resources, the economic and social benefits need to be major concerns. The total concept of economics--that is, "careful and thrifty" use of the resources which are necessities of life--rather than the narrow sense, that of immediate dollar return, and the total concept of social benefits in considering their use must be among the basic criteria for development and use of our natural resources.

This proposal strives to make clear that our obligations include the welfare of future generations and therefore in the use of our resources we must protect our natural resources against irreversible depletion, waste or destruction and safeguard the natural beauty of our State.

CHAIRMAN: Thank you, Delegate Hoe. Is there any further discussion on this proposal? The Chair recognizes Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I move for the adoption of proposed Amendment No. 1.

DELEGATE HAGINO: Second the motion.

CHAIRMAN: It has been moved and seconded that we adopt Amendment No. 1. Is there any discussion? Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I wish to speak in support of this amendment. I believe that this amendment clarifies the intent of the original committee proposal. Many questions have arisen with regard to the term "public trust" as used in the original proposal, and this amendment is meant to clarify what I believe was stated in the committee report--that is, that the issue of water ownership was not meant to be affected by the proposal. The original proposal and this amendment do not purport to give the State ownership of all water. However, since the term "public trust" in some people's minds connotes ownership, I have introduced this amendment to provide alternative language for consideration.

The first sentence of the amendment indicates that the State has the ultimate responsibility for protecting, controlling and regulating the use of water. The State, as guardian and protector of the public good, has the final responsibility for insuring that water is distributed, allocated and used in an efficient and equitable manner. I think that this is a concept with which we can all agree. Having recognized that the State has this ultimate responsibility, we should also recognize that the State has the duty to regulate water use and protect water resources for the benefit of all the people of Hawaii. In this sense, the amendment and the committee proposal go beyond the mere power to regulate--which is generally known as the police power of the State--and impose a duty upon the State to regulate and to protect. Thus, under this amendment and the committee proposal, the State must take an active and affirmative role in water management.

This amendment and the committee proposal recognize that water is a scarce and

*From "Hawai'i Aloha," composed by the Reverend Lorenzo Lyons.

precious resource, and that the management and protection of water resources are of such vital public concern that a constitutional provision directing the establishment of a central water resources agency is appropriate. I know that some concern has been expressed that this water resources agency will merely create another layer of bureaucracy and that most regulatory functions are already being performed by existing agencies. However, the intent of the proposal is not to create another level of bureaucracy, but to provide a more comprehensive and integrated system for water resource use and protection. I think that we cannot escape the conclusion that the State does need an independent and unbiased agency which can implement the policy decisions made by the State with regard to water.

It is true that presently we have several agencies which are responsible for water regulation, and these agencies sometimes have overlapping and conflicting duties. For example, the Department of Land and Natural Resources has conflicting interests in water regulation; on the one hand it must regulate, and on the other hand it must use water for agricultural development. Thus the DLNR is a competing water user and has an inherent conflict when it comes to water allocation. The county boards of water supply also have a conflict, in that their main concern is water supply for domestic use; they too are water users and cannot be expected to regulate in a completely unbiased manner. Thus, the main purpose in requiring the legislature to establish a water resources commission is to provide one central authority that can assess the needs of all the people--from sugar plantations to small taro farmers to residential users--and begin to plan so that our precious water resources will be able to meet future needs.

I would also like to note a few things about the committee proposal on water which are retained in this amendment. First of all, the legislature is not required to establish a new agency; it may vest all the duties listed in an already existing governmental body. Thus, if the legislature should decide that the DLNR should be the appropriate agency to perform these functions, it can designate the DLNR, or a subdepartment of that department, as the water resources agency. However, as the committee report indicates, the legislature should be very careful in making such a decision to insure that whatever agency it gives these duties to is not already a competing user. Secondly, although the proposal mandates the establishment of a water resources agency, it leaves to the legislature the power to set the overall state policy with regard to water conservation, quality and use. Third, the proposal and amendment do not affect rights of private parties with regard to water as determined by law, nor do they prevent anyone from bringing suit to protect their water rights. Similarly, the proposal cannot be read as guaranteeing anyone any greater rights to use water than they have legally.

There are two changes made by the amendment in the functions of the water resources agency. First, "surface water" resources has been added to the list of those water resources required to be protected. I believe that the intent of the committee proposal was to protect the bases of our water resources system, and that through an oversight surface water resources was left out. Second, in the last clause the word "new" has been deleted. The clause immediately prior to that one indicates that "appurtenant rights and existing correlative and riparian uses" will be assured in establishing water use priorities; thus use of the word "new" in the following clause is redundant since existing uses are recognized in the preceding clause. Further, in order to regulate new uses, the State would have to be aware of all existing uses and the effect of the clause would be substantially the same.

Mr. Chairman and fellow delegates, I feel that the committee proposal provision on water, coupled with these amendments, creates a very strong and needed statement in our Constitution. It strikes a balance, providing us first with a policy statement of the State's obligation to the people with respect to water resource regulation and protection, and secondly with an agency to implement that policy. I believe that this proposal has sufficient flexibility and yet provides adequate direction to the legislature and to the executive branch to insure that water use regulation and protection will be comprehensive and effective. I urge your support of this amendment.

CHAIRMAN: Thank you, Delegate Fukunaga. Is there any further discussion?

DELEGATE SUTTON: Point of information.

CHAIRMAN: State your point.

DELEGATE SUTTON: This is to the movant or the committee chairman. I have an interest because of possible conflict with another section of the Constitution as amended-- that is, in the Hawaiian affairs package--if there is any conflict with the water systems per se, and if they could address themselves to that.

CHAIRMAN: Delegate Fukunaga, would you care to answer that question? Delegate Chang?

DELEGATE CHANG: Mr. Chairman, as I understand the Hawaiian affairs package-- I sat on that committee--the interest in that proposal was in the control of the water systems on Hawaiian home lands. The question was brought up in the committee as to the relationship of those water systems to existing laws or new laws, regarding the ownership and control of water. It was felt that the Hawaiian affairs proposal did not relate so much to the ownership and control question concerning the water resources but the control of systems that were managed by the Hawaiian Homes Commission or Hawaiian home land authorities. So therefore I do not believe that these provisions conflict.

CHAIRMAN: Thank you, Delegate Chang. Delegate Hoe.

DELEGATE HOE: Mr. Chairman, I concur with that feeling. In the Hawaiian affairs package the intent was to deal specifically with systems. Also, with establishing this trust, if waters are needed for Hawaiian home lands there is a renters' doctrine which would protect waters specifically for that use. This is a federal doctrine and sets aside waters that are needed to be used for federal trusts, which of course the Hawaiian home lands are. So this would not in any way interfere with that intent.

CHAIRMAN: Thank you, Delegate Hoe.

DELEGATE SUTTON: Mr. Chairman, I've had my questions answered and I rise in support without a speech.

CHAIRMAN: Thank you, Delegate Sutton.

DELEGATE CHUN: Point of information.

CHAIRMAN: Delegate Chun.

DELEGATE CHUN: The wording as far as the "public trust" has been changed. Have we changed also the standard in care of those who are obligated to protect the water resources? In other words, do they still have to use the standard of care and duty of a trustee?

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: No. I guess what the amendment attempts to do, as I read it, is to define what "public trust" means. Instead of just putting this in the committee report, it's an attempt to clarify and put it in the Constitution. But in essence this is an attempt to retain the same obligations and duties that were inherent in the first statement.

CHAIRMAN: Thank you, Delegate Waihee. Does that answer your question, Delegate Chun?

DELEGATE CHUN: Yes, thank you.

DELEGATE TAKAHASHI: Mr. Chairman, point of information.

CHAIRMAN: State your point.

DELEGATE TAKAHASHI: The introduction in this amendment states that "Committee Proposal No. 17 is amended to read. . . ." I'm assuming that we're just amending that section referring to water resources and not the entire proposal.

CHAIRMAN: Delegate Fukunaga.

DELEGATE FUKUNAGA: That is correct, Delegate Takahashi.

CHAIRMAN: Is there any further discussion? Delegate Hamilton.

DELEGATE HAMILTON: Mr. Chairman, I should like to point out that on both the water and the land, quite likely I have a conflict of interest. My employer does own a few acres of land and some water.

CHAIRMAN: Thank you, Delegate Hamilton. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to support this amendment. I think that what Delegate Fukunaga and the committee on environment attempts to do is a classic example of this Convention's trying to prepare for the future, as we were told when we first came to these halls; and that this amendment recognizes, and the committee report recognizes, that water is a resource in Hawaii that needs to be protected for the use of all people. So therefore I rise in support of this amendment.

CHAIRMAN: Thank you, Delegate De Soto. Delegate Hoe.

DELEGATE HOE: Mr. Chairman, I rise to speak in favor of this amendment to the proposal. I feel it maintains the intent of the committee to establish a public trust doctrine for the State of Hawaii to protect the total water resources for the benefit of the people of Hawaii. I feel this is an important concept and is long overdue. I would like to support the amendment.

CHAIRMAN: Thank you, Delegate Hoe. Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, I rise to speak in favor of the amendment, and I particularly like the movant's remarks concerning the agency that would control this. It is a very specialized agency that would be handling the water and water quality, and it is very necessary, and I think it's only proper that this be a state function--to control the water. I think in one of the debates we had it was brought up that my county had recently awarded a large subdivision and allowed the developer to use and develop two wells on the property, which is certainly not in conjunction or in confirmation--or not being aware of the overall water picture, of conserving water, and studies. Again, it should be part of the state function because of the control of conservation lands and watersheds. Thank you.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Chong.

DELEGATE CHONG: Mr. Chairman, I too wish to speak in favor of this amendment. I urge the passage of this amendment establishing a state water agency to act as trustee of all the water resources of Hawaii for the benefit of the people. We cannot continue to allow anyone who wants more water to go and take it without regard for other water users, or for the health of the water resources being developed.

If we do not protect our water resources, future generations will pay for our neglect. This amendment would send a message to the legislature that our water situation has become critical and that the health of our State depends upon wise management and regulation of this vital resource. Within the last year, Oahu has experienced problems with its major wells due to the declining water level. In spite of a voluntary conservation program for more than a year, these wells are continuing to decline. Proper regulation of all water users drawing from our underground water resources would guarantee that no more water is taken from underground resources than nature can replace.

If the situation continues without regulation, we may all be drinking salt water--as everyone scrambles to get more and more water from our resources as the supply runs out. A single trustee agency is necessary to insure that we have stable and orderly development of our water, without overtaxing the resources and environment supporting the resources. The Hawaiian word for water is *wai*; the word for law is *kanawai*, showing us that the regulation of water has been a fundamental concept of Hawaiian law since ancient times. We should now recognize the wisdom of the ancient Hawaiians and readopt the principle that the water must be regulated for the benefit of the people.

CHAIRMAN: Thank you, Delegate Chong. Delegate Cabral.

DELEGATE CABRAL: Mr. Chairman, I rise to a point of inquiry. I would like to pose a couple of questions and if anyone could respond I certainly would appreciate it. I am wondering whether in the committee deliberations they had conceived and/or envisioned the establishment of such a water resource agency that in the future if it were necessary could pool water resources from other islands to be transported, say, toward the Island of Oahu in the event of a drought situation?

CHAIRMAN: Would any delegate care to respond to that question? Delegate Chang is recognized.

DELEGATE CHANG: If I understand the question correctly, the delegate is interested in whether a particular idea was presented to the committee, and that is the pooling of resources and transportation interisland. That particular idea did not arise, although I would think that if any such idea were proposed, that such an agency would have to address it. But this idea was not presented to the committee.

CHAIRMAN: Delegate Cabral.

DELEGATE CABRAL: I thank the committee chairman. I think it poses a rather interesting concept, with the establishment of such a central agency of water resources control, that conceivably they would have authority as enacted by the legislature--

CHAIRMAN: Delegate Cabral, are you speaking--

DELEGATE CABRAL: I am also posing a further query, Mr. Chairman. If this concept was not addressed, I think it has merit. I am wondering now whether it should not be referred back to the committee for further deliberations and consideration. I can see that, at the point right now, there is possibly no way that they can pool water resources from other islands and bring it, say, to Hawaii or to Molokai, or whatever. But I really do think that subject was not addressed in the committee and perhaps it should be deferred to the committee and be presented to this body at Second Reading. I am open to that address by the committee chairman and/or anyone else.

CHAIRMAN: Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, the State has an inherent police power to provide for the general welfare of all the people of the State. In its capacity as the governing body of the people of this State, it has an inherent ability or right to do whatever is necessary for the general welfare of the people of the State, and if that includes transporting water, it can transport water presumably in an emergency situation. I don't think we have to put in a special provision in the Constitution for that.

CHAIRMAN: Thank you, Delegate DiBianco. The Chair would like to state that it is out of order to refer back to a committee. Delegate Hoe.

DELEGATE HOE: Mr. Chairman, if I may add to that inquiry. The concept of establishing a public trust is to have the State care for the total water resources and if that would entail bringing water from one island to another, as Delegate DiBianco has said, that may be the case. However, they also have to consider taking care of the total water resources for the benefit of all the people of the Islands and so they could not, to the detriment of one island, bring water to another. So the power is given to the State to care for the total water resources.

CHAIRMAN: Thank you, Delegate Hoe. Delegate Alcon.

DELEGATE ALCON: Mr. Chairman, I rise on a point of inquiry. Does this amendment include the ocean as a source of water?

CHAIRMAN: Would anyone care to respond to that question? Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, this amendment addresses the same types of water resources which are set out in the committee proposal, which include groundwater, surface water and all other water.

CHAIRMAN: Thank you. Is there any further discussion? Delegate Sterling.

DELEGATE STERLING: I'm speaking again for the amendment. May I just add that water has been hauled in the past from one island to the other. In my area a long time ago, Kona suffered a drought and water was hauled there from another island. This is to satisfy Delegate Cabral's inquiry.

CHAIRMAN: Thank you. Is there any further discussion? Delegate Barnes.

DELEGATE BARNES: Mr. Chairman, just to add to the previous question that is aimed at desalinization--it seems pretty clear in the committee report that the State would have the power to manage and control marine waters out to 3 miles for sure, as well as freshwater.

CHAIRMAN: Thank you, Delegate Barnes. Is there any further discussion? If not, the vote is on Amendment No. 1, which deletes paragraph 1 and substitutes it with the following language: "The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people." The amendment also calls for insertion of the words "and surface" and deletion of the word "new" in the second paragraph. Those in favor of the amendment say aye. Those opposed, no. The ayes have it and the amendment is carried. The Chair recognizes Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I move for the adoption of Amendment No. 2.

DELEGATE DiBIANCO: Second.

CHAIRMAN: It's been moved and seconded that we adopt Amendment No. 2. Is there any discussion?

DELEGATE CROZIER: Mr. Chairman, I'd like to speak first and last.

CHAIRMAN: Proceed.

DELEGATE CROZIER: Mr. Chairman and delegates, I thought we were going to have a lot more debate on the first amendment and just from that alone you would find out how confusing water really is. But since the debate was kind of limited, let me start confusing you folks.

The amendment that just passed--they talk about the water agency and they use the words "correlative," "riparian," "appurtenant rights and...uses." The supreme court spent something like 10 years trying to decide and resolve the problem of what all these different words mean. There've been wars in Colorado dealing with just these words, because the courts took so long to decide what they meant people got upset and starting shooting each other.

Mr. Chairman, this document is supposed to be a flexible and simple document. We're putting words in here that are going to tie us up. Right now the water problem is before the Ninth Circuit Court--the U.S. court. Our state supreme court made one decision with the landowners--this is the McBryde, the Hanapepe water problem--they chose one side, then the sugar companies chose the other side and they all tangled up. These were some of the problems just dealing with words like the ones I mentioned.

Mr. Chairman, we're supposed to have a simple document here. We're not supposed to put words into the document just so they can give work to the supreme court and lawyers. For that reason, I ask you to accept my amendment.

CHAIRMAN: Thank you, Delegate Crozier. Any further discussion? Delegate Hale.

DELEGATE HALE: Question. Could Delegate Crozier explain what his amendment really does. I don't really understand it.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: What this does is let the State--just what it says: "The State shall regulate and control all water." And that's it. It doesn't say "appurtenant rights."

It doesn't get involved in making an agency; we have a water commission doing that, and right now they're leaning toward recommending a state agency to handle the problem. What we're saying is what we were programmed for in the beginning--keep the document as simple as possible. Don't create new problems and obstacles.

DELEGATE HALE: Does it mean then that the committee proposal as amended by this last one would be deleted and this would be inserted in its place?

DELEGATE CROZIER: That's what I'm hoping for.

DELEGATE HALE: Because I don't see any reference to deletion in this and that's why it's confusing.

DELEGATE CROZIER: You're going to have to get mad at LRB if they didn't do it correctly.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak against this amendment. What this amendment says is that the State "shall regulate and control all water." The arguments presented to this body, with respect to "existing correlative and riparian uses" and the use of lengthy verbiage in order to specify intent--what is happening in the courts, as I understand it, is that there's a fight for determining ownership. The previous amendment just adopted by this body doesn't direct itself to ownership at all. What it says is that the State has the fiduciary responsibility to regulate this very vital resource called water.

What this proposal does in one sentence--"The State shall regulate and control all water"--I think what we have here is a problem, a problem that has pervaded Hawaii historically for years and years and years. You have the concern, because evidently the people feel that nothing has been done to date with respect to regulating or taking care of the use of water. What we just did a little while ago was say that this agency shall be responsible. And it didn't have to be a special agency, it could be an agency within the existing departments. In the committee we argued and we were besieged by lobbies, by opinions from all kinds of attorneys, all kinds of people, people who said they were experts in water--all kinds of things. I think what we just did a few minutes ago will show historically, down the road, that we at least had the nerve and the gumption to look into the future and protect the water resources for generations that are just being born and those not yet born. So, Mr. Chairman, I speak strongly against the proposed amendment if the amendment intends to just delete verbiage, because many committees--including the Hawaiian affairs--have come out with more than just constitutional one-liners.

CHAIRMAN: Thank you, Delegate De Soto. Delegate Hale.

DELEGATE HALE: Mr. Chairman, another question. Could I ask the committee chairman or the mover of the amendment, or whoever could answer this, what this last thing we did does that this new one doesn't do. I mean, does the State really have any more power under this verbiage than they would under this simple sentence? That's my question.

CHAIRMAN: The Chair recognizes Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, the amendment just passed does two things which this present amendment would not accomplish; therefore, I would rise to speak against the amendment. First of all, it's my belief that the State does have the power to "regulate and control." So it seems to me that inherent in the provision already may be this obligation. What the original amendment that we just passed does, however, and what the committee proposal attempts to do is to, first of all, create a fiduciary duty on the part of the State to regulate and control the water. The second thing that it does is establish a coordinating agency to regulate all water.

Now one of the problems, once you get beyond the ownership question, is a problem, as was pointed out by a previous speaker, that this does not deal with--the original amendment--and the committee amendment does not deal with, because it was felt that that issue should be best left to the courts. The problem that exists now is that there are about a

multiple number of agencies all dealing with water. What is needed is some direction to the State to coordinate that and to put it into one body so that there would be, first of all, a sense of direction with regard to water; and second, so that it would be less burdensome on those people who really want to comply with the correct usage of water. So these are the two things that the committee proposal and that the amendment would do that this proposed amendment would not accomplish.

DELEGATE HALE: Can I pursue my questions?

CHAIRMAN: Before you do, Delegate Hale, the Chair would like to remind the delegates that this amendment is essentially a duplicate of the amendment that was just adopted, especially with the words "regulate and control," which are stated in both amendments. The Chair feels that this duplicates the question just decided by the Committee of the Whole and, to determine if we should continue with this consideration, the Chair will put the question--shall the Committee of the Whole consider this amendment?

DELEGATE CROZIER: Mr. Chairman--

CHAIRMAN: Delegate Crozier, you are out of order. Will you please be seated. Shall the Committee of the Whole consider this amendment which is substantially the same as the amendment first adopted? All those in favor of--

DELEGATE CROZIER: Point of order.

DELEGATE HALE: Point of order.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: Sir, you made the list on how the amendments were to be brought to the floor. I was not involved in that. And how dare you cut me off. Why didn't you let me go first, then?

DELEGATE HALE: Mr. Chairman, we've just heard an explanation that it's not the same. That's why I'm pursuing my questions.

CHAIRMAN: All right. The Chair--

DELEGATE DE SOTO: Mr. Chairman, may we have a short recess, please?

CHAIRMAN: The Chair will withdraw the question. We will proceed with this question. Is there any further discussion?

DELEGATE HALE: Could I ask more questions?

CHAIRMAN: Proceed, Delegate Hale.

DELEGATE HALE: I really haven't made up my mind--I'm really still in the dark about all of this. I don't really know what we're trying to do. When you say "create a fiduciary" responsibility, doesn't the State have a fiduciary responsibility for all of its citizens in everything that it has? What power does a "fiduciary duty" give the State that it doesn't already have? That's my question.

CHAIRMAN: Delegate Hoe.

DELEGATE HOE: I would like to speak against the amendment and in so doing, I may answer Delegate Hale's concerns.

CHAIRMAN: Proceed--

DELEGATE BLAKE: Mr. Chairman, point of inquiry.

CHAIRMAN: State your point.

DELEGATE BLAKE: First of all, it says here, "The State shall regulate..." and the one we just passed says, "The State has an obligation...." Now there's a tremendous

difference between "obligation" and "shall." My question is--who today actually owns the water, or controls the water? Will the Chair please answer that question for me?

CHAIRMAN: Delegate Blake, we have a question on the floor at the moment. Would you mind waiting until that question is answered?

DELEGATE BLAKE: She's going to rebut this thing, so I think this question should be answered first.

CHAIRMAN: Delegate Hoe, you want to respond to that?

DELEGATE HOE: I could add some response to that. Perhaps there are other delegates who could additionally respond. The law of the land right now in Hawaii is the recent--since 1973--the Abe decision regarding water, and that states that all waters--surface waters--belong to the State. However, that is being contested in certain areas. But that is the law of the land at this point. By establishing the public trust doctrine, it does not take title if there's private title recognized.

DELEGATE BLAKE: Mr. Chairman, is that being contested or an established fact?

CHAIRMAN: Can anyone respond to that? Delegate Hoe.

DELEGATE HOE: In regard to the public trust doctrine, that's established fact.

DELEGATE BLAKE: Then, Mr. Chairman, I understand that the State does just about own the water. Is that correct?

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, if I may. What is an established fact is that the trust doctrine does not affect title. That is not how we are using it here. So what is not established, or what has been established by the Hawaii supreme court in the McBryde decision, is that the State owns the water. Now as pointed out by the delegate and a number of other delegates, that decision is up for appeal. Whether it stands or not does not affect the doctrine put forth in the Constitution, because in order to have this obligation and to do the things that you are attempting to do in the amendment, you don't need title. I guess it was the committee's intent to leave the question of title to the courts. So I guess, to the extent that the trust doctrine does not take title, that is an established fact. As to who owns the water, as of this time on the books it's the State. Three years from now it might not be--or it could very well be. In any event, that is not an issue that would either hinder or stop the implementation of the committee's proposal.

DELEGATE BLAKE: Then, Mr. Chairman, I'd like to ask the maker of the previous amendment, was there any particular reason why the word "obligation" was used instead of "shall"?

CHAIRMAN: Delegate Fukunaga, would you care to respond?

DELEGATE FUKUNAGA: Mr. Chairman, I believe, as I pointed out in my remarks earlier, the word "obligation" was used in there to substitute for the words "public trust." And basically the concept was to place upon the--

CHAIRMAN: Delegate Blake, would you please be seated.

DELEGATE FUKUNAGA: The intent of the substitution was to make it clear that the State had the duty and the responsibility to care for Hawaii's water resources, rather than simply the power to do so.

CHAIRMAN: Thank you, Delegate Fukunaga. Delegate Hoe.

DELEGATE HOE: If I may I'd like to speak against the amendment. With the amendment, the existing police powers of the State are simply reaffirmed. With the trust concept, the State is given the responsibility to actively "protect, control and regulate" development of the water resources of the State. The police powers which this amendment refers to, which are inherent in the State, to "regulate and control" the resources, are purely dis-

cretionary and have not been actively employed to avert the present water supply problems and perhaps could not be sufficiently strong in times of water crises.

I personally became aware of the water problem when waters used by my friends to raise taro in Waihee began to diminish. During our attempts to find out what was happening, we were told by various agencies and departments, Oh, it's the drought--it's only a local problem--there's nothing you can do about it. Because of this information, we decided to do additional research and we took a trip around the Islands to see if indeed our problem was a local problem or if it was a statewide problem. We found the problems were everywhere, in all of the islands, in many, many valleys.

This conclusion is substantiated by a recent study, the Hawaii Water Resources Regional Study, in their Water Supply Study Element Report*, dated April 1975. They go around all the different islands identifying the water problems. Hawaii--there are "localized [water] deficiencies." On Maui--"[f]our of Maui's five Hydrographic Areas will require additional water source[s] . . . to meet projected demands through the year 2000." Kula on Maui--the extent of residential and agricultural growth which can take place given limited available water supply resources is uncertain. Central Maui--the need to achieve a balance between sugarcane growth and steam-flow quality. Lanai-- "[t]he projected demand . . . will consume most of the municipal and agricultural water supplies available . . ." Molokai--"the western half [of the island will] reach the limit of its presently developed capacity by 1990 if agricultural water requirements rise as projected." On Oahu--"[t]he capacity of the existing water facilities will be [reached] . . . much before the year 2000 . . ." This is substantiated by other studies and individual hydrologists as well. "All known [sources of water on this island--water supplies] that are economically recoverable . . . will be consumed by the year 2020 . . ." And this study was done without any regard to environmental needs at all. And on Kauai--"[i]ncreasing pumpage for sugarcane irrigation near Kekaha . . . creates a saltwater-intrusion problem . . . [and limited] ground-water yields."

What this says to me is that we need somebody to look at the total water resources, instead of just bits and pieces as is now happening, as we've heard many other delegates indicate. There is no one agency in this State that is responsible or accountable for the health of the total resource. Therefore we have a situation where the State, the county, private and military users are all competing for the same water. We all have our straws in the same soda, but no one is protecting the water. No one is taking into consideration the total water resource. This committee proposal mandates the State to create or designate an agency which would not be a competing user--since it's not fair for me, when I am also diverting water or developing water, to tell you, who want to develop water, what to do. It's important to have an unbiased agency have full responsibility, the obligation to protect and regulate the water resources of the State for the benefit of its people. This is much stronger than the proposed amendment, and I speak against this amendment.

CHAIRMAN: Thank you, Delegate Hoe. Is there any further discussion? Delegate Hornick.

DELEGATE HORNICK: Mr. Chairman, I would also like to speak against the amendment. Apparently, the movant is concerned about the concept of establishing a public trust for water. Also, there is some confusion regarding whether a public trust constitutes ownership. For the benefit of those members who were not privy to the deliberations of the committee, I'd like to say that I don't believe there is any basis for concern or confusion. We are all familiar with this concept of trusteeship. The United States trusteeship over Micronesia is an example of a public trust known as the Trust Territory of the Pacific Islands. The United States does not own the Micronesian islands; it is a trustee, which is responsible for managing those islands for the benefit of the people of Micronesia.

Similarly, the committee proposal as amended would make the State of Hawaii the trustee of the water of Hawaii for the benefit of the people of Hawaii. And as trustee, the State would have the obligation to establish management criteria for water resources. The trust doctrine is commonly used throughout the United States for natural resources that have historically been used by the public and for which there is public need. The

*Pp. 33-79.

public trust doctrine implies that the disposition and use of these resources must be done with procedural fairness, for purposes that are justifiable and with results that are consistent with protection and perpetuation of the resource. This is much stronger than the police power of regulation and control.

I believe that the imposition of a trust obligation to the water resources in Hawaii is essential. The State has always had the power to regulate water through its police power, but our present water situation--six wells on Oahu at "alert" levels, streams dry, small farmers throughout the State finding their water diverted upstream, etc.--and the historic lack of agency response is evidence of the State's reluctance to act. Exercise of the police power is purely discretionary, and for discretionary results; "trust" language imposes an obligation to act for the benefit of all the people.

Furthermore, the trust concept is also consistent with whatever ultimate decision the courts hand down with regard to water ownership. At present the law of the land, as stated by the Hawaii supreme court, is that water belongs to the public. This ruling has been challenged and the matter is now pending in federal district court. The public trust language will not conflict with the court's decision, even if the court rules that water rights are private property rights. All it says is that, regardless of ownership, the State has an obligation to protect and manage the resource for the benefit of the people of Hawaii. Furthermore, by saying that the "State shall regulate and control all water," we do not guarantee that we will rid ourselves of future litigation. Whenever there is regulation, there is a potential "taking" issue. So regulation and control will not absolve us of future contests in court.

I feel that our water resources are too important to too many aspects of our lives to allow agency indecision based on unclear allocation of responsibility to put them in serious jeopardy. The committee proposal as amended is one of the most important that will come out of this Convention in terms of impact on our lives and assurances for our future. I hope all the delegates will defeat this amendment.

CHAIRMAN: Thank you, Delegate Hornick. Is there any further discussion? There being no further discussion, the vote is on-- I'm sorry. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman and fellow delegates, I would like to let you folks know what my amendment does. This is a simple amendment. It does six things. First of all, it acknowledges that the State possesses the power to regulate and control all water. Second, it implies that it's the State's responsibility to assure the proper management of Hawaii's water resources. Third, it does not rule out the legislative creation of a water agency; it leaves with the legislature the task of determining whether or not the State needs one. Fourth, it makes no assignments of functions and powers; thus it allows for the highest degree of flexibility regarding this difficult topic of water resource. Fifth, it makes no reference to collective ownership of water resources, and thus makes it impossible to be construed as taking away private water rights, as some people are concerned with now.

Sixth, Mr. Chairman and fellow delegates--which I think is the most important part of my speech--I have the ability to listen and pay attention. I'm not good-looking, I'm not smart, but I can pay attention and listen. I've had discussions and corresponded with different people; I've listened to testimony at public hearings--people like Mr. Ed Hirata, Manager and Chief Engineer of the Honolulu board of water supply; Mr. Bill Thompson, Chairman of the Department of Land and Natural Resources; Mr. Kazuhisa Abe, former supreme court justice and author of the majority report on the 1973 McBryde water rights case; former supreme court justice Marumoto, minority author, I believe, on that case; Mr. George Yuen, Director of the Department of Health; Mr. George Hudis, from Life of the Land. All these people have come and told us basically what we were all directed toward, the stating of exactly what we want to say--that is, that the water resources in the State shall be subject to the regulation and control of the State--and no more. What they were saying, sir, is--just use one simple statement; don't get tangled up in a lot of words. For that reason, I hope you accept my amendment.

CHAIRMAN: Thank you, Delegate Crozier. The vote is on Amendment No. 2, which states: "The State shall regulate and control all water." Those in favor of the amendment say aye. Those opposed, say no.

DELEGATE CROZIER: Mr. Chairman, can I have a division of the house?

CHAIRMAN: A division of the house has been called for. All those in favor of the amendment please rise. Those opposed, stand. The vote is 17 ayes and 59 noes. The amendment is lost. The Chair now recognizes Delegate Souki to introduce Amendment No. 3.

DELEGATE SOUKI: Mr. Chairman, I wish to amend the committee proposal by deleting section 8, which is entitled "Water Resources."

DELEGATE TAM: Second.

CHAIRMAN: It's been moved and seconded that we adopt Amendment No. 3. Is there any discussion? Delegate Souki, proceed.

DELEGATE SOUKI: Mr. Chairman, first of all I wish to echo and applaud the previous delegate on his attempt to provide for new language in section 8. I thought it was extremely appropriate. Let me get on with my amendment. First of all, I think that the members here are looking at Band-Aid solutions. If in fact there is a problem existing now, you should look at the source of that problem and correct it rather than creating another institution to correct the existing problem. Let me explain.

To create a trust or an obligation for the use of water connotes management. And in consonance with the second paragraph of this section--with the creation of a new agency--it provides for the creation of a super water board with potentials that are quite unknown yet. This super water board would attempt to relieve the problems that we think we currently have. Presently we have existing agencies to provide for this here and regulate the use of the water; as some of the previous speakers have mentioned, you have the [Department of] Land and Natural Resources to regulate the water. It's also been mentioned that the State, in fact, even without the language being mentioned, has a fiduciary relationship to water and to its people. There is no need to reinsert this language.

What we should not attempt to do and what we have been attempting to do during the course of this Convention is, whenever there is a legislative problem or an executive problem, we attempt to find a solution in the relatively short time by creating another institution. Now, is in fact this institution that we're going to create, that's supposed to oversee and regulate the water, going to provide us a correction for what we think we have now when we already have existing agencies to do that? Anybody schooled in problem-solving would say--look at the solutions, look at the problems and look at the existing agencies that you have. Now if the agency cannot solve it, then the legislature in its wisdom should do away with the existing agency and create another one that can provide the remedy--not we provide this legislative function when we do not really have the capacity to do it.

I think we are quite aware of some of the superagencies that have been created. Let me make mention that in California through initiative and referendum votes a few years ago a state coastal management commission was developed, and that was supposed to remedy all the problems within the counties' coastal zones. However, as a recent article in the paper has shown, this has proven to be a nightmare. There have been requests for variances, for simple subdivisions along the coastal area, for 3, 4, 5 years that have not been resolved; there are literally thousands of requests in this supercommission that are not being handled. In fact, there is a move now among the residents in California to move that power back to the counties.

Now we're going the other way; we're taking away the powers that lie with the counties and with existing state boards, and we're providing for a new agency to remedy all these problems that we have. I think it was mentioned some time ago that an agency is only as good as the people you have; you can create and structure the most beautiful agency but if you have neither the people nor the environment to make the corrections, it's not going to do anything.

As far as the trust is concerned, I agree. We already have precedents in trusts. The United States has the trust territory in Micronesia; it's been there for a number of years, from after the war. I have been in Micronesia a number of times, and I've seen the results of trusts; sometimes trusts can be misguided. So I say, don't simply look at that word "trust." I wish to conclude that you should look seriously at the problems

that we have; that in fact we do have appropriate departments to remedy the problems. If there are weaknesses in a department, then through resolution advise the appropriate parties to resolve the weaknesses and/or create another department legislatively if need be. I really don't think that we should put this in the Constitution.

CHAIRMAN: Thank you, Delegate Souki. Delegate Chong.

DELEGATE CHONG: Mr. Chairman, I rise to speak against this amendment. As I testified previously, a state water agency is needed to protect the water resources for the benefit of all the people of this State. As the amended proposal states, it will allow the legislature to set water use priorities, "set overall water conservation" and so forth. To delete this section, leaving it at the status quo, would continue to allow the board of water supply to drill wells on the windward side without regard to the taro farmers in Kahaluu, Waiahole, Waikane, Kahana valley. I ask the delegates to allow the legislature the opportunity to settle this No. 1 problem of the State of Hawaii--our water. Please defeat this amendment.

CHAIRMAN: Thank you, Delegate Chong. Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I have a point of inquiry, a question regarding some of the language that perhaps someone can answer for me. It says here that the water resources agency will "establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses." What happens if we have some kind of a water crisis and there's not enough water to go around--for example, on the windward side where there is sometimes a shortage? The taro farmers come in and say--we have a right to the water because we already have existing correlative and riparian uses and we've been using this water for years and years for our taro. And the board of water supply comes in and says--you want to talk about appurtenant rights, we've got appurtenant rights; we drilled the wells, we're sitting on top of the water, we're the city and county. How do we assure everybody's appurtenant rights and everybody's existing correlative and riparian uses at the same time?

CHAIRMAN: Does anyone care to respond to that question? Delegate Waihee.

DELEGATE WAIHEE: That's precisely why we need one body, one agency to do that, because there are going to be times when people's uses and priorities of water are going to conflict. So what is attempted here, as the sentence reads, is to "establish criteria for water use priorities" as to what these categories would be and who would take precedence. What we also wanted to do was to insure that unless there is some emergency or some compelling need, that this agency would not just readjust existing uses, that it would recognize the fact that people are using water in a certain way right now and, unless there is an emergency or something extremely detrimental, those uses should continue to be recognized.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Hoe.

DELEGATE HOE: I think the point also of this whole proposal is not to get to that emergency situation. If we continue along the path that we have been continuing along--as we know, we are now in a critical situation. Oahu has the best water catchment system on any of the islands, and it is the one in the worst shape. You can argue that we have the most population--but is that not the future for other islands as well? The point of establishing this trust responsibility in the State is to try to prevent us from getting to that critical state. In the event that we do reach a critical state--to the point where, do I drink or do I feed my crops--that would be the responsibility of this trust entity to set priority use criteria. In a given situation, which use has priority--that would be the responsibility of the trust.

DELEGATE DiBIANCO: Could I ask just one last question?

CHAIRMAN: State your question, Delegate DiBianco.

DELEGATE DiBIANCO: I just wanted to know if this language here, where it says "while assuring"--and the word "assure" pretty much sounds like a guarantee--"while assuring appurtenant rights and existing correlative and riparian uses"--does that establish any kind of criteria? Have we established a criteria by that language?

CHAIRMAN: Is there anyone who cares to respond to that question? Delegate Waihee.

DELEGATE WAIHEE: No, I don't think we've established criteria; what we've done is set out a policy to be considered in establishing the criteria. I think that one thing we wanted was to protect the small taro farmer as well as the agricultural users of water, unless it conflicts with some overall emergency situation or use priority. I might say that, just to make it clear, it's not only this agency that will be setting the criteria or the policy; this would be done, in the overall sense, by the state legislature, and the agency itself would be implementing the details. What we wanted was an agency whose policies would have as broad a public input as possible. So the overall scheme for this, as it says earlier, would be set up "in accordance with law" or by the legislature, and the agency would then set the implementation and the finer points of this.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: Is there anything that we're doing by this new proposal that we can't already do, or that the legislature cannot already do now, under the existing Constitution?

CHAIRMAN: Is there anyone who cares to respond to that question? Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, as we pointed out in the committee proposal and committee report, some of these functions are already being done by the State and can be done by the State. But one of the main purposes for setting up a water resources agency is to coordinate these efforts so that the state policy is consistent and the functions that will be implemented by the agency or delegated to existing bodies will be consistent with those policies and functions.

DELEGATE HALE: That doesn't answer my question, Mr. Chairman. My question is, cannot the legislature now set up an agency?

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: Yes. The answer is yes. Actually, Mr. Chairman, I do find that argument sort of--I don't know how to classify it, but it seems to me that 99 percent of all the things we have considered and will be doing in this Con Con could have been done by the legislature. So the question is--do you want to do it, do you want to make this kind of a policy judgment here. I don't think any single major issue that we have considered can be--

DELEGATE SUTTON: Point of order.

CHAIRMAN: State your point.

DELEGATE SUTTON: He's speaking to the motion. He answered the question already.

DELEGATE HALE: Point of order, Mr. Chairman, I didn't ask about 99 percent of the things--and I could argue that--I specifically asked about water. I myself--if I may just make a statement neither for nor against--because unless there is other discussion that can change my mind, I'm going to have to vote for this amendment.

CHAIRMAN: Delegate Hale, if you make your statement, I'm going to have to count it as part of your time.

DELEGATE HALE: That's all right. I'm asking for guidance from somebody because I'm confused. As of now I will vote for this amendment because I feel that what we are--and I did not vote for this water resources amendment, I did not vote for and I did not vote against. I was confused and I still am. It seems to me that by putting all these words in here and putting this to the public to vote upon, that we're not really giving them a fair chance to know--I don't see how anybody can intelligently vote upon this when--I don't feel I can intelligently vote upon it unless there's more discussion here. Not having been a member of the committee and not having listened to all the input--and what Delegate Crozier said was evidently most of the input that came from the experts in this field was

that they probably already had the power and there probably wasn't any need for all of this. So it just seems to me that we're confusing things; we're making something really big for lawyers perhaps. But I don't really see that we're helping anything.

I'm not a believer that a strong state agency is going to solve our problems. I don't believe that this is necessarily going to solve--that a state agency with water is necessarily going to solve the water problem. I do believe that water problems are basically local problems and should be solved locally on each island. I don't think the solution to any water problem is to transport water, except in a very grave emergency, from one island to another. So it appears to me that this is, again, against the concept of home rule, but not necessarily because the State already has this power and could do it, but that it is sort of hitting at local boards of water supply, that maybe you're not doing your job or a state agency is not doing its job. But that's another problem, and I don't think it's a constitutional problem. So unless I can find other reasons to justify it, I will have to vote for this amendment.

CHAIRMAN: Thank you, Delegate Hale. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak against this amendment. And I'd like to say the only way I know how, it's very frightening in this time, in this day and this age, when there's two things that we don't want to give people: we don't want to assume the responsibility for protecting an individual's right to water and we don't want to give them agricultural land. When you talk land and water, people panic. Because, you see, when you have control of these two items, then you have power. And people are frightened of establishing or making an agency in this State responsible for the regulation and the use of water for people.

When I sat in on the committee and I heard somebody say that in the year 2000 the people will be drinking desalinated water, tears ran from my eyes. You mean to tell me that's what my grandchildren are going to look forward to? And I say this--that I have been to several islands when they had droughts. And I remember Kula when I visited my family up there, and they were regulated--the water was regulated for their drinking purposes. That very afternoon I drove to Makena and the sprinklers were all on, on the golf course. In Waianae they capture the water so that our children cannot grow taro. All these things happen every day. Water that was developed on Hawaiian home lands and given to a particular county was diverted away from the homestead, so that those people now cannot farm.

I say that this Convention would be remiss in their responsibilities--water is a commodity that all of us have to look at. We're saying we cannot control growth, we have to be open, people can come. Where're they going to get their water? You just heard from the board of water supply yesterday that several of our wells are at a critical stage. How come? How come they send us notices in Waianae to conserve water and then the very next week approve a massive development at the doorstep of Waianae? We need an agency to regulate the uses--somebody has got to do this. And I charge each of you with that responsibility for the future. To completely delete this thing would be a travesty. I urge all of you to vote against this amendment.

CHAIRMAN: Thank you, Delegate De Soto.

DELEGATE SOUKI: Point of information, Mr. Chairman. May I reserve the right to speak last?

CHAIRMAN: You may. Delegate Sterling.

DELEGATE STERLING: I rise to speak against the amendment. Because of the critical situation of the water, I don't think we can apply contemporary community standards to this problem. If any of you have sat on a planning commission and gone through the pressures of large developments, as the previous speaker said, then you can see where there is a definite need for a coordinating agency. The board of water supply, board of health--they don't seem to work together. The engineering department now--we have all kinds of new ideas coming up on engineering. Should we put in more concrete runoffs? or should we let grass runoffs take their place so that water would be able to seep back into the ground? What happens on a large development in Waianae? How much water is used in air-conditioning units--one of the greatest users of water?

How are we going to charge the water on a vertical subdivision such as a condominium? Do we use one meter or do we have individual meters? How about the air-conditioning units? All of these problems must be faced by this new agency, as I see it. And they must be given the power to regulate this.

If it is necessary, I see where this regulating agency will have to go into the design of new buildings. The new federal building just around the corner from us is completely, 100 percent dependent upon air conditioning; how much water is used to keep that building usable? These are the problems, as I see it, that will have to be faced. I'm very much in favor of the first amendment, even on the second amendment that was offered. I'm trying to stress the point that we do need a coordinating agency with police powers because of the problems--the demands for agricultural lands versus the very abrasive pressures of development. All of these will have to be faced by this agency, and they require the full support of a constitutional amendment.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I speak in favor of this amendment. I speak in favor of the amendment even though I agree completely with the many statements that have been made that show concern for the water resources of the State. Those have been stated with great eloquence and with great emotion, and I share those completely. Two years ago, I was on the board of directors of Life of the Land when George Hudis first started his water project. I've been concerned about it--Life of the Land was concerned with its limited resources and tried to solve the problem then and has been working toward that ever since. And I completely share the concern about the water resources of the State and share the feeling of the travesty when you see water wasted and misused.

But I speak in favor of this amendment because I believe that the proposed amendment in section 8 of the committee proposal does not solve the problem, and in fact may contribute to making the problem worse. The first sentence as we have just amended it adds no new power, no new obligations to the State of Hawaii. The State right now has power to control and regulate all of the water resources of the State; the State right now has an obligation to manage all of the State's resources for the benefit of its people. That sentence adds nothing to the State's powers.

The second portion of it recites in some detail what should be done to solve the water problems, and some portions of it are perhaps not bad. It sets forth the ideas of the majority, or some of the people who drafted the proposal, on what steps should be taken in some detail. But it also might impair the State's ability to solve water problems in the future. Specifically, it might say that only one state agency and not any other agency has any power to do anything about water problems; for example, if this passes and is ratified by the voters, it might mean that the boards of water supply of all the counties no longer have any power to charge rates for the use of water, have no power to regulate the consumption of water by residential users, because this implies there is only one agency. It says "a"--it does not say "a coordinating" agency, although I've heard that in the arguments, that the purpose of this new state agency is merely to coordinate. The language doesn't say "coordinating"; it simply says "a water resources agency." So, to the extent that it would impair and muddle and require litigation to establish the authority of the boards of water supply of each county to regulate the use of water, this would be counterproductive. It would be detrimental to the goal which I think we all share.

Secondly, I would agree with the argument that this agency, if it's one super water board, carries with it great unforeseen future problems. And I would share the risk and the concern that that agency might become all-powerful and perhaps would not accomplish what we expect. If we think that simply by putting this in the Constitution we're going to be guaranteeing that the board of water supply can't drill wells which would deprive the users in Waihee valley or Waiahole or Waikane, I think that's an expectation that is just not realistic. This super water board would have the power to do that; in fact, it would have exclusive power to do it. And it might well do it in a worse way.

And, specifically, the other risk I see is that this would put into the Constitution for the first time the requirement that the water resources agency would assure "appurtenant rights and existing correlative and riparian uses." That would go in the Constitution. That's a constitutional guarantee that, whatever happens, you cannot take away any existing appurtenant rights or riparian uses. I question whether we want to do that. I think

the existing powers in the State should be applied properly, and if they are the problem can be solved under the existing law. I would urge that you vote in favor of this amendment.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Hoe.

DELEGATE HOE: Mr. Chairman, I would like to speak against this amendment. I agree with one of the delegates that when there's a problem you should go to the source of the problem. In Hawaii today we have many agencies and departments that are responsible for the water resources--bits and pieces of the water resources, certain aspects of the water resources--but nobody has really looked at the total resource. We have DLNR at the state level, that can if it wishes but has never done it, regulate ground-water areas. We have the Department of Health, which is responsible for water quality and recently tried to do something meaningful in regard to protecting our stream flows, and was questioned all over the place on whether they had the authority to do anything about the quality of our streams. We have the Department of Transportation; we have the boards of water supply, which are mandated to supply residential users. These are all bits and pieces of the total problem. It is unfair to expect any one of them to deal with the total problem when they themselves are responsible for only part of it. They have overlapping and conflicting duties.

What the committee proposal does is allow for one agency--whether it be a department, whether it be a commission or an officer or any kind of body, it is up to the legislature to decide--to coordinate all these different pieces into one complete puzzle rather than a puzzle with parts missing. Recently in my area, a stream was completely dried up by a user. Okay, maybe the use was beneficial, maybe it wasn't; but there were many other people along the stream who questioned the use of that water. So they called DLNR, they called the board of water supply, they called the corps of engineers. What can we do? Who is responsible? "Nobody's responsible." "It's not our kuleana." "Call somebody else." Nobody knew, nobody cared. There was nowhere they could go to take care of that particular problem.

This agency would help establish new criteria. In the event of a severe crisis where indeed it was a choice between whether we drank or whether we fed the taro, by deleting the word "new" in the earlier amendment we gave this agency the authority to regulate the uses of water. So, in the event that it was indeed that choice, this agency would then have the authority to take water from agricultural users--if that indeed was the priority. Establishing this state agency--whatever kind of agency it is--does not delete the powers from existing bodies; it does not take away the responsibility of supplying water for residential users that the boards of water supply now have. In fact, what's being recommended by the state water commission supports keeping a local control on those aspects. And what they are recommending also supports this concept that somebody take care of the total water resources. This is not a brand new idea that all of a sudden popped out of this Convention; this idea is completely consistent with Hawaiian common law, English common law which was adopted in Hawaii, as it states in section 1-1 of the Hawaii Revised Statutes.

In the 1920s the Hawaii water situation had become so critical that they decided to put together a board of water supply, or the equivalent of what we now call a board of water supply. The head of that board of water supply suggested repeatedly in the '20s and '30s that the State declare ownership of water resources--not merely trusteeship but ownership of the water resources. In 1947 the state senate and house put in bills to that effect; the LRB did a study supporting it, saying that constitutionality was there and that there was justification. In 1959 there was a water resources authority study that said again that the State should declare ownership of the water resources. And in 1973, as we have heard repeatedly, the law of the land was established--that all surface waters do belong to the State.

What we're doing here is--we're not dealing with the question of ownership, we're dealing with the question of the responsibility, the obligation to take care of our total water resources. We are not taking over other people's kuleana and supplying specific bits and pieces. I speak strongly against this amendment.

CHAIRMAN: Thank you, Delegate Hoe. The Chair recognizes Delegate Funakoshi.

DELEGATE FUNAKOSHI: Mr. Chairman, I rise to speak against this amendment. To show concern and not do anything is just showing irresponsibility. We need a central point where some body is held responsible for the total water picture. Water levels are becoming very critical. When Mr. Average American turns on his faucet and runs the water, he doesn't know how low the water level is. And unless somebody can come out and look at the complete picture of the State--I'm sorry, but this bothers me to no end. We need one agency to be totally responsible for Hawaii's water picture. I hope all you delegates really realize how critical the water is in our State.

CHAIRMAN: Thank you, Delegate Funakoshi. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I'd like to make an amendment. I'd like to delete, in the second paragraph right after the word "agency," all the rest.

CHAIRMAN: Delegate Crozier, I believe your amendment is out of order since we are speaking on Amendment No. 3. Delegate Crozier.

DELEGATE CROZIER: I apologize. I speak for the amendment. We have an obligation to tread very lightly on this water issue. I could live with just: "The legislature shall provide for a water resources agency"--and stop right there, on the amendment just passed. But all the rest of the words in there makes the whole thing complicated. It makes for court cases. The whole issue will never be resolved for another 30, 35 years. Mr. Chairman, just because of all that verbiage I've got to support the delegate from Maui. We're dealing with water. Water is the key--the key to our self-sufficiency, and more--for our survival. If anyone, if any one of us has any kind of confusion about all those words after "agency," they have an obligation to protect the citizens. We should not let ourselves get tangled up in a mess we may never get out of. For that reason I say if we cannot have a clear picture, we'd better stay with the status quo.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Chong, you are recognized.

DELEGATE CHONG: Mr. Chairman, I rise again to speak against this amendment. We all share concerns for the water problems in our State. Evidently the method of solving the problem is where the differences of opinion lie. Allowing the legislature to provide for a water resources agency is the method being used by this Constitutional Convention. As the previous speaker said, there are various agencies with overlapping responsibilities. By creating one sole agency, all the responsibilities of control, quality, "beneficial and reasonable uses," "natural stream environments... [and] water use priorities" will be for the benefit of all the people in the State of Hawaii.

CHAIRMAN: Thank you, Delegate Chong. The Chair would like to remind the delegates to please try to refrain from being repetitious. Delegate Hornick.

DELEGATE HORNICK: Mr. Chairman, with that in mind I don't know how much I have to say. I would just like to clarify a couple of points that have been made. All the committee members had access to the input that the movant of the previous amendment cited, but the majority of the committee reached a different conclusion on the basis of that same input. I'd like to go further by saying that Delegate Hoe called [former] justice Abe on the telephone after the committee came out with the proposal and asked him how he personally felt about this trust concept. He reacted very excitedly, as is his way, and said, "That is my decision. My decision establishes a trust concept." And she said, "Well, can you give us a written statement to that effect?" And he responded, "Read my decision." It was only out of the goodness of Delegate Hoe's heart that she is not doing that today.

It's been mentioned that in this proposal we're creating some sort of scary super-agency that's possibly going to usurp all powers in controlling water. We stated specifically in the committee report that it's up to the legislature to designate an agency. The legislature may designate an existing agency; however, we felt it would be inadvisable for the legislature to designate an agency that was a competing user because other agencies that are also competing users would justifiably feel concern that one of their competitors would be regulating them. For example, the water commission, which has been appointed this year, would be perhaps an appropriate agency already existing that could lay out general criteria by which the other agencies could administer water policies.

The board of water supply has stated repeatedly that they are not responsible for setting water policy. It's not that they're not doing their job--it's not their job. Their job is only to supply municipal water use upon request. The same is true of DLNR; their responsibility is to groundwater and to agricultural use. Nobody is currently responsible for the total water resource. For that reason, we need an agency to set overall water policy, to establish how much water resource we have available and what criteria would be appropriate for assuring that all the water users are protected.

Regarding the provision in the proposal "assuring appurtenant rights and existing correlative and riparian uses," I would just like to say that those uses are co-equal, shared user rights. In other words, if the water supply is diminished all the users would have to face diminished usage. However, without those words in the proposal it would be possible for the municipal users to usurp the water rights usage of small farmers and agricultural users because there are obviously many more municipal users than there are agricultural users. So for that reason I feel it is essential that we include those use rights in the proposal. I feel that the committee has done an excellent job in researching this issue, which is admittedly very complex; and I feel that the solution they have come up with is fair. I don't see how they could have come up with a better solution. I urge the defeat of this amendment.

CHAIRMAN: Thank you, Delegate Hornick. Delegate Lacy.

DELEGATE LACY: Mr. Chairman, I rise to speak against the amendment. I basically favor the least control by government that we as a people can handle for ourselves. Thus I have reached a compromise within myself between the amendment to the amendment and a much stronger basic amendment, which those of us in the committee know went from one extreme to the other. I favor the basic Amendment No. 1 as the compromise because I think the main sentence to me--that the "legislature shall" etc., etc.--sets the policy. No one this morning has spoken on what form that policy would be. I think that's what some members of the delegation have really questioned earlier and did not get the answer.

There's a thing called a water code. I believe the reason I favor this amendment is because it does specify that our State shall in the long run derive a water code. The legislature will in time specify that water code. What is a water code? A water code is the same as--you might say a building code, only much more complicated. It will cover the development and the use of water. Use is the problem that we all are confronted with. This code will specify all the rules and regulations; it will be in writing, from the court decisions--it will be a guidance to the court. It will take many years--someone said 30, but I don't believe it. I think it will be about 5 years for development of a true water code. Many states have this type of control. This water code is what guides everyone: it tells you how you can license for the use of water; it will specify exactly what your rights are and what you have to do in control and management. It's the only fair way in which the citizen can look to his government and know what is being done throughout the area.

One of the most important things I believe this amendment still permits us to do is--the right of ownership still rests in the decision of the courts. This amendment does not take away that right of ownership; it does not specify that right of ownership. But it will describe within this water code, when it's developed, those appurtenant, riparian and all other rights and their interpretations, and those conditions which it will work in those areas. I think it's a very serious problem, as all the delegates are expressing; but I think that once we have the legislature heading toward the water code, we will have a document and a guidance that will lead us in the future.

CHAIRMAN: Thank you, Delegate Lacy. Delegate Chung.

DELEGATE CHUNG: I'm not speaking for or against, but I feel compelled to speak because earlier I had an amendment and I withdrew it and perhaps what I would like to discuss might give a broader view of my concern.

We have in our files a report from the various planning directors from the neighbor islands: from the County of Maui, Tosh Ishikawa, planning director; from the County of Maui, Water Supply Department, Tatsumi Imada; from the County of Kauai, department of water, the manager and chief engineer Walter Briant, Jr.; also from the County of Hawaii, manager of the department of water supply, Akira Fujimoto; and here locally, Manager

and Chief Engineer Edward Hirata, and finally from the Department of Land and Natural Resources, on behalf of Mr. W. H. Thompson, chairman of the board.

Now, my concern is, as I read through their report--they have some very important, very logical expressions. I just want to summarize, to the best of my ability, my impression of what these gentlemen tell us. The Department of Land and Natural Resources and the four county water departments all concur that it might be a mistake to adopt a new section on water resources. This is my impression as it now reads-- I'm just sharing these thoughts to throw out at you. They all agree that there should be included a statement that the State has the right to regulate and control water, which we all agree. But the question is raised, which we clarified earlier, on the language of "public trust." They feel the creation of a water resource agency would add another layer of government bureaucracy, which is not needed or desirable. But again, we all agree that it is not the department but the people who run the department that make it efficient or inefficient. They expressed that the State already has the power to do what this agency would do, all resting in the DLNR except that concerning water quality, which is the jurisdiction of the health department. These people also agree that all the powers should not be listed in the Constitution--they don't want it to be too specific--and that it should be handled through the legislative process. They also question the "appurtenant rights and existing correlative and riparian uses"--they feel it's not too clear. And they feel that this will be subject to legal dispute.

In conclusion, my feeling is rather than creating a new agency--and they also felt--that we should just add a new section which would simply affirm the State's right to regulate water for the good of all the people. I just want to share these comments after reviewing the report from the various people from our neighbor islands. So we are faced with a hard decision this morning. There's no question we need central control. Should this control be addressed in our Constitution? Should we take away the so-called advocacy for local home rule? These are things that I'm trying to grapple with, although I sincerely believe that we should have some kind of central control, yet without undermining the efforts and the goodwill of the neighbor island officials.

CHAIRMAN: Thank you, Delegate Chung. The Chair again reminds the delegates to please try to refrain from being repetitious. Delegate Hanaïke.

DELEGATE HANAÏKE: Mr. Chairman, I'd also like to speak against this amendment. We all realize that there's a problem and we're all trying to grapple with it. And as I see it, we can go in three different directions: we can either depend on our police powers or go the route that we're going now, which is basically a trust concept, or we can stay with the status quo.

Now if we rely on the police powers, as has been stated, it's discretionary; it's not comprehensive and, as has been stated, it's a lot different from the trust concept, which is my second direction. You know this trust concept means that you go for the benefit of the people, and that's different from just mere regulation. You set a direction for the government body to go in and in essence the government becomes a public guardian for all of us. Now it seems to me this amendment is in essence stating that we stay with the status quo. And as far as I'm concerned that means no regulation at all. As has been stated, the DLNR has done nothing. To add further on that, DLNR was supposedly responsible for the groundwaters; in 1961 they were instructed to set up rules and regulations in this area and only recently have attempted to do so. They have not even addressed emergency situations.

As has been stated, the board of water supply hasn't done anything--I'd like to also go into that a little. Last year a lot of this situation came to light through the press when certain farmers in the Waihee valley went to court. Up until then, the board of water supply refused to release any information on the situation on Oahu and refused to open their records. It wasn't until the board of water supply was forced to open their records that we realized how bad the situation was in Hawaii, and we started looking at the studies that had been made in the past few years, that stated the same thing. I would like to state, on the side, that the judge was shocked to see what had happened. Shortly thereafter, the board of water supply went to the press to ask for voluntary rationing. Another example is on the windward side, an area that I come from. In Kaneohe we don't get our water from Kaneohe; we don't even get our water from Kahaluu, our next-door neighbor. We get our water from Punaluu. Water in Kahaluu goes to Ewa to water the Ewa canefields.

When I was involved in the Waiahole-Waikane land use commission hearings, the board of water supply went on record--they wrote a letter to the land use commission--and they stated that although the developers wanted to put in four increments in their subdivision, they could only provide water for the first increment--on the windward side, which supposedly has a lot of water. And then I mentioned the situation with the Waihee farmers. But what we have is our state supreme court which had taken up this issue a few years ago, and it has been stated--the Abe decision in McBryde--what I wanted to point out was the fact that it wasn't any agency that took this up, it was our state supreme court. When something goes to court, that's pretty extreme. When an objective body has to decide these issues, it means that nothing has been done and this is the last recourse for people. There was no direction given. The courts had to grapple with this problem for years, alone.

I realize that this whole thing is very far-reaching and many people are worried about this and very concerned. But if you knew some of the things that were happening already--for example, if you've ever read the water report called 20-20, you might feel as I do that these concerns override any concerns that this amendment and committee report are proposing.

CHAIRMAN: Thank you, Delegate Hanaike. Delegate DiBianco.

DELEGATE DIBIANCO: I rise to speak against the amendment. But I would like to say I do so because I am strongly in favor of the concept that's been discussed, which is to provide for a water resources agency. I think one is absolutely necessary and long overdue, for all the reasons that have been previously stated. I would like to go on record, however, as sharing Delegate Crozier's concern--I would have been a lot happier if we had put a period after the word "agency," or maybe even after the first entire clause that says: "The legislature shall provide for a water resources agency which shall, in accordance with law, set overall water conservation, quality and use policies"--period, and just left it at that.

I think the language that says that the agency shall "protect...natural stream environments" may cause us a problem with the army corps of engineers and their flood control projects. I think the language to "establish criteria for water use priorities while assuring"--and the word "assure" is pretty much the same as guarantee, while guaranteeing--"appurtenant rights and existing correlative and riparian uses" is vague, is going to cause some problems and will probably cause some litigation.

So I do share a lot of Delegate Crozier's concerns. The only reason I come down against the amendment is because I am so strongly in favor of the water resources agency that I just feel I should support the committee on this and possibly, if they share my concerns now that we've all spoken regarding the language, they will clean it up a little bit for Second Reading.

CHAIRMAN: Thank you, Delegate DiBianco. Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, I rise to speak for the second time against the amendment. Therefore I'm speaking for Amendment No. 1 that was recently passed. I want to address myself to the section in there on water conservation. I spoke the first time on a minor matter, and this will indicate the conflicting agencies that are involved. On a minor matter like curbs and gutters--Wai'alae Iki, curbs and gutters, concrete. Every bit of rain goes straight out to the ocean. All the other subdivisions that we have, all the rain comes down the curbs and gutters and goes in huge pipes straight out to the ocean. It's a problem that is going to have to be faced by the public works people. This is the problem that has recently come up--that instead of using concrete curbs and gutters, should we go back to grass gutters to allow the water to seep through and replenish the basin? Public works, board of health. What about our sewage treatment plants? Can we recycle this? Federal flood control. Whose going to coordinate the requirements of the federal flood control people with the State and with the different counties?

These are different problems that are arising. I'm trying to illustrate the fact that we have these various agencies that are not now satisfying the problem. We do need a water resources agency--I speak very strongly for this. I think we're taking the right step in the right direction because, as I've tried to illustrate, the different agencies that

we have now--and for many reasons, possibly jealous of each other or inability to coordinate or correlate--we have these conflicting problems that keep coming up in every meeting, on any application, whether it's for preservation of agricultural lands or for development. We do have this and it must be faced.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I would just like to make a small point. I said that the court cases may take 35 years. Another delegate to my left said it would probably take only 5 years. Mr. Chairman, the McBryde Hanapepe case has been going on since 1959 and it's only now going into the Ninth Circuit Court. We still have the U.S. supreme court to go, sir--that one may be another 10 years. From that example alone, I say that it will probably take 30 years to clean up this whole mess.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I would like to speak for the amendment. But I'd like to make some statements that if in support of this I'm wrong, I stand to be corrected. I understand from this committee proposal that in the first part of this proposal, "Conservation and Development of Resources," we are attacking the concerns that all of us have for water and all of our natural resources, by saying that for the "benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air" and so forth; and in the last sentence which says: "All public natural resources are held in trust by the State for the benefit of the people." So I don't really think that the problem we're addressing in this amendment is the problem that has been talked about--that we're not concerned.

My concern for water goes back, I suspect, longer than most anybody's here. It goes back over 20 years when, as a member of a local government, I tried to get the water owned by the water source--owned by Pahala Sugar Company turned over to the County of Hawaii. They wanted to turn over the smaller of two tunnels that they had, and I insisted that--at the same time we were planning a subdivision--that the State and the county should have the larger of the water tunnels in order to assure that the people of that area would have water. And so my concern about water is historic and I feel no guilt about not being for protecting water.

But I do feel a great deal of concern about this amendment as it's stated. As Delegate Crozier has said, I would feel happy with a water resources agency, period--perhaps with a little defining of its powers. But I feel that all this extra verbiage in here is confusing, is a source of litigation, is assuring the people who own these rights things that we're not even sure of what we are assuring them. I'm not even sure that everybody here understands the concept of "riparian" rights and "appurtenant" rights and "correlative" rights--and I have some concept of it because I am in the real estate field, but I don't have a legal concept of it. I would say that even my concept, I think, is somewhat vague. I feel that we are opening a real can of worms, that we're getting into an area that the Constitution should not get in; and I would say that if we were concerned about some of the problems that have been brought up here, there are others that this Constitutional Convention has voted down that would have been of a constitutional concern--such as the public's right to know, and access to all government records--and then the board of water supply could not have refused these records.

CHAIRMAN: Delegate Hale, could you confine your remarks to the amendment.

DELEGATE HALE: I think my comments are pertinent, Mr. Chairman, because one delegate said that 99 percent of what we are doing is legislative. I don't think that is true; much of what we have turned down was constitutional and much of what we are passing is legislative. And I shall vote against this, hoping that on Second Reading somebody will come up with an amendment for a water resources agency, period, that I can support in concept. But to have it go through with all these contingencies I don't think is in the best interest of the people, and I do think that we are legislating in an area where we're really not all that familiar and we are creating problems and causing the basis for problems that maybe generations will have to face.

CHAIRMAN: Thank you, Delegate Hale. Before the Chair recognizes the movant to make the final speech, is there anyone else who wishes to speak? Delegate Paty.

DELEGATE PATY: I wish to speak against the amendment and express, of course, the fact that I may have a conflict, as my firm is easily one of the largest water users in the entire State. But I think we have to recognize that we are looking here at an idea whose time has come. There is no question that the feeling on the part of many people in the State--and I've been following the water trend for upwards of 30 years, and I've seen this idea developed in more definitive terms as the years have gone by.

I think, very honestly, that if we don't provide for some sort of an agency, we can be very well assured that the legislature is going to. I am a member of the state water commission, and although I haven't seen much of them in the last couple of months, I do hear that they have divided into six subcommittees which are related to supply, demand, development, management, rights and finance. And they are going to recommend policies to the next legislature regarding these particular areas. And there is no doubt in my mind that the legislature will certainly take upon itself the establishment of some sort of regulating agency that is going to do the kinds of things that we're talking about here today. Frankly and in all honesty, if there wasn't any regulation I should be happy. But I have made public statements, long before I considered running for Con Con, that we do have to have some sort of a unifying force to direct and to give guidance to and to control and if need be to regulate the water resources of this State. And I haven't backed off of that position.

I am not, however, enamored of a superagency. I think this job can be done just as effectively with a rather modest group--commission if you will--with the necessary powers and the necessary staffing. But I would also like to say that although I support the idea of a controlling unit, a controlling body of some sort, I would certainly be a lot happier-- I feel that with the language contained in the second paragraph of Amendment No. 1--because I see no way you're going to avoid continued litigation if we subscribe to this particular language. But certainly the time has come for us to address this control of our water resources, and for that reason I'm speaking against this amendment.

CHAIRMAN: Thank you, Delegate Paty. The Chair calls for a 30-second administrative recess at this time. Will the delegates please remain seated.

At 11:35 a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:36 a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. We will continue with our debate on Amendment No. 3. Is there any further discussion? Delegate Tam.

DELEGATE TAM: Mr. Chairman, I speak in favor of the amendment. Right off the bat, I can say I feel the trend on the floor is to vote against the amendment. We don't have the votes to sustain this amendment, but I'd just like to make my comments known.

I've heard a number of speakers--I hear a lot of concern about the water problem, I hear a lot of talk about state benefit. But what I really hear are references to Oahu; almost all the speakers I've heard have mentioned Oahu problems. And while I may sympathize with what the speakers have to say, it would seem that what we're trying to do is take care of an Oahu problem. But in the end it's going to penalize us on the neighbor islands. It's been admitted that we have all the state agencies we could ever want to control water as well as anything else. We have all the appropriate bodies. We've already indicated we have a deep trust in the executive office and the legislative office, and yet it's admitted--or what seems to be tacitly admitted--that these offices will not do anything about it. There seems to be an inconsistency here.

What I do hear is something to the effect that Oahu agencies are unresponsive--Oahu county agencies are unresponsive. And for that, it seems like we are trying to do something to take care of that. But in catching this Oahu county agency or agencies, we're penalizing those of us on the neighbor islands--and that's the real issue. The question is, why should someone from Honolulu who doesn't see us or know us out there, or know our problems, be telling us what--how to take care of the water resources? It's already come down in a recent case, [HGEA et al. v. County of Maui, and Elmer F. Cravalho, Mayor]--sounds like our mayor was fighting against the HGEA--actually it was a question of what were actually county charter functions and powers and jurisdictions and what was actually within the State's. And it was decided at that time that such things

as police, liquor and the board of water supply, as structures and organizations, were better left to the counties; whereas something such as personnel would be better left to the State since personnel was more of a statewide concern, the basic thrust being in terms of flexibility. And local control of those matters which are better managed at the local level should be left at the local level. We believe, in accordance with the supreme court decision, that something like water be left with the boards of water supply at the local levels.

Now, this matter about problems on the outer islands. There was one mention about problems on the outer islands--I would bring this up as an indication of misconceptions. There's an implication that on Maui we don't care for the Kula farmers but we care for the Makena golf courses. Now the problem over there is not a matter of priority; it's a matter of storing the water, collecting the water, being able to pump the water up to Kula and put it in adequate reservoirs in time of drought. There's also a problem of contamination up in the Kula area. And when there are drought problems in the up-country watersheds, the water has to be pumped upward from other watersheds throughout the Island. Water is pumped up, but because of the heavy demand on agricultural use, they can't get all the water they want. This doesn't mean that the county is not responsive to it. As far as the golf courses being watered in Makena, I think this body should know that the water that was pumped to those courses there came out of wells that the land developer built himself, or themselves. Not only that, but this was brackish water and totally unfit for drinking--the only way we're going to let anybody water the golf course instead of piping it into homes or using it for agriculture up in Kula.

In summation I would get back to--that this is a matter which calls for flexibility and calls for local control, and it calls for responsiveness of that local control. With a superagency specifying a whole set of rigid standards, we're not going to have this. We're going to take care of a problem here on Oahu, where admittedly there are a number of people, but then those of us on the neighbor islands, because of our small populations, are going to get lost in the shuffle. For that reason, I would speak for this amendment.

CHAIRMAN: Thank you, Delegate Tam. The Chair recognizes Delegate Chong.

DELEGATE CHONG: Mr. Chairman, I think much of the argument that the previous delegate made in favor of this amendment could be used as an argument against this amendment. Creation of an agency, a state agency, is definitely that--one that would be concerned also with the other county problems. Naturally we here are concerned about Oahu. But Anahola has that problem. Hana has that problem. Nahiku has a problem. Kona has the problem of all waters used on agricultural lands being diverted. Now, allowing that a state agency is in control of all this water in the whole State, it will be responsible for the equal distribution of water as well as quality, conservation and everything else. I shall speak again against this amendment.

CHAIRMAN: Thank you, Delegate Chong. Is there any further discussion? If not, the Chair recognizes the movant, Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, first of all I would like to mention to all the good delegates here that I too respect the need for the protection of water, and that for the long term, we should look for some method in providing for enough water for our heirs to this great land of Hawaii.

However, I do not think that the creation of another agency in this State will provide that remedy, for this reason: all of the experts on water in Hawaii who spoke to the committee spoke against the language in section 8 as being possibly confusing, providing for future litigation; they spoke against the need for a new level of government, as a new layer of government will only provide for more people, more money, more taxes--no guarantee of solving any problems. They also mentioned very clearly in their letters and reports to the committee that we already have existing agencies that can remedy the problem. By statute, the land and natural resources department is the body in the State to regulate the water. If this body is not satisfied with what the land and natural resources is doing, then we should write a resolution to the executive who is responsible for its function, even though it's a quasi-body, that it should improve the deficiencies it seems to have. We need to strengthen the powers; but we don't need to create another agency for a possible--and again I say--a possible inadequacy.

I think we should also say another thing. I think most of us believe in this, that the government most responsive to the people is the one nearest to the people. Conversely, the government not as responsive is the one farthest away. Now, you've got a state body, a superagency, above the other agencies that you have for the regulation of water, which includes the county boards of water supply. What are we going to be doing with them? Will their functions and responsibilities be diluted? The land and natural resources department--how will it affect their functions? The health department, for the control of water pollution--how would it control that? How would this affect all of those? Now we surpass all that and go to this great big body here and they're going to resolve the problems that we have. They may not--this body may not be responsive to you. They might be responsive to other interests that you may not want.

There is no guarantee that a superagency is going to resolve the problems. The only guarantee you will have by the creation of this agency is that it's going to create problems, it's going to create confusion. Therefore, for clarity and for the future heirs of the State, I request that this problem be resolved by the legislature and not us here. We have neither the time, the depth nor the skill to really look into this problem.

CHAIRMAN: Thank you, Delegate Souki. The question before this body is the adoption of Amendment No. 3, which calls for the deletion of section 8, entitled "Water Resources." Those in favor of the amendment, please indicate so by raising your hand. Those opposed to the amendment, please indicate by raising your hand. The negative has it and the amendment is lost. The Chair would like at this time to call a very short administrative recess, for the purpose of giving the stenographer a well-deserved rest.

At 11:48 a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:53 a.m.

CHAIRMAN: The Committee of the Whole will please come back into order. The Chair recognizes Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I move for the adoption of Amendment No. 4.

DELEGATE DE SOTO: Second.

CHAIRMAN: It's been moved and seconded that we adopt Amendment No. 4. Is there any discussion? Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I would like to speak in favor of this amendment. The purpose of this amendment is to require legislative approval before the construction of a nuclear fission power plant or the disposal of radioactive wastes. The term "nuclear fission power plant" is used for two reasons. The first is to distinguish "fission" from "fusion." At the present time the costs and hazard of nuclear fission are apparent, whereas fusion is still a laboratory phenomenon and as yet untested. The second reason is to make clear that the concern is for power generation rather than for the hazards of such other facilities which may be necessary for research or for fuel fabrication or reprocessing.

The term "radioactive material" refers to material associated with the operation and maintenance of a nuclear power plant--for example, fuel, waste materials, or other contaminated items. It does not refer to radioactive materials used in medical research or treatment, such as the use for cancer treatments at hospitals. Finally, this amendment would place in the hands of the legislature the policy question of whether or not to permit the construction of a nuclear power plant in Hawaii based upon a consideration of the social and economic factors involved. Following legislative approval, the procedure would be the same as currently provided.

Some delegates are concerned that the states have been completely preempted by the federal government from regulating nuclear energy. This is not the case. The states are free under [Title] 42 U.S. Code, section 2021(k) to regulate for manifold health, safety and economic "purposes other than protection against radiation hazards." This

amendment extends the State's power to regulate nuclear energy up to the limits marked by the federal legislative and regulatory scheme. The amendment would require approval in each house by a two-thirds majority. This is because of the importance of the question for the future of this State.

The issue of nuclear power is an enormously complex, technical economic question. There are those who say that the question is premature because Hawaii is not yet large enough to justify the economic investment, that even the Island of Oahu will not have a population large enough until the year 2000 or beyond, and that there is time enough to consider this issue at the next constitutional convention or at the one after that. Nonetheless, I feel that the question is of such importance that we must confront it now. Even if we do not make the decision itself, we can decide the process by which the decision will be made. I am extremely concerned because nuclear energy is enormously expensive and extremely dangerous.

Testimony before the Committee on Environment, Agriculture, Conservation and Land has revealed that a nuclear power plant would cost at least \$1 billion to construct. In addition, there is the problem of radioactive waste disposal and storage. Testimony before the committee also suggested that waste material is so poisonous that the inhalation of even one speck may cause cancer, long-term genetic damage and death. In addition, these radioactive wastes may need to be stored for several millenniums before radioactivity dissipates. Needless to say, storage is both costly and dangerous. Fellow delegates, I urge a speedy adoption of this amendment.

CHAIRMAN: Thank you, Delegate Fukunaga. Is there further discussion? Delegate Nakamura.

DELEGATE NAKAMURA: Mr. Chairman, I'd just like to clarify a few things for the members of the committee. I was one of those who spoke against this proposal in the committee, based on procedural grounds that perhaps the federal government did preempt the field. After further research--and I think Delegate Fukunaga has clarified that situation--I am extremely in favor of this proposal to help protect our environment for the future.

CHAIRMAN: Thank you, Delegate Nakamura. Is there any further discussion? Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I rise to speak against the amendment. What I'd like to accomplish is to point out some problems that hopefully be--if the amendment is approved now--would hopefully be cleaned up at the time of Second Reading.

In particular, the language does not say power plants may not be built in the State of Hawaii. It says that "[c]onstruction of nuclear fission power plants... shall be subject to approval" of each house. Now, that seems to mean that construction anywhere in the world has to be approved by our house and senate. I don't think that's what is meant, but the wording does seem to say that. So I hope that could be cleaned up. Secondly, it's not clear. Does that mean if there is a decision to construct a plant--does that mean the construction plans have to have a two-thirds vote?

Even more important, I think that the disposal of radioactive material should be regulated, and it should be strictly regulated. If there is any radioactive material brought into the State, we should not make it hard to regulate; we should make it easy for our legislature to strictly regulate disposal of radioactive material. Therefore, I would hope that we would not require any regulation of the disposition which would make it necessary to have a two-thirds vote to regulate it. For example, what if someone should ship some nuclear material to Hawaii from a plant in California or some other state? We should make it as easy as possible for our legislature to strictly control and regulate that. But the last reason that I would oppose the amendment at all is that once again we are venturing into the area of legislation, and this provision has no place in our Constitution.

CHAIRMAN: Thank you, Delegate Burgess. Is there further discussion? Delegate Takehara.

DELEGATE TAKEHARA: Mr. Chairman, I'd like to speak against the amendment. We must seek nuclear safety for our children and future generations. There are no

guarantees to this date that nuclear power plants are safe. The experience of several mainland states with nuclear power plants, whose environments may be damaged, should not be repeated in Hawaii.

Citizens of Arizona, Michigan, Missouri, California, Montana, North Dakota, Ohio, Oklahoma, Maine and Washington today are loudly expressing concern about and taking active steps to seek nuclear safety. There was a program on "20-20" a month or so ago about a town in Indiana in which low-level wastes which previously had been considered dangerous had been allowed to leak into the water supply. They wound up in concrete sidewalks, buildings, fish, everywhere. It takes time for cancers to develop but now, 20-plus years later, the town has an abnormally high incidence of leukemia and thyroid cancers. Geiger counters show that almost all the buildings built in the past 20 years are radioactive, and it remains to be seen what the effects will be in the second or third generation.

This is the problem with the dangers of radioactive materials in general. All nuclear power plants leak low-level wastes as well as producing incredibly toxic hot waste; they become concentrated in fish and other animals, and then we as humans eat them. However, cancers generally take 30 years to develop and genetic damage usually takes two or three generations to surface. We don't know yet how bad it will be, but the Union of Concerned Scientists has done a lot of research and they advocate that nuclear power plant construction be stopped until these questions are answered.

Hawaii is a unique and progressive state. We have the expertise as well as ever-available solar, wind, geothermal, etc. resources, which are alternatives for energy. Fellow delegates, I plead with you to search your consciences. Do we in Hawaii really want to open the door for possible risks to our future generations? Do we really feel that something like this is a constitutional matter? that all these natural resources like the sun and the wind will disappear from us in 10 years? Because we have an obligation to secure the best and most healthful environment for future generations, and because I feel that this very dangerous--as well as legislative--matter should not be presented for consideration to the legislature, I speak against this amendment.

CHAIRMAN: Thank you, Delegate Takehara.

DELEGATE CHANG: Point of information, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE CHANG: Did the previous speaker understand that this proposed amendment would impose safeguards on the construction of nuclear power plants in Hawaii, or provide the legislature an enabling clause?

CHAIRMAN: Delegate Takehara, would you care to respond?

DELEGATE TAKEHARA: Would you repeat that question?

DELEGATE CHANG: The proposed amendment would impose safeguards in the area of nuclear power and would require that any construction be subject to approval by a two-thirds vote in each house of the legislature, which would not be the situation if the amendment does not pass. I take it from the tone of your speech that you understand this amendment to be an enabling clause in the Constitution?

CHAIRMAN: Delegate Chang, would you address your question to the Chair.

DELEGATE TAKEHARA: If I understand your question correctly, you're saying that where there is a possible enabling factor in this amendment, because we are presenting this as a constitutional amendment in the sense that there is a possibility for this plant with a two-thirds vote in each house?

CHAIRMAN: Delegate Chang.

DELEGATE CHANG: Mr. Chairman, I don't understand the delegate's position because this proposed constitutional amendment would impose a safeguard with regard to the construction of nuclear power plants in Hawaii, and I understand the delegate to be against the construction of nuclear power plants in Hawaii. So it would seem that she would be in favor of the amendment and yet she spoke against it.

DELEGATE TAKEHARA: I'm against this amendment. By enabling this, I'm concerned, as I did express in my testimony, about the fact that there is nothing thus far that has shown it is absolutely safe to our people.

CHAIRMAN: Thank you, Delegate Takehara. Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, I rise on a point of information. Perhaps we could all feel a little safer if this question was answered: What is the present condition under which Hawaiian Electric or anyone can come in now and build a nuclear fission power plant? Can they do it with or without any kind of approval?

CHAIRMAN: Is there anyone who cares to respond to that question? Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, under present circumstances, if any private company sought to construct a nuclear fission power plant, there is no requirement that they get approval from the legislature. The only body that they would have to go to is some other type of regulatory agency, such as the PUC.

CHAIRMAN: Thank you. Does that answer your question, Delegate Ching? Delegate Hale?

DELEGATE HALE: I have a question. This says "nuclear fission"; I read in a paper not long ago that there was a breakthrough and there are now nuclear fusion plants. Does this cover that?

CHAIRMAN: Delegate Fukunaga, would you care to respond?

DELEGATE FUKUNAGA: This does not cover fusion.

CHAIRMAN: Thank you. Delegate O'Toole.

DELEGATE O'TOOLE: I'd like to speak in favor of the amendment. I've got great concern also regarding safety, and I agree with Delegate Takehara that there is no proof of safety. Yet I'm in favor of this one and opposed to the one that follows for the reasoning that our Constitution is not one which we should set for just 10 years but one we should set for all future generations. I'm a believer in technology. If we put a total ban in the Constitution, what if--even if it takes 50, 60, 100 years--we do get the capability of making nuclear fission plants safe? I'd always heard before that fusion--it would be hundreds of years before fusion would become possible. And yet all of a sudden we have a breakthrough. With technology the way it is today, I don't think you can predict these types of things.

So therefore I would like to see some flexibility; and therefore again, I'd like to speak in favor of this, because with the legislature having to vote by a two-thirds majority we have a situation where we know darn well that if nuclear power plants are not safe the legislature would not vote in favor of it--especially since there would be so much pressure on them they wouldn't be able to. Let's look at the situation today. Let's say, if a nuclear fission plant was being proposed for Hawaii and if this law was on the books at the current time, I don't think there's any possible way that the nuclear fission plant would be built. So therefore I have the same fears as Delegate Takehara, yet I think this amendment will take care of much of the situation that she's concerned about.

CHAIRMAN: Thank you, Delegate O'Toole. Delegate Lee.

DELEGATE RACHEL LEE: I am against this amendment. I agree with Delegate Takehara--this two-thirds vote in the two houses scares me. How can we assume that the legislature would not buckle under extreme pressure by industries that will deal with nuclear power. I feel this amendment is like shutting a door without putting the lock on. So I'm against this amendment.

CHAIRMAN: Thank you, Delegate Lee. Delegate Villaverde.

DELEGATE VILLAVERDE: Mr. Chairman, I'm for this particular amendment. I'm concerned also about future activity regarding this very delicate and destructive area, as Delegate Takehara--

CHAIRMAN: Delegate Villaverde, would you please refrain from--

DELEGATE VILLAVERDE: --as the delegate over there said. However, if we don't have an amendment such as this for inclusion in the Constitution--and this is a protective device--what we're going to have is nuclear confusion.

CHAIRMAN: Thank you, Delegate Villaverde. At this time the Chair recognizes Delegate Wurdeman.

DELEGATE WURDEMAN: Mr. Chairman, I would like to speak against this amendment. I don't feel that this is a constitutional issue. I believe if we set up an energy agency such as this and construct a nuclear fission power plant, that we should also address solar energy, biomass energy, geothermal energy, wind energy, water energy, wave energy, ocean thermal conversion energy and an enormous list of different kinds of energy that would protect the future of Hawai'i nei.

I also believe that in voting down this particular amendment, which seems to have the vote--I would like to go for the next amendment.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I speak against this amendment. Originally I was going to save one of my arguments until my amendment but I think I better lay it on you folks now. In this it says "...shall be subject to approval by a two-thirds vote in each house of the legislature." Mr. Chairman, no way can anybody build a nuclear power plant unless they get special revenue bonds. We just gave them that privilege the other day. Mr. Chairman, this is the same thing. They cannot build a plant until they get a two-thirds vote for the bonds, they cannot build a nuclear plant unless they get two-thirds. We got that safeguard already. So let's vote this one down and get to mine.

CHAIRMAN: Delegate Odanaka.

DELEGATE ODANAKA: Mr. Chairman, I would like to speak in favor of this amendment. I would like to direct a question to the Chair to direct it to the maker of this motion. I would like her to state once more whether this would add a protective measure for nuclear power plants.

CHAIRMAN: Delegate Fukunaga, would you care to respond to that question?

DELEGATE FUKUNAGA: Could you repeat the question?

DELEGATE ODANAKA: Would this amendment provide for protection over construction of nuclear fission power plants?

DELEGATE FUKUNAGA: Yes, it would.

DELEGATE ODANAKA: Then I really urge all of you delegates to consider this issue really at first hand. I don't think that geothermal energy can be compared to nuclear energy. I just know that nuclear energy really can affect a lot of lives.

CHAIRMAN: Thank you, Delegate Odanaka. The Chair recognizes Delegate Lacy.

DELEGATE LACY: Mr. Chairman, I rise in opposition to the amendment. I want to cover a couple of areas from my experience with nuclear power. I've lived with it, operated it, worried about it, but to the general public it's a strange area that little is known about. For instance, the movant used a couple of areas and spoke about the dangers of "one speck." Yes, if you got one speck of plutonium, I'm fairly sure that death would come in a reasonable length of time, a very short period of time--the "speck" being something you would have to define for me, but it would probably be big enough so you could see it and that would be quite a bit.

In a nuclear power plant, there is not a lot of radioactive material floating around. So I think the only way that I can speak to you on this basis is to read you a couple of items from people who operate them--we're talking now about commercial nuclear power

plants, and that's what I understand is being spoken to here in this amendment. We're not talking about some other type of radioactive material. "It is the IBEW's [the union's] opinion that nuclear power is safe, environmentally acceptable, and the most economical way to meet the power needs of the consumers of this nation."* "The IBEW has been involved with commercial power reactors since 1957 when Shippingport came on stream"--that was our first commercial plant. "Currently, 64 power reactors are licensed to operate. IBEW members help operate and maintain 39 of these.... Our knowledge of nuclear safety is based on our pragmatic experience gained over the past 19 years of having thousands of our members involved at the power reactors. That experience tells us that nuclear power is safe.

"We know that standards of construction are more rigid and exacting at a nuclear power plant than at a fossil station. We know, because we help construct them.

"We know that in 19 years there have been no fatalities at the nuclear power plants from radiation or its effects. We know, because we help maintain them.

"We know that continuing training to increasingly more difficult standards is required to operate the nuclear plants. We know, because we help operate them.

"We know that there have been no proven somatic or genetic effects to our members [sic] families as a result of radiation exposure from the nuclear power plants. We know, because we live next to them." And they go on to say: "We urge our members in the following states to turn out with their families and their friends on election day to defeat the anti-growth initiatives."** And that was in Arizona, Colorado, Missouri, Montana, Ohio, Oregon, Washington, California, etc.

The 3,400 members of the "Board of the Health Physics Society... [oppose] legislation designed to ban, delay, defer or place at an economic disadvantage nuclear power reactors."+ It's been mentioned about this society of scientists that come together--I asked one of the persons testifying before our committee--after he had spoken strongly about all the dangers of nuclear power and all the accidents and everything--I said, how about giving me a list of them. I haven't received any yet.

There are engineering problems occurring in any kind of an engineering system. For instance, you have to design to retain the material that might be radioactive. But the kinds of information, such as the storage for millenniums--I'd like to cover the waste disposal subject now. This is a thing I could talk on for an hour and other people could talk on for days to try to make you understand. Here is a plan that will work for reprocessing waste material. The rods that go into the nuclear power plant look like great big pieces of steel. When they're taken out, they are placed in big swimming pools. They have a tremendous amount of heat, and this heat is dissipated over a period of time; it's best to leave them in this condition for 1 to 3 years. Then you take that material and you process it into another smaller unit because the radiation has dropped enough that you can, with normal protection, then use saws, drills, etc. and cut it up into smaller pieces, put it in containers and it can be shipped to a reprocessing plant. The reprocessing plant will probably put it into swimming pools again, and they will watch this radiation for a period of up to 10 years. By that time it's only a fraction of what it was when it came out of that nuclear reactor. You then take that material and you reprocess it to get that plutonium back. It's a very valuable metal and you want it; so you go to that expense, and what you have left are a by-product. The ones you're worried about are such things as strontium and cesium and some of those that have a shorter half-life. You're not worried about the 25,000-year one. You're taking that material and trying to get it back again, and you're going to use it again to make your next fuel rods. You take this material and eventually you will solidify it in glass. And then this material at that time can be set in the open to air, such that it's cooled by the natural circulation around, by wind and general temperature in the region. If you want to then bury it at some future date, you can take the material and bury that material that will be down to such a small amount that within approximately 30 years you will have the material so you couldn't tell the difference.

*"Are Nuclear Power Plants Needed," IBEW Journal, October 1977, p. 16.

**"Are Nuclear Power Plants Needed? Yes! The Atom on the Ballot," IBEW Journal, November 1976, p. 3.

+Officers and Directors of the Health Physics Society, Resolution, subscribed to at Buffalo, New York, July 17, 1975.

And after 1,000 years--not millenniums--but after 1,000 years it would be just like the earth is out there right now, if you get around some uranium in a natural God-given area.

So I want you to consider that there are a lot of people in this country who are operating and are around nuclear power reactors. It's not a frightening thing. I hope that some of the delegates in the future will read up on the subject and get better informed, because someday we might need a reactor in Hawaii because of the cost of oil, and bringing coal here instead of nuclear power would be a major disaster for the environment and everything that deals with coal. We have proven in numbers of areas of our country that they are safe, they are operable and they now furnish about 10 percent of our country's electrical power. So when someone says they are automatically dangerous and should not be here, I think that's wrong. They should not be here now because we don't need them and we couldn't afford them. It's cheaper right now to go ahead and use our coal-fired systems, and with bagasse or others as a backup or as an additional source.

There is one other point and that has to do with the financial standpoint, of bonds that would be permitted for our major utility here in the electrical area. If they wanted to float a bond issue and there is a restriction on the source of power that they may use, then the investors look a little bit askance at the possibility that that will be prevented to be the cheapest way to do something. So this value is a few points more expensive to us by putting a restriction that the bond market would look at. I have my own feeling that there is no question that during the next 10 years there would never be consideration of a nuclear power plant. Certainly we should leave that open for many years from now, when it comes; and those of you who know people in the areas of California, back east in Philadelphia or in the Pennsylvania area, I hope that you will correspond with them and find out what their feelings are as to the danger of living around and being with people at nuclear power plants. It is not what most people think it is.

CHAIRMAN: Thank you, Delegate Lacy. Delegate Sterling--

DELEGATE CROZIER: Mr. Chairman, point of information. I'd like to clarify something that the delegate just said. Can I do that?

CHAIRMAN: Your point is out of order. Delegate Sterling.

DELEGATE STERLING: Mr. Chairman, I rise to speak against the amendment, with due deference to the previous speaker's personal experience with the item of nuclear fission. I'm perhaps the only one in this room who has some experience with this. I was on Okinawa when the first two bombs were dropped on Hiroshima and Nagasaki--we were waiting to move into Japan by land and sea. And then I spent 3-1/2 years in the northern part of Arizona working in the northern Arizona area and the Four Corners area mining uranium. Then we come home to the Pacific--while mining this uranium, we became very familiar with the tight controls of the Atomic Energy Commission, where it was very restricted to certain people on who would be given the opportunity to mine uranium. But we come home to the Pacific--I don't want to get emotional about this, but the same kind of promises were made to the people of Bikini: everything is going to be all right; you can return to Bikini, to your atoll; it's going to be all right. You know, really you people don't count; this is so important--that we drop a couple of bombs out there. We're going to move you to another atoll; you can live over there, although it's not exactly the same as your own--but you can move over there for a little while and then in a little while you'll be able to move home.

But they can't move home. They have to move to another place, because of one statement that has continued to be made in all of the debate this morning on this subject--the unknown quantity, the unknown quality of what we're talking about. I don't think any scientist can guarantee exactly the tremendous powers, both constructive and destructive, that are still to be unleashed from nuclear fission or nuclear fusion. But I'm more concerned for the people of Bikini, the tremendous problems that they have had and are still having and will continue to have from generation to generation. I submit that the same promises were made to these people--that everything is going to be all right. Big Brother is going to take care of you. Thank you.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Chang.

DELEGATE CHANG: Mr. Chairman, I rise to speak for the amendment. This policy question perplexed the Committee on Environment, Agriculture, Conservation and Land

and resulted in a decision that marred an otherwise harmonious and productive decision-making session. This amendment reconciles the different viewpoints that were expressed that evening and establishes a constitutional provision that most of the adversary-advocates can accept. It establishes a safeguard that does not now exist and retains governmental flexibility in dealing with the vital and complex subject of energy.

Delegates, the recent experience of the Bikini islanders reminds us that the people of Hawaii are living in an island State and have but mere specks of land which they can call their home. This limited area is not to be exposed to radioactive hazards without careful scrutiny by our elected representatives. Mr. Chairman, I urge the adoption of this amendment.

CHAIRMAN: Thank you, Delegate Chang. The Chair recognizes Delegate Hale.

DELEGATE HALE: Mr. Chairman, I speak against this amendment. I think the whole purpose of putting something in the Constitution--as an amendment to our Constitution to submit to the people, would be to get the people's attitude toward nuclear power. And I feel that the honest, straightforward amendment would be No. 5, by Delegate Crozier. I urge you to vote down this amendment and consider that amendment, because then the people have a clear-cut choice. All we're doing now is telling the people that--you know, we don't really want it, you indicate you really don't want it, but if two thirds of your elected representatives want it then it's going to be forced down your throats. And I don't think this is being fair or right or honest with the people.

I believe that if we are trying to make a policy statement against nuclear power, let's make an honest policy statement and let the people give us their input. If we're not trying to make a policy statement, then leave it alone and leave it up to the legislature to decide. They can pass a law saying that there will be no nuclear power plants. We aren't giving them any power, except to say two thirds. There will be more wheeling and dealing in the legislature over it than there would be if it were just a simple majority or if there's nothing needed. I don't think it's a very good amendment; I don't think it solves the problem. I don't think it's something that the people should have to vote on. I think a good clear-cut statement, that we either do or do not want nuclear power plants--and I would say nuclear power plants, not just fission plants, because we're talking about years to come, we don't know what other kinds of nuclear power plants might come up. Now we're just recently being told that fusion is safe. Maybe it is and maybe it isn't, if they can develop the process. What other processes might come up within the next 10 years? Let's just make a good clear-cut statement that the people can give us their opinions on--do we or do we not want nuclear power plants in our State--and let's not carry on this kind of, what I call shibai.

CHAIRMAN: Delegate Ihara.

DELEGATE LES IHARA: Mr. Chairman, I would like to speak for this amendment. What I'd like to say is that I hear a lot of concern about nuclear power plants, and several people have stated that they are for a total ban instead of just requiring a two-thirds vote of the state legislature. I'd like to urge all those who are in favor of a total ban to vote for this amendment, because if the total ban fails you end up with nothing. By voting for this amendment and passing it, should the ban fail--and I won't be voting for the ban--but should the ban fail you will at least have some safeguard, as opposed to nothing.

CHAIRMAN: Thank you, Delegate Ihara. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak in favor of the proposed amendment. When looking at this amendment--and I take exception to charges just laid out there that might intimate as to the character or the sincerity of Delegate Fukunaga. Attacks such as those are unwarranted--alleged shibai tactics. Delegate Fukunaga put this together because there was a concern, and there still is a concern on both sides of the fence. I personally would rather see a total ban, but before Delegate Crozier had his in Delegate Fukunaga had hers in. I think what the delegate on my far left alluded to, with respect to voting in favor--if you're in favor of a total ban, and if you're not, vote for this and then look at the other one--but at least keep something there.

In committee I made long and--some other members of the committee felt--emotional pleas. And I'm never going to apologize for my emotionalism. But I do say that we need to have some control over these things. One of the things that really gets me upset is

that a couple of years ago a study was done by a public utility company in Honolulu, which I will not name, and the site that they looked at was, again, the front door of the leeward coast, you know, and almost up against the Hawaiian homestead. So, in case there is a leak--that's all right, only the homesteaders going make.

We have problems existing in Hawaii today. We don't know the true pollution rate of the waters in Pearl Harbor, and I don't know if we can ever regulate that because there's always a supreme being above us before we get to the real being. I think that this amendment is a sincere effort on the part of Delegate Fukunaga and I must compliment her, because the young are indeed trying to prepare for the future. So therefore I'm going to vote for this one.

CHAIRMAN: Thank you, Delegate De Soto.

DELEGATE HALE: Point of personal privilege.

CHAIRMAN: State your point.

DELEGATE HALE: If the former delegate was referring to my speech, I did not say a word about Delegate Fukunaga.

DELEGATE DE SOTO: I was not referring to the--to "da kine."

CHAIRMAN: Delegate Stone.

DELEGATE STONE: Mr. Chairman, I'm a little bit concerned about this amendment. I wish to speak against it. I see if we pass this amendment, we're saying in effect--no more geothermal research, no more solar research in Hawaii, no more wind research in Hawaii, no wave research in Hawaii--we're going the nuclear way. Now please, before we go that way, let's do these other sources of energy justice. Let's give them a real test. Let's not jump too quick.

CHAIRMAN: Thank you, Delegate Stone. Delegate Blake.

DELEGATE BLAKE: Mr. Chairman, I speak against the amendment. The gentleman off to my right here probably is the only person in the audience who has ever had any true experience with it, lived with it, probably right next to it. And physically I don't see anything wrong with him, and besides that he speaks of development of one of these plants in the billions of dollars. I don't think any utility company in the State of Hawaii right now would want to spend that amount of money. I also am inclined to believe that if one day it is safe enough to be done, and done at a cheaper cost, that the recipients who are paying for the electric cost will benefit by it. I also appreciate the remark that was made by the delegate directly in back of me that a step of this nature may curtail many of the experiments that are going on right now that could help us. We also have a built-in control in the two-thirds on special revenue bonds. I firmly believe also that if a plan of this nature does come up or is asked for in the City and County of Honolulu here, the city itself would give that project a severe going-over before they would agree to it. It might also by that time get to the legislature. For these points, I ask that you consider voting down this amendment.

CHAIRMAN: Thank you, Delegate Blake. Delegate Waihee.

DELEGATE WURDEMAN: Point of information.

CHAIRMAN: State your point, Delegate Wurdeman.

DELEGATE WURDEMAN: I'm a little bit confused and I keep hearing people refer to this, in particular to the taxation and finance committee, on the special purpose revenue bonds. Is it the intent of this to maybe offset that, or not?

CHAIRMAN: Would someone care to respond to that? Delegate Crozier.

DELEGATE CROZIER: It's just a duplication of that authority already.

CHAIRMAN: Delegate Crozier, would you please address the Chair.

DELEGATE CROZIER: Mr. Chairman and delegates, all this thing is, is just a duplication. They cannot build a power plant without those special revenue bonds; they have to have them. And to get those revenue bonds they need a two-thirds vote anyway. So this is just a lot of words, and it's just a cover-up. Sorry.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak in favor of the amendment because I think the amendment would do what some others have said. I think this amendment would encourage research in geothermal energy, it will encourage research in solar energy. This amendment is in effect an almost total ban on bringing nuclear energy into the State of Hawaii. Now, what this amendment is intended to do is to add a new layer of control upon the present existing situation. In order for a company to now build a nuclear energy plant in Hawaii, all it would need to do is to meet the zoning regulations and then to meet--if there are any PUC regulations. This would create a new structure over that, where the public would have direct input into their legislation, and it would demand that prior to the building of any kind of nuclear power plant that this pass the two-thirds vote of both houses of the legislature.

Now I've heard some aspersions cast upon the fact that this two-thirds requirement might be specious. However, it's interesting to note that in order to overcome a constitutional amendment which is a total ban--if we banned it in totality, the legislature would then need a two-thirds vote to present an amendment that would allow it to happen anyway. So we can bring it up at that time. We can amend with the same number of votes. So it seems to me what this will attempt to do is curtail the spread of nuclear energy into Hawaii and allow the public input when it comes, but at the same time recognize that there are going to be changes in technology in the long run and allow for that possibility. It also deals with a subject which a total ban may not be cognizant of; the federal courts have held that banning nuclear energy in its entirety in a state has constitutional questionability. So this is an attempt also to adjust to the existing law. For these reasons I would speak in favor of the amendment.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I rise to speak in favor of this amendment. In so doing I concur, of course, with many of the kinds of justification made thus far for passage of this amendment. At the same time, I think we should clear the air as far as certain facts are concerned. Let us remember that it's not only on the basis of special purpose revenue bonds that money will have to be raised in order to have these plants built. If a public utility is a private concern it can also insure its own revenue bonds without going the route that this Convention approved a few days ago. That's a distinction we should make.

Another item I'd like to point out is that this amendment would require any bill authorizing construction of a nuclear fission power plant to pass both houses of the legislature by a two-thirds vote. Let us also remember that the governor, as I understand it, must then approve of this authorization bill. If the governor, or if more than a third of the members of each house, feel very strongly that such a bill should not pass, it's going to be very difficult. The governor alone by vetoing the bill can then require another vote of the legislature, this time similarly by a two-thirds vote of the house and a two-thirds vote of the senate. I just want to point out that under these circumstances any bill that's going to be passed authorizing construction of this type of nuclear power plant will have to be screened very, very carefully and will take a lot of hard thinking, hard analysis before such a program can be approved. And this is the safeguard that we are encouraging our people to expect. We don't want to shut off the use of nuclear power plants in the future because we don't know what's going to happen--we may need this source of energy. So therefore, at the same time that we're not shutting it off, we want to install adequate controls.

CHAIRMAN: Thank you, Delegate Taira. Delegate Ontai.

DELEGATE ONTAI: Mr. Chairman, I speak in favor of this amendment. The logical site and perhaps the only one that will be a site for the first plant if and when the time arises is located where the Kahe electric plant is today on Oahu. A couple years ago a man from Hawaiian Electric Company told me that this is the reason they are leaving that

valley wide open and have not filled it yet. And that is the reason they need such a big valley. The poor people of Nanakuli, Makakilo, Ewa Beach all these years are quivering in their sleep at night. This amendment will stop their quivering, I hope. It calls for a two-thirds vote of the legislature, which as you know is not very easy to get. When and if the time comes that a utility company is ready to go ahead, with this two-thirds vote you can rest assured there will be a heck of a lot of public discussion of the pros and cons, and at that point perhaps the thinking of the public will be different and perhaps it will be tighter--perhaps there will be more proof that it is safe. I trust a two-thirds vote will do the job. Therefore I'm in favor of this amendment.

CHAIRMAN: Thank you, Delegate Ontai.

DELEGATE TAKEHARA: Mr. Chairman, I'd like to make an amendment to the amendment, to delete the last 16 words of this amendment beginning from "shall be subject to approval" and to insert the words "shall not be permitted within the boundaries of the State as set forth in Section 1 of Article XIII."

DELEGATE HALE: Second.

DELEGATE LES IHARA: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Ihara.

DELEGATE LES IHARA: Mr. Chairman, I believe that this amendment is the essence of the next proposed amendment by Delegate Crozier and I think--

DELEGATE HALE: Point of order. I seconded the motion; there's nothing wrong with that amendment.

DELEGATE LES IHARA: Mr. Chairman, I have a point of order.

CHAIRMAN: State your point.

DELEGATE LES IHARA: I had a point of parliamentary inquiry. My inquiry is whether it is in order to make that amendment now, because it is a substantive change to the amendment by Delegate Fukunaga.

CHAIRMAN: The Chair sustains your point as we will be--

DELEGATE CROZIER: Point of order, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE CROZIER: Mr. Chairman, that delegate in the back there has no knowledge or definite proof that I am going to put in my amendment. Therefore I think she is free to make any amendment she wants to, sir. You don't know what's on my mind.

DELEGATE HALE: Mr. Chairman, may we have your rationale for not allowing an amendment to an amendment. It has been done all through this Convention thus far.

DELEGATE CHONG: Parliamentary inquiry, Mr. Chairman.

CHAIRMAN: The Chair calls a short administrative recess.

At 12:45 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 12:49 p.m.

CHAIRMAN: The Committee of the Whole will please come to order. The Chair apologizes; the amendment is in order, it has been seconded. It has been moved and seconded that we strike the words "shall be subject to approval by a two-thirds vote in each house of the legislature" and insert the words "shall not be permitted within the boundaries of the State...." Is there any discussion on the amendment to the amendment? Delegate Takehara.

DELEGATE TAKEHARA: Mr. Chairman, I would like to speak for this amendment to the amendment. I will not belabor the point, except now I readily understand why this two-thirds amendment was first. This was to make it extremely difficult to bring in nuclear power plants to Hawaii by requiring an additional approval by two-thirds of the legislature, and I should vote for this amendment because just in case the total ban amendment fails, Hawaii will at least have this safeguard. And therefore I think that inserting this amendment will solve all our problems at one time.

CHAIRMAN: Is there any further discussion? Delegate Blake.

DELEGATE BLAKE: I speak for the amendment to the amendment. However, before I say that, I'm a little surprised that a number of the delegates here--before anything can be constructed on this Island here, there are six different commissions or boards you have to pass before you can get your green ticket. And this has to do with the City and County of Honolulu, this has to do with the counties on every island. These are stop-and-check gaps. And I'm sure that a questionable thing like this here--this is for general information now--would certainly meet with tremendous opposition from the council, the planning commission, the building department, water department, health department in every county--this is purely for information to all of you--and I don't know why we have to jump to the legislature to begin with. If that's the case, we should do away with all the counties. But don't forget now--if it wasn't for the counties there wouldn't be a state. And I'd like to encourage all of you to vote for the amendment.

CHAIRMAN: Thank you, Delegate Blake. Delegate Hirata.

DELEGATE HIRATA: Mr. Chairman, I rise to speak against this proposed amendment. I think that the Constitution should be a flexible document which can be interpreted and would also allow room for the legislature to make decisions later on down the line. I think that most of us here, a majority of my colleagues, feel that we are writing a document not for today, not for tomorrow, not for 2 years from now; but we're writing a document that we hope we can keep for the next 10, 20, 30, 100 years. With this proposed amendment, the document would be so steadfast--there would be a complete prohibition against the construction of any nuclear fission power plants in the Islands.

I'm sure that a number of us are very afraid of nuclear power, and I'm sure that the legislators are also. I think they share the kinds of concerns that many of us have over here today, and before allowing any kind of construction of a nuclear power plant they would think twice and maybe even three times before making a decision. By passing this particular amendment and by putting a complete prohibition on any sort of construction of nuclear power plants in the Islands, I think we will be writing a very inflexible document--not one that can be interpreted, not one that can be used to help the people of Hawaii later on when maybe we need a cheaper, less expensive form of electricity. I feel that by adopting such an amendment we may be hanging ourselves in the future, when we need the power, when it may be safe at that time to bring in a nuclear power plant. And for these reasons I ask my fellow colleagues to vote down this amendment.

CHAIRMAN: Thank you, Delegate Hirata. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I speak against the amendment, and in doing so I'd just like to clarify once again what the original proposal would have done. It would not have gotten rid of the six boards and agencies that anybody would have to go through. As a matter of fact, all it would have done is take the existing system and impose a seventh layer as an additional safeguard. So it was not the intent of the original amendment to do away with any of the present safeguards but just to increase the amount of protections that we now have. I just wanted to clarify that, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Waihee. Delegate DiBianco.

DELEGATE DiBIANCO: I rise to speak in favor of the amendment. I would remind the delegation that all we are doing, as Delegate Hale reminded us earlier, is we're not banning nuclear power in the State; we're just trying to put a question on the ballot. I think that, however--to discuss the merits themselves--if we were to ban nuclear power in this State, what we would be doing would be sending a message on to those people who are charged with the responsibility for developing our energy resources that they would have to look to other sources in order to satisfy our energy needs. I don't think there's

anything wrong with that. Hawaii is blessed with more natural energy sources than any other area I've ever seen. Some places have wind--we have constant tradewinds. We have sunshine. We have volcanic energy. We have an ocean surrounding us from which energy can be extracted. We have all kinds of energy sources and there's no reason why we shouldn't be trying to develop these, and in fact forcing those agencies and companies charged with development of energy to in fact develop these sources, rather than to look toward nuclear energy as the means of solving what is admittedly becoming an energy crisis not only in this State but throughout the United States.

Perhaps if I could share with you an experience of my own you would understand why I have my own personal feelings against nuclear energy. I grew up in a small town in Colorado right near the Utah border. Back in the '50s when I moved there as a child, the uranium boom was in full swing. This particular area of the country has a lot of uranium and so the Atomic Energy Commission opened up a plant in my hometown and started extracting uranium ore from the surrounding countryside. What was left over, the dirt that was left over after the uranium had been extracted, had been mined out of the ground, is known as tailings. Nobody back in those days knew really too much about what they were doing after they extracted the ore, so the tailings were used as groundfill; the tailings were used, unfortunately, in several subdivisions upon which a lot of residential dwellings were built.

This hometown of mine, which is a rather pleasant place to live, about 20,000 people live there. It's an agricultural area, and for those of you who think Hawaii has cornered the market on pleasant living, let me assure you that this place, with its 200 lakes, its skiing, its hunting and fishing, its agriculture, is really a very, very pretty place to live. Unfortunately, now, the public health officials have noticed twice as many birth defects, twice as much leukemia, considerably more cancer than most other areas of the country and more than most other areas of Colorado and nobody can explain why. In the past several years the Atomic Energy Commission--or whatever its successor agency is now--has gone back through my hometown, has checked many of the homes and has found out that in fact some of them are radioactive. It has also found that some of the cement in the bricks of the homes is itself radioactive. Some of the homes have had to be condemned. There was a point in time when the national magazines were running stories about whether my hometown would become a ghost town.

I am not against development of nuclear energy--I think it's impossible to make a statement like that. I think that those kinds of resources have to be developed. It's something that is available to the knowledge of mankind and it would be silly to set it aside. It's something that we have to use. But I'm not so sure that Hawaii needs it. I don't think Hawaii needs it at this time. I think that unless we put a ban on it in the Constitution, we will not force those people who are in charge of our energy resources to look to the tremendous abundance of other energy sources that we have available and force them to develop those. I think therefore that the amendment is appropriate and I strongly urge that you consider placing it on the ballot for the ultimate decision of the general public.

DELEGATE CROZIER: Point of information.

CHAIRMAN: State your point.

DELEGATE CROZIER: I'd just like to let the Convention know that-- I don't know what the correct motion is, but it would be to the benefit of the Convention--

CHAIRMAN: Delegate Crozier, you would be debating the issue and therefore you would be--

DELEGATE CROZIER: I'm not debating. Personal privilege.

CHAIRMAN: State your point.

DELEGATE CROZIER: I just want to let the Convention know that this new amendment is basically what I had intended, so I will not be putting in my amendment later. This is the shot right here.

CHAIRMAN: Delegate Sterling.

DELEGATE STERLING: I'd like to speak in favor of the amendment. I always had

a feeling that the preceding delegate and I had something in common--I guess we're both radioactive, coming from the same area. Many times it has been mentioned here that our State has been a leader in its legislation. I know we can be a leader in this legislation banning nuclear power [plants]. The previous speaker touched on something and stated it in English. I'd like to state it in Hawaiian. Nana 'ike kumu: consider the source of all things. Ocean energy, constant winds in Kona are a possible source of energy, constant sunlight that can be measured--all possible sources. We have these possibilities and potentials to work from--geothermal energy, with very little environmental impact, wind energy, solar energy. This does not destroy the very fragile nature of our environment. These are known factors. And again I agree with the preceding speaker that we have this source we can explore. It's a beautiful source readily available to us.

I too, as I stated previously, have lived and worked in the northern Arizona-Utah area we call the Four Corners: New Mexico, Colorado, Utah and Arizona joined in working with this mining of uranium. And even then it was an unknown factor. You can find pieces--and this is one way they promoted these sales of uranium mines--by going in and holding up a Geiger counter next to petrified wood, wood that had been petrified by uranium. And you can get so many clicks off that thing--and then to the newcomer who doesn't know the difference--you can't recover it from petrified wood--but they immediately bought these holdings which they thought would make them millions of dollars in a few months. Petrified wood that has been petrified by uranium, that is thousands of years old and can still make a Geiger counter jump--these are a part of the unknown factors we're talking about. Thank you.

CHAIRMAN: Delegate Hironaka.

DELEGATE HIRONAKA: Mr. Chairman, I'd like to speak for the amendment to the amendment. I've been listening to all the discussion going on, and I've come to the conclusion that I think the amendment to the amendment would be in order because this would put to rest all the people's anxieties about nuclear energy at this point as we are not too sure about it. And also, as somebody pointed out, we would encourage the exploration of other energy sources for the immediate future. Because at any time in the future should there be absolute research that shows that nuclear energy is safe, the legislature can always very easily put to the people an amendment to this Constitution. But at this time I would think that if you put the amendment to the amendment to the people and the people ratify it, then at least you have stopped all these questions about the safety of nuclear energy in Hawaii.

CHAIRMAN: Delegate Souki.

DELEGATE SOUKI: Mr. Chairman, I wish to speak against the amendment to the amendment. I share the fears of many of the people here of the unknown factors that possibly can endanger us and our heirs to this very noble land. However, the other major fear that we have, that is very real and very eminent, is the fact that we are rapidly running out of the energy sources we have, which are fossil fuels. And Hawaii is more vulnerable to the problem of fossil fuels than I believe any other state in this union. If we put this question to the public and it should be confirmed, then what can possibly happen is that we will have denied one area of alternate energy that is possibly the most feasible now besides fossil fuel, the most economical to the State here.

I would agree that there are many alternate forms of energy in the State of Hawaii that could also provide some solution. However--and I'm involved in alternate energy programs so I speak with some basis--solar energy presently is very expensive and it's primarily for domestic use. The best solar scientists in the United States have unanimously stated that solar energy for industrial use won't be ready for the remainder of this century. It's many years away before we can concentrate all the powers of the sun to make it productive to provide for other than domestic hot-water-heating purposes. Even if we had all the households in the nation using the present solar system that we have now, it would provide for less than 45 percent of our energy needs. The other energy consideration that we're talking about is thermal: geothermal, water thermal and wind are all very expensive and will not resolve the energy problems that we have.

I think we all read recently where Hawaiian Electric got funded \$1 million for wind-mills. Now this \$1 million will provide energy for only 135 homes. And this is only for domestic use now--this doesn't get into industrial use. Where all of this seems feasible,

it won't be ready for many, many years. Unfortunately--or fortunately, as it may be, however you want to look at it--for Hawaii the only real energy alternative in the relatively near future is atomic energy. Face it foursquare: there is no other alternative in the relatively near future, other than to continue with the fossil.

DELEGATE PENEBACKER: Mr. Chairman, I rise on a point of personal privilege.

CHAIRMAN: State your point.

DELEGATE PENEBACKER: We've been discussing nuclear energy for the last hour and a half, and I'm suffering from a lack of energy because I haven't eaten lunch yet. Would it be appropriate to take a lunch break?

CHAIRMAN: Your point is out of order at this point. The only way that we can recess is to rise and report. Delegate Chung.

DELEGATE CHUNG: Mr. Chairman, I yield to my fellow delegate.

DELEGATE PENEBACKER: At this time I'd like to make a motion to rise and report to the President that we need additional time to discuss the issue before us.

DELEGATE DiBIANCO: Second.

CHAIRMAN: The motion has been made and seconded that this Committee of the Whole rise and report. All those in favor of the motion say aye. All opposed, say no.

DELEGATE PENEBACKER: Division of the house.

CHAIRMAN: Division of the house has been called for. All those in favor of the motion please rise. All those who oppose the motion please rise.

DELEGATE PENEBACKER: You notice all the fat people got up.

CHAIRMAN: The vote is 28 ayes and 45 noes. The motion is defeated. Delegate Chung.

DELEGATE CHUNG: Mr. Chairman, I'm speaking against the amendment to the amendment. I don't think we ought to take such a drastic step, to forever--or for a long period--stop any possibility of nuclear power being developed in Hawaii. We are yet looking into a lot of the problems of safety. When the problem of nuclear power first entered our minds many years ago, we faced similar objections. But can you imagine what would have happened to our national defense program had we taken the drastic step of banning development of nuclear energy completely, while the other nations have gone on and forged with great advantage their own nuclear programs? Our armed forces would be in very bad shape, worse than ever. So looking back, Congress made a wise decision years ago to proceed with the development of nuclear energy. At that time it faced much opposition.

What little I know about nuclear power or nuclear fission I learned from my boy. He is a nuclear engineer; he received his training at Idaho Falls and worked for 3 years on the U.S.S. Enterprise as a nuclear engineer, and for 2 years on the South Carolina. And to me he looks just as healthy, just as strong--

CHAIRMAN: Delegate Chung, could you keep your comments to the amendment, please.

DELEGATE CHUNG: I just want to point out the fact that there were so many examples brought up about the dangers, and the kind of program I'm talking about is not the kind which happened at Bikini or at Idaho where they were mining. That's a different situation. What we're talking about is a program to develop nuclear power in Hawaii, with rigid controls for safety. And this is what I think we are addressing--we're talking about different things. Therefore, using my boy's experience--I'm using that as an example to show how it could be safe with rigidly controlled standards over the uses of nuclear power. Certainly we don't know all about the dangers, pro and con. And certainly our scientists are continuously working on programs to find new information. I really feel

that someday we may face a situation in Hawaii where we might find it feasible to develop a nuclear program to help our utility industries. I don't want to see us completely block off this possibility in the future.

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I'd like to speak for this amendment. First of all, I'd like to bring up--I was not intending to bring up any personal experience, but I think I'd better bring it up right now. One of the delegates just mentioned the U.S.S. Enterprise, which is a nuclear aircraft carrier. Mr. Chairman, in 1969 there was a terrible accident out at sea where I think there were about 25 guys who got killed. So they had to tow that nuclear ship into Pearl Harbor. While that ship--that safe ship--was in Pearl Harbor, it released over a million gallons of radioactive water into Pearl Harbor.

Mr. Chairman, at that time I was working for a federal agency, and one of my functions was as a diver at Pearl Harbor. I ended up diving in that water--I didn't know that water was radioactive. And to show you how serious the problem, I cannot verify--I wish the press wasn't here--but 4 months ago my diving partner died of cancer. I don't know if he died because of that radioactivity; I don't know if he died of natural causes. But there's always going to be that doubt in my mind because that "safe" ship might have wiped him out, and maybe I'm next--I don't know.

CHAIRMAN: The Chair recognizes Delegate Odanaka.

DELEGATE ODANAKA: I would like to commend the maker of this amendment and the maker of the amendment to the amendment. I'd like to say that I'm really supportive of this amendment to the amendment, and I feel let's not go around what we really want. If we want protection over nuclear fission power plants, let's provide the protection. Why should we settle for second best when we can get the safeguards directly? I don't see the logic behind this. We are one of the few states that can get along without nuclear fission power plants. I would truly believe all of you delegates were sincere in saying that we are a unique state, if this does pass.

CHAIRMAN: Delegate Chong.

DELEGATE CHONG: Mr. Chairman, I'm in favor of the amendment as amended now. Nuclear power is a new science not thoroughly researched. Throughout our nation these plants are controversial; there are bans in many areas already. There are many articles and research materials available that refer to the mysterious deaths of animals in surrounding areas where nuclear plants are located. They still don't know what exactly causes these deaths, although there is a higher rate of radioactivity. For many years now there have been asbestos plants; now people are being affected physically by inhalation of the fumes. X rays use radiation; technicians use protective clothing whenever they administer an X ray or a treatment. Food additives are now considered not healthful ingredients to our diet. Legionnaires' disease is now being linked to air conditioning. In this day of science, researchers are beginning to reverse their previous decisions that these "safe" resources were indeed safe. They are beginning to research natural resources, natural foods, natural medicines. Until scientists can prove over a period of more than 7 or 8 years that nuclear energy plants will be safe, I'll vote in favor of this amendment. By the time scientists will come up with a safe solution, there will also be another constitutional convention.

CHAIRMAN: The Chair would again like to remind the delegates to please cooperate and restrict your debate to new arguments and not be repetitious. Delegate Wurdeman.

DELEGATE WURDEMAN: With that I'm not sure, but I'll try. I wish to speak in favor of this amendment for a constitutional ban on nuclear power in Hawaii. There are profound reasons why Hawaii has to protect itself from nuclear power plants. There are dangerous ramifications we do not fully comprehend. I'm not a nuclear engineer or a diver, but I'd like to quote Dr. Daniel Burhans, Director of Environmental Studies [at the U.H.] in his statement that "carcinogenic and fatal risks accompany nuclear energy production.... Radioactive waste storage is a serious problem; it is highly susceptible to sabotage or theft. If it should leak into our water supply, it will be lethal" to the many thousands of people that we have here. "The toxic aspects of plutonium are astounding. An ounce or 29 grams is enough to kill every human on earth if it is widely dispersed.... The expense involved from fuel to construction, to insurance will be tremendous. Insurance companies, as a

rule, will not touch employees in nuclear power plants. Uranium supplies in the U.S. are rapidly dwindling and prices are doubling. There isn't a nuclear power plant small enough for the size of Hawaii and its population is not large enough to be cost-effective." We have other alternative sources of energy and we should look into them--solar, biomass, geothermal, wind, wave and ocean thermal conversion.

CHAIRMAN: Delegate Laura Ching.

DELEGATE LAURA CHING: Mr. Chairman, I rise to speak in support of the amendment to the amendment. There is no other issue so crucial to our lives and the lives of our children as the banning of nuclear fission power plants. There is no question in my mind that the dangers of these power plants far outweigh the dubious economic advantages offered by nuclear fission energy. There are five major areas of risk that I find unacceptable.

The most basic of these dangers is the production of nuclear fission material itself. The process of nuclear fission produces materials that will leave a permanent cancer legacy for future generations. Bikini residents cannot return even 20 to 30 years after radioactive contamination of the land. Do we want our children to live with the specter of radioactive contamination of Hawaii's air and water? Furthermore, the fact that these materials last up to a quarter of a million years gives us our second problem--radioactive waste storage.

There are no acceptable solutions now to storage of radioactive waste material. Most of the fission products created in the reactor are trapped in the forms of solids, liquids and gasses, then shipped in drums away from the site. These drums must be stored for hundreds of thousands of years, and yet of course no container lasts that long. In fact, the Atomic Energy Commission has recorded 16 leaks in the storage of the first 350,000-gallon batch. There is no question that if leaks occur here in Hawaii, untold numbers of lives will be lost. Furthermore, the toxic aspects of plutonium are unbelievable. One ounce is enough to kill every human being on earth if dispersed. Inhaling a speck of this material can cause cancer and long-term genetic defects.

Another danger area in regard to these power plants is the high risk of sabotage and nuclear reactor accidents. We have all read at one time or another [of] terrorist activities in different countries that affect or destroy buildings, airplanes, trains, and of course people. Luckily, in the United States the incidence of such activity is low. Yet governmental sources indicate a high probability that terrorist activity will eventually reach the United States, as extremist groups attempt to change our basic foreign policy. One of the perfect targets for such terrorist action is the nuclear power plant. The takeover of one plant could hold this entire State hostage. I submit that this is no idle speculation, for if one believes that terrorist activity here in the United States is inevitable, then one is drawn to the unavoidable conclusion that the nuclear power plant is an ideal target.

Furthermore, we live in a very uncertain world. Accidents happen all the time and if Murphy's Law holds true, then what can go wrong will go wrong. I believe the risk of such incidents of sabotage and unavoidable accidents make the nuclear fission power plant an unacceptable energy alternative.

Lastly, the greatest hazard of nuclear energy is that it is now the driving force behind the proliferation of atomic bombs around the world. It spreads the equipment, knowledge, and especially the materials needed to make nuclear weapons. It only takes 10 pounds of plutonium, the size of a softball, to make an atomic bomb. As a student at a mainland university demonstrated, construction of the bomb itself is not difficult, for in a term paper written 2 years ago he gave detailed instructions on how to build one. Thus, the theft of nuclear material and the subsequent possibility of its use as an atomic weapon is another unacceptable risk that should not be tolerated. For all the above reasons as well as many more unstated ones, I urge my fellow delegates to support this amendment to the amendment.

DELEGATE HIRATA: Point of information, Mr. Chairman.

CHAIRMAN: State your point, Delegate Hirata.

DELEGATE HIRATA: I mean, point of inquiry. I was wondering if someone could answer a few questions for me. First, if we adopt the amendment to the amendment, will

it mean that--I guess I read it to mean that there would be no nuclear power plants in the Islands. Would this allow any sort of nuclear-run ships to come into the State? Also, I was wondering if this amendment passed and then it was taken to court and found unconstitutional, would that then mean there would be no sort of protection in the Constitution, to protect the people of the Islands?

CHAIRMAN: Is there any delegate who wishes to respond? Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, the amendment says: "Construction of nuclear fission power plants... shall not be permitted... [in] the State...." So if a ship came in, that doesn't qualify at all because they are not constructing the ship in the State. Besides which, of course, federal law always controls and it's obvious that we're not talking about the kind of nuclear plant that is here only temporarily as part of a ship or a boat. As for the second question, you always run the risk that if something is declared unconstitutional, that therefore there's a void in our own State Constitution. That would be true whether we accepted the amendment as amended or the amendment as originally offered by Delegate Fukunaga. I don't understand on what conceivable basis this could be declared unconstitutional.

CHAIRMAN: Does that answer your questions?

DELEGATE NAKAMURA: Mr. Chairman, I think I could further clarify that. A lot of the objection I was making in committee was based on a case called Northern States Power Company v. State of Minnesota in which I think the federal courts held that the federal government would preempt any states from regulation of nuclear power plants because the Atomic Energy Commission had already acted. But there seems to be a real fine line between a restriction or a complete ban against nuclear power plants and the regulation of power plants. The regulation portion seems to have been addressed. The restriction question has not been directly addressed; I think that's still open. So I understand that [convention attorney] Mr. Funaki has been talked to about this and that he feels this language is acceptable. Like I said, the complete ban has not been completely addressed. The two-thirds, I think, would be a little more acceptable.

CHAIRMAN: Thank you. Is there any other discussion on this amendment to the amendment? Delegate Nozaki.

DELEGATE NOZAKI: Mr. Chairman, I rise to speak against the amendment to the amendment. In Waianae I chair the planning and zoning committee for the Waianae neighborhood board and I also chair the Waianae development area organization. I have never been approached by the community or any other individual about concerns over the use of nuclear energy by the electric plant at Kahe. If anyone should be worried, it should be me since I live only a mile away from the plant. However, I feel that the issue is unnecessarily becoming an emotional one. We should look at the issue objectively. There are many reasons why we should vote down this amendment.

First of all, we must not overlook the possible future options for beneficial use by our society in our search for alternative sources of energy. No. 2, we can look forward to scientific advancements and technological improvements in the use of nuclear energy, which will render it safe. No. 3, there is a need for flexibility by allowing the legislature to make decisions as the time and conditions require. A constitutional ban would be a disadvantage to us if the times call for use of nuclear energy and if it is appropriate and safe to use it. Remember that once a concept is incorporated into a document such as the Constitution, it is difficult to remove when it is necessary at a later date. Therefore, we should give the legislature the authority to deal with nuclear issues by voting down this amendment to the amendment.

CHAIRMAN: Thank you, Delegate Nozaki. Delegate Chang--

DELEGATE PETERSON: Point of personal privilege.

CHAIRMAN: State your point.

DELEGATE PETERSON: Could the amendment be read again for my benefit, please?

CHAIRMAN: The amendment to the amendment would call for striking out in Amendment No. 4 the words "shall be subject to approval by a two-thirds vote in each house of

the legislature," and inserting the words "shall not be permitted within the boundaries of the State as set forth in Section 1 of Article XIII." Delegate Chang.

DELEGATE CHANG: I'll keep it short, Mr. Chairman. I just want to bring to the delegates' attention, if it hasn't caught their attention yet, there is a spectrum of differences regarding the use of nuclear energy in Hawaii, and this is the very same problem that perplexed the committee. There are differences on the philosophical level, on the theoretical level, on the legal level and on the practical level. And thus we felt that it was truly a matter to be left to the legislature's discretion. However, because it was of vital and quite inclusive consequence with regard to this particular subject matter, it is felt that the proposed amendment requiring a two-thirds vote of the legislature to approve any construction of nuclear plants would be a guideline to policy formulation by the people who are elected to perform that very duty for Hawaii--that is, make policy determinations. And thus I speak against the amendment to the amendment, which would remove that policy-determination function from the hands of our elected policy-makers and preempt them from considering all these differences on a philosophical, theoretical, practical and legal level.

DELEGATE HALE: Mr. Chairman, point of information.

CHAIRMAN: Delegate Hale, state your point.

DELEGATE HALE: This is an amendment to an amendment we're talking about, and the amendment is an amendment to the committee proposal. Is the committee chairman saying that the committee proposal is to do this, and was the vote in the committee to put out this amendment to its own proposal? If so, why didn't it come in the original proposal?

CHAIRMAN: Delegate Chang, would you care to respond to that?

DELEGATE CHANG: The committee never considered the option that was presented to you in the original amendment to the proposal--that is, requiring two thirds of the legislature to approve construction. The only question presented to the committee that evening in decision-making was a total ban, which the committee rejected because of the differences in opinion on all of those levels I stated. Thus, in my speech in favor of the amendment to the committee proposal, I stated that this seems to be a proposal which reconciles the different kinds of interests which were advocated that evening.

DELEGATE HALE: Mr. Chairman, my question is, is the speaker speaking as chairman of the committee when he says he supports it or is he speaking as an individual?

CHAIRMAN: Delegate Chang, would you like to clarify that?

DELEGATE CHANG: I cannot speak for the committee, Delegate Hale. The committee has taken no official position on the matter. All I am doing is recounting the events which occurred that evening.

DELEGATE DiBIANCO: Point of--

DELEGATE CROZIER: Point of order, Mr. Chairman.

CHAIRMAN: Delegate DiBianco, you're out of order. Will you please be seated.

DELEGATE CROZIER: Mr. Chairman, I think it would be appropriate for the chairman of the environment committee to tell the vote on that issue, sir.

CHAIRMAN: Delegate Chang.

DELEGATE CHANG: According to my staff, it was 11 to 12.

DELEGATE DiBIANCO: Point of information.

CHAIRMAN: State your point, Delegate DiBianco.

DELEGATE DiBIANCO: I wanted to know from either of the previous two speakers--not the ones who have been making the points--if they feel that the legislature is the appropriate body and is intelligent enough to determine questions of nuclear power, why

they felt that the legislature was not the appropriate body to decide questions of indirect initiative.

CHAIRMAN: Delegate Lacy.

DELEGATE LACY: Mr. Chairman, I just want to make a few comments. I am rising in opposition to the amendment to the amendment. I would much prefer the legislature restricting by a two-thirds vote, rather than placing in the Constitution such a prohibitive statement as this amendment to the amendment calls for. But one thing I think is only fair to state--a lot of delegates have made remarks concerning why they are against this or against allowing nuclear power, yet they go into the bomb area. So I thought I ought to read to you what President Carter--

DELEGATE WURDEMAN: Point of order.

CHAIRMAN: Excuse me, Delegate Lacy. Delegate Wurdeman, state your point.

DELEGATE WURDEMAN: I don't believe the delegates in here--all of them--were speaking on the nuclear bomb, Delegate Lacy.

DELEGATE LACY: Mr. Chairman, I can cover that. I don't want to name the delegates, but we know the fine and very respected delegate from the Kona area and the gentleman to my right about four seats--their comments were that--they described Bikini. Bikini had nothing to do with nuclear power; it was absolutely a bomb experiment. No nuclear power plant can blow up. "I think the nuclear power plants are safe"--this is the President. "There has never been and cannot possibly be an explosion of a nuclear power plant. It is physically impossible. And the safety record there among nuclear power plants is far superior to the safety record of power plants that are fueled by oil and coal," etc.

I think we ought to stick to the effects of nuclear fission within a nuclear power plant and the handling of that material. About four speakers before me, a beautiful young lady to the rear of me spoke of the leakage of a million gallons--again we're talking about bomb manufacture--if it's the same one I'm thinking about in the Hanford, Washington general area. It's very true that plutonium, as I mentioned in my first remarks, is extremely dangerous. But we're not talking about the plutonium equal to 10 pounds that we're going to slam together at great speed of light and have the atomic bomb. You could melt down the power plants sitting on those submarines at Pearl Harbor--completely melt down all the fuel elements, have them sit in one solid ball--and you couldn't explode it. So let's stick to the real facts and let's not jump off into areas that don't really belong in nuclear fission construction, etc. And I ask you to vote against this amendment to the amendment, and if you feel so strongly I'd rather see you vote on the legislature at two-thirds, if you really feel we need it in the Constitution--which I don't.

CHAIRMAN: Delegate Peterson.

DELEGATE PETERSON: I just have a point of inquiry. It was brought to my attention within the past few days that the greatest users of radioactive materials on the Island are the hospitals using radioactive isotopes, radioactive tracers in the prevention and diagnosis of disease. I wonder if--this question of how this may affect them in their disposal and use of radioactive materials.

CHAIRMAN: Is there anyone who wishes to respond to that? Delegate Harris.

DELEGATE HARRIS: Yes, my staff checked into that, Delegate Peterson. They discovered that the radioactive material used by the hospitals has a very short half-life, and that the hospitals themselves just keep the material until that half-life has expired, then dispose of it as nonradioactive waste. So it would not affect the hospitals.

DELEGATE HINO: Point of personal privilege, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE HINO: I am very, very tired and uncomfortable from hearing so many of the same people talk in this Convention. And every once in a while my good friend and colorful friend from Kauai wants to have his say, but the Chairman consistently ignores him. Would you please--or may I yield my time on the floor to Delegate de Costa?

CHAIRMAN: The Chair apologizes. I wasn't aware that Delegate de Costa wanted to speak. Delegate de Costa.

DELEGATE DE COSTA: Thank you, Mr. Chairman. I wish I could use some well-mannered words to put it--that we ain't got no guts. Let the other states try it first, then bring it back to us. You know, we could put in all kinds of bans--ban crime in Hawaii. But I think the only one that would pass would be ban the bra.

CHAIRMAN: Delegate Harris.

DELEGATE HARRIS: Mr. Chairman, I rise to speak in favor of this amendment, and I'd like to--

DELEGATE HALE: Excuse me. Mr. Chairman, was that previous speaker for or against?

DELEGATE DE COSTA: Sorry, ma'am, I said we got no guts if we pass it. In other words, I'm speaking against the amendment to the amendment.

CHAIRMAN: Proceed, Delegate Harris.

DELEGATE HARRIS: Some question has been raised as to the facts and safety of nuclear power. I would like to offer some facts, perhaps in reaction to some of the testimony from an earlier delegate. It was alleged that first of all we're talking about a very small amount of nuclear waste. Let me point out, from a publication by the Union of Concerned Scientists, some information on those wastes: "The waste includes strontium 90, cesium 137 and plutonium 239, among the most toxic and long-lived substances known. By the end of this century, the government estimates that there will be one billion cubic feet of nuclear waste in the United States, enough to cover a four-lane highway, coast to coast, a foot deep." They go on to point out that no method "for long-term storage or disposal of these radioactive wastes has been proven. All proposed techniques for storing these wastes are in a research and development stage, and many problems have already developed in these."

It was pointed out earlier that in one attempt to store waste, in June 1973, 115,000 gallons of high-level radioactive wastes leaked from tanks at the AEC's waste-storage facility. Investigation yielded: (1) that the tank had been leaking for several weeks; (2) no automatic alarm system alerted anyone to the leak; (3) the management in charge of the storage facility did not review monitoring reports that would have shown the leak; and (4) there was no preventive maintenance applied. It's been pointed out that plutonium is a very dangerous substance; this is also pointed out by these concerned scientists. One pollen grain of plutonium is enough to cause lung cancer. A typical nuclear power plant produces several hundred pounds of plutonium each year. So we're talking about a sizable waste-disposal problem. It has been pointed out that it takes plutonium half a million years for its killing power to diminish. It's been alleged today that nuclear power plants are indeed safe. I would disagree with that. There have been many accidents in nuclear power plants, and I believe we are very fortunate in this country that we haven't experienced a severe disaster.

Let me point out one such accident--the Browns Ferry one. Let me read from a report. "On March 22, 1975, the electrical control cables at Browns Ferry caught fire, causing probably the worst serious commercial nuclear power incident to date. Billed as the world's largest nuclear power plant, Browns Ferry was rushed into operation in '74, 7 months before the fire disaster, despite numerous warnings from the Atomic Energy Commission safety reviewers and inspectors, who cited dangers in the electrical cables. The fire burned uncontrolled for 7-1/2 hours, destroying and incapacitating plant safety systems. Workers were able to shut down Browns Ferry Unit 2, but Unit 1 was totally out of control for several hours, its sophisticated safety mechanisms completely destroyed. Unit 1 was finally put under control with a few pieces of equipment that were not even part of the plant's safety system. 'By sheer luck,' confided the safety official, 'a catastrophic radiation release was avoided.'" By sheer luck. Unit 1 came within only one hour of a core meltdown.

CHAIRMAN: Thank you, Delegate Harris. Is there any further discussion?

DELEGATE HARRIS: Excuse me, Mr. Chairman, was my time up?

CHAIRMAN: I'm sorry, I thought you were finished. Continue.

DELEGATE HARRIS: I'll try to avoid pausing for breath. To further illustrate my point regarding the alleged safety of these plants, there was an article in the paper just a day or so ago about India's nuclear power plants. It was found that "India's largest nuclear power plant, which produced plutonium for the country...has been shut down...." It goes on to say that the "entire [plant] including door knobs and handles was contaminated with radioactivity.... A prestigious Indian publication," it goes on to say, "said...11,000 people working in India nuclear power plants 'have been exposed to excessive levels of radiation.'"* It is clear that these plants are not safe, and I don't believe that the people of Hawaii should be faced with the burden of this kind of potential disaster.

CHAIRMAN: Thank you, Delegate Harris. Delegate Hale.

DELEGATE HALE: Mr. Chairman, I speak for the amendment to the amendment. I would just call the attention of the delegates to something that seems to me is happening and has been happening in this Constitutional Convention. I think it's about time we called a spade a spade. Every time some big industry or big business seems to be affected, we have to take the meat out of what we're doing and take the strength out of it in order to satisfy all sides of the question. It seems to me that is just what we did a minute ago--

DELEGATE TAIRA: Point of order, Mr. Chairman.

DELEGATE HALE: I'm speaking for this amendment--

CHAIRMAN: Delegate Hale, will you please be seated. Delegate Taira, state your point.

DELEGATE TAIRA: My point of order is that I think it's very discourteous to cast allusions of this kind, of maybe illegal pressure or something like that, that some delegates are guilty of. I resent this very much. If we're going to have this debate, I hope we can debate what is good about this amendment or what is not good. And let's keep--

CHAIRMAN: Delegate Hale, would you be seated.

DELEGATE DiBIANCO: Point of parliamentary inquiry. I would like to know if it is not in fact correct in the Committee of the Whole that, according to Robert's Rules of Order, discourteous, rude and even obnoxious behavior is to be tolerated, since it is in fact a committee hearing.

DELEGATE HALE: And, Mr. Chairman, I had the floor.

CHAIRMAN: Delegate Hale, there was a point of order.

DELEGATE HALE: But do I have to give up the floor for a point of order?

CHAIRMAN: Yes, you do.

DELEGATE HALE: May I now be recognized?

CHAIRMAN: Proceed. Delegate Hale, the Chair--

DELEGATE TAIRA: Mr. Chairman, would you rule on my point of order?

CHAIRMAN: The Chair states that Delegate Taira's point is well taken and the Chair would like to ask that the delegate refrain from--

DELEGATE WURDEMAN: Point of inquiry.

*Honolulu Advertiser, September 12, 1978, p. C-1.

CHAIRMAN: Delegate Wurdeman.

DELEGATE WURDEMAN: I asked a little earlier about whether or not the original amendment was intended, because of the special purpose revenue bonds that were put in--and now I'm really confused. Can anybody answer me on that?

DELEGATE HALE: I had intended to use that argument, Mr. Chairman, to be for this amendment.

CHAIRMAN: Okay, proceed, Delegate Hale.

DELEGATE HALE: I do feel that for anybody or any big industry or any big utility to put in a nuclear fission power plant, it is going to take a special purpose revenue bond. And we specifically said that utilities could take advantage of the special purpose revenue bonds, and we put in a two-thirds requirement by the legislature. So I maintain that the utilities were not afraid of a two-thirds requirement in the legislature, and therefore they would not be afraid of a two-thirds vote in the legislature for the construction of a nuclear fission power plant. And this is exactly what I'm saying--that what we are doing is, we're kowtowing to the electric company. And I speak as a member of a neighbor island--I'm glad I live on the neighbor islands, because I doubt that we'll get that power plant on our Island. It would not be feasible to put the nuclear power plant on the Island of Hawaii and then send electricity to Honolulu. I pity you people who do live on the Island of Oahu, with a nuclear fission plant, however; and I would not want to have you put one there in order to send power to our Island to help us develop. We have plenty of natural sources that we are trying to develop and will develop in the next 10 years, that will be safe. I would like to say that this, in my opinion, is another attempt to compromise basic principles for big business and the big utilities. And--

CHAIRMAN: Delegate Hale--

DELEGATE HALE: And that is my opinion, Mr. Chairman, and I'm not ascribing that opinion to anyone else. I am telling the group that this is my opinion, and I have a right to give my opinion.

CHAIRMAN: Delegate Hale, the Chair would appreciate it if you would keep your testimony to the merits of the amendment.

DELEGATE HALE: That is the merit, Mr. Chairman. The merit is that we should not be doing things for big business--

CHAIRMAN: You are injecting a personal note in your testimony.

DELEGATE HALE: Yes, because we're all going to vote upon this as a personal problem, and this to me is a very, very personal problem. We've seen it happen in many other amendments that have come before this Convention--but I won't elaborate on those since that may be out of order. But I'd just like to say--let us be honest with the people. We aren't going to fool the people; they aren't that easily fooled. And if we really want a ban on nuclear power, if we want to say something in our Constitution, let's put it to the people in an honest way and give them a chance to vote on it. We aren't making these amendments to the Constitution; all we are doing is making recommendations to the people. And now that the submissions committee is going to allow people to vote no, they can vote down our whole Constitution or they can vote down parts of it. But they will not be fooled. I say that is an honest way to attack the problem. As one delegate pointed out before, if we get to the place where nuclear fission plants are acceptable to the people, we can always put in an amendment to the Constitution through the legislature and let the people take this out of the Constitution. I would trust the people in the area of nuclear power plants before I would trust a two-thirds vote of the legislature. That's what we're doing.

We talk about the lives and the things that are necessary for life on this planet. I maintain that our unique state and our isolation and all the other things that have been put out to us make us very, very susceptible to all the dangers that are inherent in a nuclear fission power plant. And there's no reason for us to have that here. The only thing that does concern me is that it used to be that on our Island our electric power was owned by Hilo Electric Company, and I know they were not intending to put in a nuclear power plant because it would not be feasible on our Island. But now our Hilo Electric Company

has been bought out by Hawaiian Electric, and we too will be subject to whatever pressures they are able to put on the legislature. I don't feel that the people in my county would approve of getting energy from that source. I would certainly like to give them a chance to vote on it.

CHAIRMAN: Thank you, Delegate Hale.

DELEGATE LACY: Mr. Chairman, I rise on a point of information.

CHAIRMAN: State your point, Delegate Lacy.

DELEGATE LACY: There was a statement made by the delegate from Kauai that the plutonium produced by the nuclear fission power plant--I wish I could get the name of that one, because that would be the first time in history that we produced the plutonium--we normally put it in. Could you get the name of that, please?

CHAIRMAN: Can anyone answer that? Delegate Lacy, no one is able to answer that. Are there any delegates who wish to speak for the first time? Delegate Kojima.

DELEGATE KOJIMA: Mr. Chairman, I speak against the amendment to the amendment. Someday the world's oil and coal resources will be depleted or the prices of such will be so prohibitive that we cannot afford to continue to use them. We will need to consider all the alternatives for energy, and nuclear energy is only one possible alternative. It does not mean that we have to go that route; there are other alternatives, like geothermal, solar or gas even, as Kauai is trying to do now. But to shut out the alternative of nuclear energy without even considering this thing when we may need it 10, 20 years from now, by this constitutional action, I think, is very delimiting and should not be. When the time comes for the proper alternative to be found, I expect the people in power to make the right choices. And I would think the concerns of the people about nuclear energy would put that as a very low priority alternative.

CHAIRMAN: Thank you, Delegate Kojima. Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak against the amendment, and in doing so I'd like to point out a few facts. Fact No. 1 is that the public utility company actively opposed the imposition of a two-thirds vote for revenue bonds. I think it's a tribute to this body that we, in spite of that opposition, passed the two-thirds vote requirement. So I don't see that as the utility company willingly agreeing to a two-thirds vote--that's fact No. 1.

Another fact that I ought to point out is that the construction of a nuclear power plant is tied not only to revenue bonds; there are all kinds of moneys that will be used. As a matter of fact, there are limits on the total amount of revenue bonds that can be used for a project, and construction of such a plant would involve tremendous amounts of money. So without some kind of control on this, in addition to whatever control it would take to get revenue bonds, it's quite possible that somebody could construct a power plant in this State under the present circumstances without getting to the legislature, even if our tax and finance package were to pass in its present form. In my humble judgment that would be a tragedy. So I don't think that we ought to have such a tight correlation between revenue bonds and this two-thirds approval.

The last point I'd like to make is something about honesty. I think it is just as honest for somebody to propose an amendment to the public to show that they are deeply concerned about a problem while at the same time leaving room for some flexibility at the end, just in case some of the contingencies that have been discussed were to occur--that there would be some flexibility. And at the same time we can honestly tell the public that we have severe concerns, that this issue ought not to be taken lightly, and we can honestly propose this without-- I don't like to equate honesty with a total ban. I think it's just as honest to hold a position as proposed in the original amendment.

CHAIRMAN: Thank you, Delegate Waihee. Delegate Takehara, as the movant do you wish to speak last on this amendment?

DELEGATE TAKEHARA: It doesn't matter. Mr. Chairman, I once against rise to speak for this amendment, for various reasons. One, I can understand where some of the

mainland states and their statesmen had to succumb to nuclear fission power plants: they have their hard winters and hot summers; they thrive on coal, oil, and they don't have the resources that we do here in Hawaii where the sun, the wind, the land and the waves are always about us throughout the year. Also, what efforts have we as the public made to even help in this effort to conserve energy, before we bring in something like a nuclear power plant? As to the questions of safety, there's nobody yet who can absolutely say that this kind of plant is absolutely safe for us. And therefore--yes, I am gutless. I refuse to even take .001 percent of the future health and safety of our children and our future generations.

As to those who are saying we are inflexible, remember that we're working on amendments just for 10 years, possibly--if there's another Convention in 10 years. It's not forever and ever, as some other people have stated. Our State has a fine Constitution, and presently in it it says that with the same ratio of two-thirds, the "legislature may propose amendments to the constitution...by a two-thirds vote of each house...." So there is this flexibility open just in case there is a real need for another source of energy. I strongly urge all of you to vote for this amendment to the amendment. Please, fellow delegates, search your consciences.

CHAIRMAN: Thank you, Delegate Takehara. Delegate Ihara.

DELEGATE LES IHARA: Mr. Chairman, I'd like to speak against this proposed amendment to the other proposed amendment. To me the question is not whether there will be a nuclear power plant in Hawaii, because I think most of us agree that we don't want a nuclear power plant in Hawaii; I think the question is--is there a problem in light of what I perceive to be the situation now, the general consensus, and also the fact that there are no power plants planned in the next 10 years. So I don't really see a problem; I don't really see that it's an issue. The question to me is, should we do anything about the possibility of there being a nuclear power plant in Hawaii. And to that question I don't think we should respond by totally eliminating that possibility of there being a nuclear power plant but rather to control that possibility and restrict it, and do that by a two-thirds vote of the legislature. I also believe that once we totally ban the possibility of there being a nuclear power plant, it would be extremely difficult to open up that possibility. For all these reasons I would speak strongly against a total ban of nuclear power plants in Hawaii.

CHAIRMAN: Thank you, Delegate Ihara. Delegate Hironaka.

DELEGATE HIRONAKA: Mr. Chairman, I'd like to speak again--

CHAIRMAN: I'm sorry, Delegate Hironaka. I thought you didn't speak before. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I'd like to speak for the amendment to the amendment. And I'd like to clear the air. One of the delegates to my left--I don't know how far down but less than three seats--said there was a monetary limit set on the special revenue bonds. And if I remember correctly the limit was \$5 million, sir; but that was for manufacturing, processing and other stuff. When it comes to utilities, there is no limit. They can get as much as--whatever they can--that's how much they can get. Some of the people from the different outside islands became idealistic and said--oh, we might have to have nuclear power someday. If I was on the outside islands, I could get idealistic too. But I'm going to live next to the power plant. I'm not idealistic anymore--I'm a realist.

Right now we have an oil type of power plant. We have one alternate plan in case that goes wrong--nuclear power. We don't have an alternate plan for solar; we don't have an alternate plan for wind. We don't have any other alternate plan. If we put this in, they're going to have to get off their duffs and get an alternate plan. That's why we say--get an alternate plan. What would happen if we would put it in? Simple. When it was necessary, it would go to the people. The legislature just puts it on the ballot and the people would decide. The people from Wahiawa would be concerned. The people from Ewa Beach would be concerned. Mililani Town, Waipahu, Makakilo and Waianae--we would be concerned. Big Island, Maui, Kauai--you guys don't care. You guys aren't going to use this--it's not going to affect your lives. The smallest--

DELEGATE VILLAVERDE: Mr. Chairman, I rise on personal privilege.

CHAIRMAN: State your point.

DELEGATE VILLAVERDE: For one thing I care, and I care because my ear hurts right now.

DELEGATE CROZIER: Sorry, Mr. Chairman, I apologize. You got me mad, and I lost track. I'll just say to vote for this amendment.

CHAIRMAN: Delegate Alcon.

DELEGATE ALCON: Mr. Chairman, I stand on a point of personal privilege.

CHAIRMAN: State your point.

DELEGATE ALCON: We have been debating this issue for 4 hours. No new evidence has been offered. We have all died of cancer. I think we should all vote on this matter and go fusion--I mean fishing.

CHAIRMAN: Is there any further discussion? If not, the vote is on the amendment to Amendment No. 4--

DELEGATE HALE: Roll call.

CHAIRMAN: --which states that the following language be stricken from the amendment: "... shall be subject to approval by a two-thirds vote in each house of the legislature"; and the following shall be inserted: "... shall not be permitted within the boundaries of the State as set forth in Section 1 of Article XIII."

DELEGATE LAURA CHING: Mr. Chairman, I ask for a roll-call vote, please.

CHAIRMAN: A roll call has been called. Are there ten seconds? There are ten seconds. Mr. Clerk, will you please call the roll.

Roll call being in order, the motion to amend Amendment No. 4 failed to carry by a vote of 35 ayes, 53 noes and 14 excused; with Delegates Alcon, Barnes, Barr, Blake, Blean, Burgess, Campbell, Laura Ching, Chong, Chu, Chun, Crozier, De Soto, DiBianco, Dyer, Fernandes Salling, Fujimoto, Hale, Hanaike, Harris, Hironaka, Hoe, Hornick, Rachel Lee, Liu, Marumoto, Odanaka, Ontai, Penebacker, Stegmaier, Sterling, Takehara, Takitani, Wurdeman and Yoshimura voting aye; Delegates Anae, Andrews, Barnard, Chang, Calvin Ching, Donald Ching, Haunani Ching, Chung, de Costa, Fukunaga, Fushikoshi, Hagino, Hamilton, Hashimoto, Hino, Hirata, Hokama, Les Ihara, Teruo Ihara, Ikeda, Ishikawa, Iwamoto, Izu, Kaapu, Kaito, Kojima, Lacy, Ledward, Marion Lee, Lewis, McCall, Miller, Nakamura, Nishimoto, Nozaki, O'Toole, Paty, Peterson, Pulham, Sakima, Sasaki, Shinno, Souki, Stone, Sutton, Taira, Takahashi, Tamayori, Uyehara, Villaverde, Waihee, Weatherwax and Chairman Okamura voting no; and Delegates Cabral, Eastvold, Ellis, Funakoshi, Goodenow, Hayashida, Dennis Ihara, Kimball, Kono, Shon, Silva, Takemoto, Tam and Yamashita being excused.

CHAIRMAN: The noes have it. The amendment to the amendment is lost. Is there further discussion on the original amendment? Delegate DiBianco.

DELEGATE DiBIANCO: Mr. Chairman, I move to amend the original amendment to read as follows: "Construction of nuclear fission power plants and disposal of radioactive material shall be subject to approval by a two-thirds vote in each house of the legislature, provided that all nuclear power plants constructed in the State of Hawaii shall be constructed in the districts of those Con Con delegates who voted against banning power plants."

DELEGATE CROZIER: Second the motion.

DELEGATE TAIRA: Point of order, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE TAIRA: My point is that motions of a frivolous nature such as this are not in order. I don't know where I read it, but would you rule on that?

CHAIRMAN: The Chair rules that the motion is out of order. Delegate Fukunaga.

DELEGATE FUKUNAGA: Mr. Chairman, I would like to offer an amendment to proposed Amendment No. 4, an amendment by substitution of the following language: "No nuclear fission power plant shall be constructed or radioactive material disposed of in the State of Hawaii without the prior approval by a two-thirds vote in each house of the legislature."

DELEGATE TAKEHARA: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate Fukunaga, do you have that in writing? It has been moved and seconded as a substitute motion that the following language be used to substitute Amendment No. 4: "No nuclear fission power plant shall be constructed or radioactive material disposed of in the State of Hawaii without the prior approval by a two-thirds vote in each house of the legislature." Is there any discussion on this motion?

DELEGATE ALCON: Point of inquiry, Mr. Chairman.

CHAIRMAN: State your point, Delegate Alcon.

DELEGATE ALCON: What is the difference between the new amendment and the original amendment?

CHAIRMAN: Delegate Fukunaga, would you care to answer that?

DELEGATE FUKUNAGA: The language which would be substituted for the proposed Amendment No. 4 makes it very explicit in the first five words that people in the State of Hawaii, and the delegates to this Convention, do not wish to have any nuclear fission power plants constructed without prior approval by the legislature. I think this language is a little bit stronger than that which was proposed earlier and it addresses some of the concerns raised in the discussion.

CHAIRMAN: Is there any discussion on this amendment to the amendment? Are there any amendments to the original Amendment No. 4?

DELEGATE BLAKE: Mr. Chairman, question on the amendment. Is it my understanding now that if a company wants to build a nuclear plant, all they have to do is put in their application to the legislature and bypass the counties?

CHAIRMAN: Delegate Fukunaga, would you care to answer?

DELEGATE FUKUNAGA: No, they would not. This is primarily intended to clarify the language that was used earlier. I believe the language earlier was somewhat unclear.

DELEGATE TAKEHARA: Point of information, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE TAKEHARA: I think this has a little more detail in it. I speak for the amendment--

CHAIRMAN: Delegate Takehara, would you mind waiting? There being no amendments to the original Amendment No. 4, are there any amendments to the substitute amendment?

DELEGATE STERLING: Point of information. Didn't the movant of this just make an amendment saying there is no construction without prior approval, or is that just clarification?

CHAIRMAN: This is a substitute motion. There being no amendments to the substitute amendment, the Chair will entertain discussion on the substitute amendment to Amendment No. 4. Delegate Takehara.

DELEGATE TAKEHARA: Mr. Chairman, I speak for this amendment because I feel that with the detail in addition to the two-thirds vote in each house of the legislature, we're being assured that disposal of the waste will be outside of the territories of Hawaii.

CHAIRMAN: Delegate Hironaka.

DELEGATE HIRONAKA: Mr. Chairman, although I'm disappointed that we lost on the other one, I would like to speak in favor of this. I think we ought to sometimes be humane. I think the testimony of the delegate on my left who started the Panasonic Club-- I think it was clear that many times we ought to be concerned about how people feel and not be cold about facts. However, I think this at least is negative enough that it will give the people at least a little bit more peace of mind. So I speak in favor of this amendment.

DELEGATE HALE: Point of information. Could you read that again? I don't quite see why we're doing anything with disposal of radioactive waste. Maybe I didn't get it.

CHAIRMAN: The substitute amendment reads: "No nuclear fission power plant shall be constructed or radioactive material disposed of in the State of Hawaii without the prior approval by a two-thirds vote in each house of the legislature." Delegate Chong.

DELEGATE CHONG: Mr. Chairman, I speak in favor of this amendment only because the other one failed.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: Mr. Chairman, I rise to speak in favor of the amendment because I think it clarifies the intent of the original amendment, and I thank the author for doing that. Essentially it's the same except the language is stronger and, I believe, a lot clearer.

CHAIRMAN: Delegate Barnes.

DELEGATE BARNES: Mr. Chairman, I rise to speak in favor of this substitute amendment. Throughout the testimony that we heard and through my contact with community organizations in the leeward area, I've seen a very strong concern not only about the construction of nuclear plants but also the transportation and disposal of nuclear materials existing in our community--the transportation that's going on today. And so the stronger the language the better, as far as I'm concerned. I would prefer, also, a referendum requirement, but that didn't seem to make it through the committee or draw too much support. So this is perhaps as strong as we can go right now. It's my own personal hope that this concept of disposal would include the transportation of dangerous radioactive materials on our island today. Again, I'm speaking in favor.

CHAIRMAN: Thank you, Delegate Barnes. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I also speak in favor of the amendment. Thank you.

CHAIRMAN: Thank you, Delegate Crozier. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, point of parliamentary inquiry. I would like to question the inclusion of the five words relating to disposal of radioactive material. Is it appropriate to move to delete that at this time, or should I wait until after the vote on the substitution?

CHAIRMAN: The Chair asked for amendments earlier. There were no amendments made at that time, so I think that you are out of order at this time.

DELEGATE LACY: Mr. Chairman, point of order.

CHAIRMAN: Delegate Lacy.

DELEGATE LACY: I believe you made it for the original amendment, that you asked for the--

CHAIRMAN: I also asked it for the substitute amendment.

DELEGATE LACY: But any time that we're debating, can we not make a motion to amend?

DELEGATE HALE: Point of order, Mr. Chairman. Amendments are always in order until we have voted --

DELEGATE WAIHEE: Point of order, Mr. Chairman. There should be only one point of order on the floor at a time.

CHAIRMAN: Your point is well taken. Delegate Burgess, you are in order. You may make the amendment.

DELEGATE BURGESS: I would move at this time to delete those five words, "or radioactive material disposed of."

CHAIRMAN: Is there a second?

DELEGATE HALE: Second.

CHAIRMAN: It's been moved and seconded that we amend the substitute amendment by deleting the words "or radioactive material disposed of." Is there any discussion? Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, just very briefly. I'm afraid that language, if we leave it in--for example, my watch has a radioactive dial on it--that would prohibit me from throwing it away or disposing of it when it stops working, without the approval of a two-thirds vote of the legislature. Everybody with a smoke detector has a little bit of radioactive material on it that makes it work; we would be prohibited from disposing of that without a two-thirds vote of the legislature. I think it's just a housekeeping thing. I think the substance of it is the prohibition on construction of nuclear power plants, and that's what I would prefer to vote on.

CHAIRMAN: Delegate Hale.

DELEGATE HALE: I speak against the amendment to the amendment. Having heard Delegate Crozier talk about that ship that came in, I think this is what my interpretation would be of what this would mean. I would say that the legislature by two-thirds vote could take care of watches and other things and dispose of them in some other manner. But what we are concerned about is large amounts of radioactive waste. I think it should be kept in. It's the only reason that I would vote against this, because I--perhaps when you're real hungry as I am now, a crumb is better than nothing at all.

CHAIRMAN: Thank you, Delegate Hale. Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I rise to speak against the amendment to the amendment that was just proposed. You see, I don't know what individuals will do with their watches once the watch is broken. I have some ideas. However, I think that one of the things we're going to overlook here is, it is the disposition of radioactive material that is dangerous. There is no sure proven method for this disposition. I can't believe what's going on. What I see here is, "No nuclear fission power plant shall be constructed," and then to delete, "or radioactive material disposed of." That's the biggest problem. Some of the people who talked earlier touched upon it. Sure, Bikini island has no probable association with Hawaii, so is detached in that sense. But one thing I know for sure--if you contaminate these small islands, I don't know where everybody else is going to go. I don't want to go anywhere else in the world but here. The roots of my family come from here. I owe a responsibility not only to my grandchildren but to their children. And I feel very, very strong about this, and I dare make a suggestion that if you put the vote out to the voters you will get the same kind of reaction--they don't want nuclear power plants. But I will speak against this proposed amendment to the amendment.

CHAIRMAN: Thank you, Delegate De Soto. Is there any further discussion? If not-- Delegate Barnes.

DELEGATE BARNES: Just two words again. I speak against the amendment to the amendment. I think the proper place for this would be the committee report; the committee report could clarify what kinds of radiation we're concerned about and take care of my concerns about transportation.

CHAIRMAN: The vote is on the amendment to the substitute amendment, to delete the words "or radioactive material disposed of." All those in favor say aye. All those opposed say no. The noes have it and the motion is defeated. Is there any further discussion on the substitute amendment?

DELEGATE CHU: Mr. Chairman, I have a point of inquiry. As far as this provision is concerned, in the procedure requiring a two-thirds vote of the legislature, does this have to occur before or after all the other existing necessary procedures?

CHAIRMAN: Delegate Fukunaga, would you care to answer that question?

DELEGATE FUKUNAGA: I defer to Delegate Waihee.

DELEGATE WAIHEE: After.

CHAIRMAN: Is there any further discussion? Okay, if not the vote is on the substitution of the last motion for the original motion, which reads: "No nuclear fission power plant shall be constructed or radioactive material disposed of in the State of Hawaii without the prior approval by a two-thirds vote in each house of the legislature." All those in favor of the substitution say aye. All those opposed, say no. The ayes have it and the substitution amendment is adopted. Delegate Crozier.

DELEGATE CROZIER: Mr. Chairman, I rise to a point of personal privilege. I'd just like to say that I feel like Delegate Tam felt on Saturday. He's not even here--maybe I won't be here tomorrow either. Mr. Chairman, I'd like to withdraw Amendment No. 5.

CHAIRMAN: Thank you, Delegate Crozier. There are no further amendments to be taken up by this Committee of the Whole. So at this time the Chairman will entertain a motion to rise and report. Delegate Chang.

DELEGATE CHANG: Mr. Chairman, it is with great pleasure and anticipation that I move that we rise and report that the Committee of the Whole has adopted Amendments No. 1 and 4 to Committee Proposal No. 17, and that after the necessary copies have been printed and distributed, we recommend that Committee Proposal No. 17 as amended be adopted on Second Reading.

DELEGATE HAGINO: Second the motion.

CHAIRMAN: It is moved and seconded that we rise and report that the Committee of the Whole has adopted Amendments No. 1 and 4 to Committee Proposal No. 17 and that after the necessary copies have been printed and distributed, we recommend that Committee Proposal No. 17 as amended be adopted on Second Reading. All those in favor of the motion as stated, say aye. All opposed, say no. The ayes have it and we will rise and report as ordered.

At 2:26 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Debates in Committee of the Whole on STYLE

Committee Proposal No. 18

Chairman: DELEGATE CAROL FUKUNAGA

Tuesday, September 12, 1978 • Afternoon Session

The Committee of the Whole was called to order at 1:46 p.m.

Delegate Carol Fukunaga presided as Chairman:

CHAIRMAN: The Committee of the Whole will please come to order. The Convention has referred Committee Proposal No. 18 to this Committee of the Whole for consideration. In addition to this committee proposal, we have one amendment to the proposal--Amendment No. 1. This is the only amendment to Committee Proposal No. 18--offered by Delegate Hamilton.

Before proceeding into our deliberations, I have a few comments to pass along to the assembly here this afternoon. The Chair requests that the order for consideration of the committee report and the amendment be followed in that order. The Chair requests that as a courtesy delegates on the floor state on which side of the question they are speaking before debating. Delegates will be allowed to speak for 10 minutes the first time and 5 minutes the second time. A delegate will not be allowed to yield his time to another delegate and the mover of the primary amendment may request that he be allowed to speak last in debate. Any frivolous or dilatory motions calling for recess or roll-call vote will be declared out of order, subject to an appeal.

At this time, if there are no objections, we will proceed to hear from the chairman of the style committee, Delegate Hamilton, on Committee Proposal No. 18.

DELEGATE HAMILTON: Thank you, Madam Chairman. I move for approval of Amendment No. 1 to Committee Proposal No. 18.

DELEGATE STONE: I second the motion.

CHAIRMAN: Delegate Hamilton, would you like to speak to your proposal?

DELEGATE HAMILTON: Yes. I might explain briefly what we're doing here--and I'd be interested to hear the explanation myself. This is mostly technical material. This amendment simply brings up to date what the style committee has done on Committee Proposal No. 18. When Committee Proposal No. 18 was submitted, we of course had to submit it at the point that the style committee had reached in its work. Now we have done some more work, particularly in the case of the judiciary; therefore we are deleting that and renumbering the sections. This is a technical amendment and that is the extent of its significance.

CHAIRMAN: Is there any further discussion? There being no further discussion, the motion before this body is to amend Committee Proposal No. 18 by deleting sections 15, 16 and 17 and renumbering sections 18 to 21 as 15 to 18, respectively. All those in favor of the motion, please signify by raising your hand. All those opposed, please raise your hand. The motion is unanimously carried.

DELEGATE HAMILTON: I would now move to adopt the committee proposal as--

CHAIRMAN: Delegate Hamilton, would you--

DELEGATE HAMILTON: I guess I'd better get a new script here.

CHAIRMAN: --would you care to move that we rise and report--

DELEGATE HAMILTON: I think I shall. I've got the place now--this is the worst script I've ever had. Madam Chairman, I move that we rise and report that the Committee of the Whole has adopted Amendment No. 1 to Committee Proposal No. 18, and after the necessary copies have been printed and distributed, we recommend that the amended proposal be adopted by the Convention.

DELEGATE HALE: Second the motion.

CHAIRMAN: It has been moved and seconded that we rise and report that the Committee of the Whole has adopted Amendment No. 1 to Committee Proposal No. 18 and recommends adoption by the Convention. All those in favor of reporting as stated, please say aye. All those opposed, say no. The ayes have it and the motion is carried.

At 1:52 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

Appendix

Proposed Amendments to the Committee Proposals

The amendments to committee proposals that were offered by individual delegates during the Committee of the Whole debates are documented on the following pages. (The committee proposals can be found in Volume I.) Deletions to the proposal are indicated by brackets and new material is underscored. Material that is both bracketed and underscored indicates that a floor amendment to the original amendment was subsequently adopted; otherwise, floor amendments to the amendments have not been included. Ellipsis points indicate the omission of unaffected parts of the section being amended. For clarity and technical accuracy, where necessary, amendments have been corrected.

Committee Proposal No. 1 is amended to read:

1. (Delegate Chun -- Article XIV)

Section 5. The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct, and that such standards derive from the personal integrity of each individual in government. In keeping faith with this belief, the legislature, each political subdivision, and the constitutional convention shall adopt a code of ethics, which shall apply to appointed and elected officers and employees of the State or the political subdivision, respectively, including members of the boards, commissions and other bodies. Each elected or appointed official shall act in total good faith and undivided loyalty for the benefit of all the citizens of the State....

2. (Delegate Taira -- Article XIV)

Section 5... Each code of ethics shall be administered by a separate ethics commission, except that the code of ethics adopted by the constitutional convention shall be administered by the State Ethics Commission. [No member of an ethics commission shall, during his term of office, run for or hold any office in any political organization, or directly or indirectly make any political contribution, or take part in any political campaign. The members of ethics commissions shall be prohibited from taking an active part in political management or in political campaigns. Ethics commissioners shall be selected in a manner which assures their independence and impartiality....

3. (Delegate Pulham -- Article XIV)

Section 5... [Each code of ethics shall include, but not be limited to, provisions on gifts, confidential information, the use of position, contracts with government agencies, post-employment, financial disclosure, and lobbyist registration and restriction. The financial disclosure provision shall require all elected officers, all candidates for elective office, and such appointed officers and employees as shall be provided by law to make public financial disclosure. Other public officials with significant discretionary or fiscal powers as provided by law shall make confidential financial disclosure. All financial disclosure statements shall include at least the following areas: sources and amounts of income, ownership and officership interests in businesses, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.]

4. (Delegate Pulham -- Article XIV)

Section 5... Each code of ethics shall include, but not be limited to, provisions on gifts, confidential information, the use of position, contracts with government agencies, post-employment, financial disclosure, and lobbyist registration and restriction. The financial disclosure provision shall require all elected officers, [all candidates for elective office,] and such appointed officers and employees as shall be provided by law to make public financial disclosure. Other public officials with significant discretionary or fiscal powers as provided by law shall make confidential financial disclosure. All financial disclosure statements shall include at least the following areas: sources and amounts of income, ownership and officership interests in businesses, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

5. (Delegate Cabral -- Article XIV)

Section 5... Each code of ethics shall include, but not be limited to, provisions on gifts, confidential information, the use of position, inclusive of nepotism, contracts with government agencies, post-employment, financial disclosure, and lobbyist registration and restriction. The financial disclosure provision shall require all elected officers, all candidates for elective office, and such appointed officers and employees as shall be provided by law to make public financial disclosure. Other public officials with significant discretionary or fiscal powers as provided by law shall make confidential financial disclosure. All financial disclosure statements shall include at least the following areas: sources and amounts of income, ownership and officership interests in businesses, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

6. (Delegate Chu -- Article XIV)

Section 5... Each code of ethics shall include, but not be limited to, provisions on gifts, participation in partisan political campaigns, confidential information, the use of position, contracts with government agencies, post-employment, financial disclosure, and lobbyist registration and restriction. The financial disclosure provision shall require all elected officers, all candidates for elective office, and such appointed officers and employees as shall be provided by law to make public financial disclosure. Other public officials with significant discretionary or fiscal powers as provided by law shall make confidential financial disclosure. All financial disclosure statements shall include at least the following areas: sources and amounts of income,

ownership and officership interests in businesses, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

7. (Delegate Campbell -- Article XIV)

Section 5.... Judges and justices shall be required to make public financial disclosure.

Committee Proposal No. 2 is amended to read:

1. (Delegate Alcon -- Article XIII)

Section 4. The motto of the State shall be "Ua mau ke ea o ka aina i ka pono (The life of the land is perpetuated in righteousness)"

Committee Proposal No. 3 is amended to read:

1. (Delegate Blean -- Article IV)

Section 2. There shall be a lieutenant governor, who [shall have the same qualifications as the governor. He shall be elected at the same time, for the same term, and in the same manner, as the governor; provided that the votes cast in the general election for the nominee for governor shall be deemed cast for the nominee for lieutenant governor of the same political party.] shall be appointed by the governor. He shall be appointed for the same term as the governor. No person shall be [elected] appointed to the office of lieutenant governor for more than two consecutive full terms. The lieutenant governor shall perform such duties as may be prescribed by law.

2. (Delegate Crozier -- Article IV)

[LIEUTENANT GOVERNOR] SECRETARY OF STATE

Section 2. There shall be a [lieutenant governor] secretary of state, who shall have the same qualifications as the governor. He shall be [elected at the same time, for the same term, and in the same manner, as] appointed by the governor [; provided that the votes cast in the general election for the nominee for governor shall be deemed cast for the nominee for lieutenant governor of the same political party.] with the advice and consent of the senate. [No person shall be elected to the office of lieutenant governor for more than two consecutive full terms. The lieutenant governor] He shall perform such duties as may be prescribed by law.

Other sections withdrawn.

3. (Delegate O'Toole -- Article IV)

Section 2. There shall be a lieutenant governor, who shall have the same qualifications as the governor. He shall be elected at the same time, for the same term, and in the same manner, as the governor; provided that the [votes cast in the general election for the nominee for governor shall be deemed cast for the nominee for lieutenant governor of the same political party.] lieutenant governor shall be elected independently of the governor. No person shall be elected to the office of lieutenant governor for more than two consecutive full terms. The lieutenant governor shall perform such duties as may be prescribed by law.

4. (Delegate O'Toole -- Article IV)

Section 2. There shall be a lieutenant governor, who shall have the same qualifications as the governor. He shall be elected at the same time, for the same term, and in the same manner, as the governor; provided that the votes cast in the general election for the nominee for governor shall be deemed cast for the nominee for lieutenant governor of the same political party. No person shall be elected to the office of lieutenant governor for more than two consecutive full terms. The lieutenant governor shall perform, in addition to such duties as may be prescribed by law [.] , the following:

1. Serve as secretary of state including the responsibilities for the supervision of elections, re-
cordation of legislative and gubernatorial acts, certification of state documents and custodian of rules and regu-
lations promulgated by governmental agencies.

2. Supervise the enforcement of all laws and rules governing the licensing, operation and conduct
of trades, businesses and professions.

3. Serve as a coordinator of volunteer programs in the State.

Other section withdrawn.

5. (Delegate Barnes -- Article IV)

Section . There shall be an attorney general, who shall perform such duties as may be prescribed
by law and who shall be the chief legal officer of the state.

The attorney general shall have the same qualifications as the governor and, in addition, shall have
been admitted to practice law before the supreme court of the state for a period of at least five years. The attorney
general shall be elected at the same time, for the same term and in the same manner as the governor, and removal
shall be by the same manner as for the governor. In the event a vacancy occurs during a term, succession to of-
fice shall be as prescribed by law.

6. (Delegate Goodenow -- Article IV)

ATTORNEY GENERAL

Section . There shall be an attorney general who shall have the same qualifications as the governor and shall have been admitted to practice law before the supreme court of this State for at least five years. The attorney general shall be appointed by the governor from a list submitted by the merit nomination commission with the advice and consent of the senate. The attorney general shall perform such duties as may be prescribed by law. No person holding the office of attorney general shall be eligible to become a candidate for election to any state or political subdivision elective office while holding the office of attorney general or in the first such election after leaving the office of attorney general.

There shall be a merit nomination commission composed of nine members. The president of the senate, the speaker of the house of representatives and members of each house belonging to a party or parties different from that of the president or the speaker shall each appoint two members who shall be lay persons, not holding any other public office and the eight members thus appointed shall within thirty days thereafter appoint a ninth member who shall serve as chairperson of the commission.

The commission shall propose a list of not less than three nor more than five nominees to fill any vacancy in the office of the attorney general and then dissolve. The governor shall appoint a person to fill the office of the attorney general from this list.

Committee Proposal No. 4 is amended to read:

1. (Delegate Wurdeman -- Article XIV)

Section 2. Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired. Any such system shall not discriminate in benefits provided by class of employee or officer unless such differences in benefits bear a reasonable relationship to the individual contributions made or be based upon the special problems of those employees whose duties involve danger to life.

2. (Delegate Pulham -- Article XIV)

PLAIN LANGUAGE

Section . All governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms.

3. (Delegate Peterson -- Article XV)

Section 2. The legislature may submit to the electorate at any general or special election the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" If any [ten] nine-year period shall elapse[, or if it would elapse if ten days were added to any period less than 10 years,] during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of [or within 10 days of the expiration of] such period....

4. (Delegate Kimball -- Article XIV)

CONSTITUTIONAL REVISION COMMISSION

Section . The legislature shall provide for a constitutional revision commission which shall undertake a continuous study of the constitution of the state.

5. (Delegate Hagino -- Preamble)

We, the people of [the State of] Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage[,] and uniqueness as an island State, dedicate our efforts to fulfill the philosophy decreed by the Hawaiian motto, "Ua mau ke ea o ka aina i ka pono".

We reserve the right to control our destiny; to nurture the integrity of our people and culture; and to preserve the quality of life that we desire.

We reaffirm our belief in a government of the people, by the people and for the people, and with an understanding and compassionate heart toward all the peoples of the earth, do hereby ordain and establish this constitution for the State of Hawaii.

6. (Delegate Wurdeman -- Article XV)

Section 2.... The constitutional convention shall convene not less than five months prior to the next regularly scheduled general election. The convention will be held at the State Capitol, ...

Committee Proposal No. 5 is amended to read:

1. (Delegate Sasaki -- Article VIII)

Section 1. The State shall [have power to] provide for the protection and promotion of the public health.

2. (Delegate Harris -- Article VIII)

Section 1. The State shall have power to provide for the protection and promotion of the public health. More than an absence of disease, health is a state of mental, social, environmental and physical well being.

3. (Delegate Chang -- Article VIII)

PRESERVATION OF A HEALTHFUL ENVIRONMENT

Section . The State shall have the power to promote and maintain a healthful environment [and to prevent], including the prevention of any excessive demands upon the environment and the State's resources.

4. (Delegate DiBianco -- Article VIII)

[MANAGEMENT OF STATE POPULATION GROWTH

Section . The State shall plan and manage the growth of its population to protect and preserve the public health and welfare.]

5. (Delegate Harris -- Article VIII)

MANAGEMENT OF STATE POPULATION GROWTH

Section . The State and its political subdivisions, as provided by general law, shall plan and manage the growth of [its] the population to protect and preserve the public health and welfare [.] , except that each political subdivision, as provided by general law, may plan and manage the growth of its population in a more restrictive manner than the State.

6. (Delegate Hale -- Article VIII)

MANAGEMENT OF STATE POPULATION GROWTH

Section . The State shall have the power to plan and manage the growth of its population to protect and preserve the public health and welfare.

7. (Delegate Fukunaga -- Article VIII)

CULTURAL RESOURCES

Section . The State shall have the power to preserve and develop the cultural, creative, and traditional arts, and historical places and objects of its various ethnic groups.

8. (Delegate Harris -- Article VIII)

Withdrawn.

9. (Delegate Souki -- Article VIII)

ECONOMIC SECURITY OF THE ELDERLY

Section . The State shall have the power to provide for the [economic] security of the elderly [to assure retirement in health, honor and dignity.] by establishing and promoting programs to assure their economic and social well-being.

10. (Delegate Laura Ching -- Article VIII)

MANDATORY COMPREHENSIVE HEALTH PLAN

Section . There shall be a mandatory comprehensive health plan providing coverage of comprehensive health care at minimal cost for all persons residing in the State, including protection against excessive health care costs. Under the plan, no person shall pay more than percent of the gross income of that person or that person's family for medical care coverage. All persons residing in the State as provided by law shall participate in the plan; provided that other health plans may provide supplemental coverage. The plan shall be financed through government financing as provided by law and through contributions from employers and employees and other beneficiaries of the plan. The legislature shall establish the comprehensive health plan which shall be maintained by a board of trustees as provided by law. The board of trustees shall recommend to the legislature legislation to reduce medical care costs throughout the State.

11. (Delegate Cabral -- Article VIII)

RIGHT TO CONTINUITY OF PUBLIC SERVICES

Section . The right of the people to receive uninterrupted public service as performed by public employees or through contract for provision of public services, including, but not limited to, those services relating to public health, safety and the general welfare, shall not be violated.

12. (Delegate Cabral -- Article XII)

PUBLIC EMPLOYEES; BINDING ARBITRATION

Section 2. Persons in public employment shall have the right to organize for the purpose of collective bargaining as prescribed by law [.] ; provided that all disputes concerning any initial agreement, the

renewal of any agreement or the interpretation or application of any existing agreement between a public employer and an employee organization, which have reached an impasse, shall be settled by an arbitration procedure as provided by law, which shall result in a final and binding decision.

13. (Delegate Ellis -- Article XII)

Section 2. Persons in public employment shall have the right to organize for the purpose of collective bargaining as prescribed by law. The chief negotiator representing the public employer in negotiations with an employee organization shall be a representative of the state legislature and the legislative bodies of the various political subdivisions. All negotiations between a public employer and an employee organization relating to wages, hours and other terms and conditions of employment shall be open to the public.

Committee Proposal No. 6 is amended to read:

1. (Delegates Lacy/Goodenow -- Article IX)

Section 1. The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university [, public libraries] and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution.

PUBLIC LIBRARIES

Section . The State shall provide for the establishment, support and control of an independent statewide system of public libraries, including physical facilities therefor, in accordance with law.

2. (Delegate Nozaki -- Article IX)

SCHOOL ADVISORY COUNCILS

Section . A school advisory council shall be established in accordance with law for each school in the public school system. Each council shall advise the school on improvements to school operations and programs in accordance with law.

3. (Delegate Chu -- Article IX)

DISTRICT BOARDS OF EDUCATION

Section . There shall be district boards of education composed of members who shall be elected by qualified voters in accordance with law. Each school district shall have at least one district board of education.

Other sections filed.

4A. (Delegate Hironaka -- Article IX)

LOCAL BOARD OF EDUCATION; COMPOSITION AND POWER

Section . There shall be local boards of education composed of members who shall be elected in a nonpartisan manner by the qualified voters of the respective school districts as provided by law.

Each local board of education shall select from its membership a representative or representatives, in accordance with law, who shall serve as members on the state board of education.

Other section withdrawn.

5. (Delegate Okamura -- Article IX)

Section 2. There shall be a board of education composed of members who shall be elected in a nonpartisan manner by qualified voters in accordance with law from two at-large units. The first unit shall be comprised of the island of Oahu and all other islands not specifically enumerated. The second unit shall be comprised of the islands of Hawaii, Maui, Lanai, Molokai, Kahoolawe, Kauai and Niihau. Each at-large unit shall be divided into school districts, as may be provided by law. There shall be at least one member residing in each school district. [No member shall serve more than two consecutive terms of four years each.]

Members elected in the 1978 general election shall serve for two-year terms.

6. (Delegate Yamashita -- Article IX)

STATE BOARD, SUPERINTENDENT, AND LOCAL BOARDS OF EDUCATION

Section 2. [There shall be a board of education composed of members who shall be elected in a nonpartisan manner by qualified voters in accordance with law from two at-large units. The first unit shall be comprised of the island of Oahu and all other islands not specifically enumerated. The second unit shall be comprised of the islands of Hawaii, Maui, Lanai, Molokai, Kahoolawe, Kauai and Niihau. Each at-large unit shall be divided into school districts, as may be provided by law. There shall be at least one member residing in each school district. No member shall serve more than two consecutive terms of four years each.] There shall be a state board of education whose members shall be the chairpersons of the local boards of education which shall be created in accordance with law. The state board of education shall submit three names

to the governor to fill the position of superintendent of education. The state board of education shall advise the superintendent of education on the policies and administration of the statewide system of public schools.

There shall be a superintendent of education who shall be nominated from among the three names submitted by the state board of education and, by and with the advice and consent of the senate, appointed by the governor. The superintendent shall have power, in accordance with law, to exercise control over the public school system.

There shall be established by law in each school district a local board of education whose members shall be elected in accordance with law. Each local board of education shall advise the district administration on school matters of districtwide concern.

Members elected to the state board of education in the 1978 general election shall serve for two-year terms.

7. (Delegate Nozaki -- Article IX)

Withdrawn.

8. (Delegate Hironaka -- Article IX)

Withdrawn.

9. (Delegates Fushikoshi/Hirata -- Article IX)

Section 3. The board of education shall have power, in accordance with law, to formulate policy, and to exercise control over the public school system through its executive officer, the superintendent of education, who shall be appointed by the board [.] except that the board shall have jurisdiction over the internal organization and management of the public school system, as provided by law, and shall exercise its jurisdiction in a manner consistent with general laws.

[The board may adopt, amend or repeal rules as provided by law to implement its policy and to exercise control over the public school system. If the adoption, amendment or repeal of a rule promulgated by the board is prescribed by law to be subject to the approval of a designated authority who disapproves, the board may proceed to reconsider the adoption, amendment or repeal of the rule so disapproved. If after such reconsideration, the adoption, amendment or repeal of the rule shall be approved by a two-thirds vote of all the members of the board, the same shall be deemed approved by the designated authority.]

10. (Delegate Campbell -- Article IX)

Section 3. The board of education shall have power, in accordance with law, to formulate policy, and to exercise control over the public school system through its executive officer, the superintendent of education, who shall be [appointed by the board.] elected by the qualified voters of the State as provided by law for a term of four years.

[The board may adopt, amend or repeal rules as provided by law to implement its policy and to exercise control over the public school system. If the adoption, amendment or repeal of a rule promulgated by the board is prescribed by law to be subject to the approval of a designated authority who disapproves, the board may proceed to reconsider the adoption, amendment or repeal of the rule so disapproved. If after such reconsideration, the adoption, amendment or repeal of the rule shall be approved by a two-thirds vote of all the members of the board, the same shall be deemed approved by the designated authority.]

11. (Delegates Fushikoshi/Hirata -- Article IX)

Section 5. There shall be a board of regents of the University of Hawaii, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor. At least part of the membership of the board shall represent geographic subdivisions of the State. The board shall have power, in accordance with law, to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board. [Notwithstanding any law relating to the power to formulate policy and to exercise control over the university, the] The board shall have exclusive jurisdiction over the internal organization and management of the university [.] as provided by law; except that this section shall not limit the power of the legislature to enact laws of state-wide concern.

12. (Delegate Chong -- Article IX)

Withdrawn.

13. (Delegate Harris -- Article IX)

Section 5. There shall be a board of regents of the University of Hawaii, [the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor.] who shall be elected in a nonpartisan manner by qualified voters in accordance with law from two at-large units. [At least part of the membership of the board shall represent geographic subdivisions of the State.] The first unit shall be comprised of the island of Oahu and all other islands not specifically enumerated. The second unit shall be comprised of the islands of Hawaii, Maui, Lanai, Molokai, Kahoolawe, Kauai and Niihau. Each at-large unit shall be divided into school districts, as may be provided by law. There shall be at least one member residing in each school district. No member shall serve more than two consecutive terms of four years each.

Members elected in the 1978 general election shall serve for two-year terms.

The board shall have power, in accordance with law, to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the

board. [Notwithstanding any law relating to the power to formulate policy and to exercise control over the university, the board shall have exclusive jurisdiction over the internal organization and management of the university.]

14. (Delegate Odanaka -- Article IX)

Withdrawn.

Committee Proposal No. 7 is amended to read:

1. (Delegate Wurdeman -- Article VII)

Section 2. . . . A law [may] shall only qualify as a general law [even though] if it is [inapplicable] applicable to [one or more] all counties by reason of the provisions of this section.

2. (Delegate Izu -- Article VII)

Section 3. The taxing power shall be reserved to the State except so much thereof as may be delegated by the legislature to the political subdivisions[, provided, that the power to levy a tax on]; [provided] except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties[.], [except] with the exception of the county of Kalawao. The legislature shall have the power to apportion State revenues among the several political subdivisions.

3. (Delegate Kimball -- Article VII)

Section 3. The taxing power shall be reserved to the State except so much thereof as may be delegated by the legislature to the political subdivisions, provided, that the [power to levy a tax on real property shall be exercised exclusively by the counties] counties, except the county of Kalawao, shall have the exclusive power to levy a tax on real property and the power to levy a general excise tax in an amount not to exceed twenty-five percent of any general excise tax levied by the State. The legislature shall have the power to apportion State revenues among the several political subdivisions.

4. (Delegate Kimball -- Article VII)

Withdrawn.

5. (Delegate Shon -- Article VII)

Section 3. The taxing power shall be reserved to the State except so much thereof as may be delegated by the legislature to the political subdivisions, [provided, that the power to levy a tax on real property shall be exercised exclusively by the counties. The] and the legislature shall have the power to apportion State revenues among the several political subdivisions.

6. (Delegate Kaito -- Article VII)

[LAND USE: STATE AND COUNTY

Section . Reclassification of land to urban use shall be subject to approval by the county in which the land exists.]

- 7A. (Delegate Hokama -- Article VII)

LAND USE: STATE AND COUNTY

Section . Reclassification of land to urban use shall be subject to approval by ordinance by the county in which the land exists.

8. (Delegate Izu -- Article XVI)

EFFECTIVE DATE AND APPLICATION OF ARTICLE VII, SECTION 3

Section . The amendments to Section 3 of Article VII shall take effect on the first [day of January after three] of July after two full calendar years have elapsed following such ratification. Upon the taking effect of the amendments Article VII as amended shall apply to all county charters irrespective of whether adopted before or after the admission of the State.

Committee Proposal No. 8 is amended to read:

1. (Delegate Cabral -- Article III)

Section I. The legislative power of the State shall be vested in a legislature, which shall consist of [two houses, a senate and a house of representatives.] one house called the senate. Such power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the Constitution of the United States.

Other section withdrawn.

2. (Delegate Stone -- Article III)

Section 5. The members of the legislature shall be elected at general elections. The term of office of members of the house of representatives shall be two years beginning with their election and ending on the day of the next general election, and the term of office of members of the senate shall be four years beginning with their election and ending on the day of the second general election after their election. No members of the legislature shall serve more than a total of twelve years.

3. (Delegate Cabral -- Article III)

LEGISLATIVE COMMISSION

Section . There shall be a legislative commission, which shall be appointed by the governor on or before June 1, 19 , and every four years after the first commission is appointed. The legislative commission shall study legislative salary, benefits, direct or indirect, made to legislators whether by way of compensation, allowance, reimbursement, health benefits or retirement system benefits and, in addition, shall study the legislative structure, procedures, session length and all other aspects of the legislative branch. Within one hundred eighty days after its appointment, the commission shall submit to the governor recommendations for a salary and benefit plan for members of the legislature, or amendments to the state constitution, or both, and then dissolve. Upon approval by the governor, the chief election officer shall place the recommendations on the ballot at the next regularly scheduled general election for approval or disapproval by the voters and such recommendations shall not become effective until approved by the voters.

SALARY; ALLOWANCES[; COMMISSION ON LEGISLATIVE SALARY]

Section 10. The members of the legislature shall be empowered to appropriate funds for the operation of the legislature, including such supporting agencies as needed, and shall receive allowances reasonably related to expenses [as prescribed by law, and a salary prescribed pursuant to this section.

There shall be a commission on legislative salary, which shall be appointed by the governor on or before November 30, 1978, and every eight years thereafter. Not later than the fortieth legislative day of the 1979 regular legislative session and every eight years thereafter, the commission shall submit to the legislature and the governor recommendations for a salary plan for members of the legislature and then dissolve. The salary plan submitted shall become effective as provided in the plan unless the legislature disapproves the plan by adoption of a concurrent resolution prior to adjournment sine die of the legislative session in which the plan is submitted or the governor disapproves the plan by a message of the disapproval transmitted to the legislature prior to the said adjournment. Any change in salary which becomes effective shall not apply to the legislature to which the recommendations for the change in salary was submitted.] and a salary prescribed pursuant to Section .

4. (Delegate Chu -- Article III)

SALARY; ALLOWANCES[; COMMISSION ON LEGISLATIVE SALARY]

Section 10. The members of the legislature shall receive allowances reasonably related to expenses as prescribed by law, and a salary prescribed pursuant to this section.

[There shall be a commission on legislative salary, which shall be appointed by the governor on or before November 30, 1978, and every eight years thereafter. Not later than the fortieth legislative day of the 1979 regular legislative session and every eight years thereafter, the commission shall submit to the legislature and the governor recommendations for a salary plan for members of the legislature and then dissolve. The salary plan submitted shall become effective as provided in the plan unless the legislature disapproves the plan by adoption of a concurrent resolution prior to adjournment sine die of the legislative session in which the plan is submitted or the governor disapproves the plan by a message of the disapproval transmitted to the legislature prior to the said adjournment. Any change in salary which becomes effective shall not apply to the legislature to which the recommendations for the change in salary was submitted.] The salary of each member of the legislature shall be \$12,000 a year, with a four percent annual increase, that shall take effect after the general election of 1980.

TABLE OF LEGISLATIVE SALARIES BASED ON \$12,000/yr WITH 4% ANNUAL INCREASE:

<u>YEAR</u>	<u>SALARY</u>	<u>+</u>	<u>4% INCREASE</u>	<u>NEW SALARY</u>
1979	\$12,000.00			
1980	12,000.00		\$480.00	\$12,480.00
1981	12,480.00		499.20	12,979.20
1982	12,979.20		519.17	13,498.37
1983	13,498.37		539.93	14,038.30
1984	14,038.30		561.53	14,599.83
1985	14,599.83		583.99	15,183.82
1986	15,183.82		607.35	15,791.17
1987	15,791.17		631.65	16,422.82
1988	16,422.82		656.91	17,079.73
1989	17,079.73		683.19	17,762.92
1990	17,762.92		710.52	18,473.44

5. (Delegate Cabral -- Article III)

Section 11. The legislature shall convene [annually] biennially in regular session at 10:00 o'clock a.m. on the [third] [last] Wednesday in [January] [February] in odd-numbered years.

At the written request of two-thirds of the members to which each house is entitled, the presiding officers of both houses shall convene the legislature in special session. The governor may convene both houses or the senate alone in special session.

Regular session shall be limited to a period of [sixty] 75 working days, and special sessions shall be limited to a period of thirty days. Any session may be extended a total of not more than fifteen days. Such extension shall be granted by the presiding officers of both houses at the written request of two-thirds of the members to which each house is entitled or may be granted by the governor.

Each regular session shall be recessed for not less than five days at some period between the twentieth and fortieth days of the regular session. The legislature shall determine the dates of the mandatory recess by concurrent resolution. Any session may be recessed by concurrent resolution adopted by a majority of the members to which each house is entitled. Saturdays, Sundays, holidays, the days in mandatory recess and any days in recess pursuant to a concurrent resolution shall be excluded in computing the number of days in any session.

All sessions shall be held in the capital of the State. In case the capital shall be unsafe, the governor may direct that any session be held at some other place.

Other section filed.

6. (Delegate Crozier -- Article III)

Section 13. Each house shall be the judge of the elections, returns and qualifications of its own members and shall have, for misconduct, disorderly behavior or neglect of duty of any member, power to punish such member by censure or, upon a two-thirds vote of all the members to which such house is entitled, by suspension or expulsion of such member. Each house shall choose its own officers, determine the rules of its proceedings and keep a journal[.]; provided that all bills and substantive resolutions introduced in the legislature shall be referred to, considered and reported on as provided by rule by the entire membership of that house in which it is being considered, sitting as a committee of the whole and shall not be referred to, considered or reported on by any other committee or subcommittee of that house. The legislature shall not have any standing committees or any subcommittees of the committee of the whole. The ayes and noes of the members on any question shall, at the desire of one-fifth of the members present, be entered upon the journal.

[Twenty days after a bill has been referred to a committee in either house, the same may be recalled from such committee by the affirmative vote of one-third of the members to which such house is entitled.]

Every meeting of a committee of the whole in either house or of a committee of the whole comprised of [member or] all members from both houses held for the purpose of making decision on matters referred to the committee shall be open to the public.

Each house shall provide by rule of its proceedings for a date, applicable to both houses but no sooner than the twentieth day of the session, by which date all bills to be considered in a regular session shall be introduced; provided that such date shall precede the commencement of the mandatory recess of not less than five days under Section ___.

7. (Delegate Chu -- Article III)

Section 13. Each house shall be the judge of the elections, returns and qualifications of its own members and shall have, for misconduct, disorderly behavior or neglect of duty of any member, power to punish such member by censure or, upon a two-thirds vote of all the members to which such house is entitled, by suspension or expulsion of such member. Each house shall choose its own officers, determine the rules of its proceedings and keep a journal[.] to include a record of all committee decision making sessions, floor action and all matters arising during public hearings. The ayes and noes of the members on any question shall[, at the desire of one-fifth of the members present,] be entered upon the journal.

Twenty days after a bill has been referred to a committee in either house, the same may be recalled from such committee by the affirmative vote of one-third of the members to which such house is entitled.

Every meeting of a committee in either house or of a committee comprised of member or members from both houses held for the purpose of making decision on matters referred to the committee shall be open to the public.

Every hearing conducted by a committee or other body of the legislature, for the purpose of receiving testimony on bills, resolutions or other matters referred to that committee or body shall also be open to the public absent a compelling reason to close the hearing. Each house shall adopt uniform rules for such hearings and shall provide for seventy-two hours advance notice to the public for each such public hearing. No law shall be passed by the legislature unless the substance of the law has had public hearing.

Each house shall provide by rule of its proceedings for a date, applicable to both houses but no sooner than the twentieth day of the session, by which date all bills to be considered in a regular session shall be introduced; provided that such date shall precede the commencement of the mandatory recess of not less than five days under Section ___.

8. (Delegate Yamashita -- Article)

REAPPORTIONMENT
APPORTIONMENT WITHIN BASIC ISLAND UNITS

Section 1.... 7. Not more than four members shall be elected from any senatorial district and only one member shall be elected from any representative district....

9. (Delegate Barr -- Article)

Withdrawn.

10. (Delegate Chong -- Article)

REAPPORTIONMENT
APPORTIONMENT WITHIN BASIC ISLAND UNITS

Section 1. . . . 9. No consideration shall be given to holdover senators in effecting redistricting.

PLACEMENT OF HOLDOVER SENATORS

If a senator is serving a term which will extend past the general election at which an apportionment plan becomes effective, the reapportionment commission shall designate in the plan the senatorial district the senator shall represent for the remaining period of the senator's term. In making such designation the senator need not live in the senatorial district which the senator is designated as representing during the remainder of the term which extends past the general election at which the reapportionment plan becomes effective; provided the reapportionment commission shall consider the following criteria:

1. The senatorial district from which the senator was elected.
2. The senatorial district in which the senator will reside under the reapportionment plan.
3. The requirement of continuing the staggered terms of senators in each district as established by Section 2 of Article XVI, the next paragraph in this article, and the number of senators in a senatorial district under the reapportionment plan of the commission.

RETENTION OF STAGGERED TERMS FOR THE SENATE

The senate shall be composed of senators who serve staggered terms of office as follows: senatorial districts with one member, the term of office shall end as provided by the constitution; senatorial districts with two members, each member shall serve a term ending on the date of a different general election; senatorial districts with three members, (A) two members shall serve a term ending on the date of the same general election and (B) one member shall serve a term ending on the date of a general election different than the other two members; senatorial districts with four members, (A) two members shall serve a term ending on the date of the same general election and (B) two members shall serve a term ending on the date of a general election different than the other two members.

[If, due to redistricting under a reapportionment plan, the number of senators in a senatorial district whose election would end on dates of a general election different from that set forth in the above paragraph, then the members of the senate to be elected in the first general election after such reapportionment shall be divided into two classes.] If, in the first or second general election in which senators are elected after a reapportionment, the number of senators in a senatorial district whose terms would end on a date of a general election will be more than that set forth in the above paragraph, then at such general election the members of the senate shall be divided into two classes. The members of the first class shall hold office for a term of four years beginning with their election and ending on the day of the second general election held thereafter. The first class shall consist of that number of persons with the highest number of votes necessary to fulfill item (B) in the above paragraph for senatorial districts with three or four members or one person in senatorial districts with two members. The remaining persons shall constitute the second class and shall hold office for a term of two years beginning with their election and ending on the day of the next general election held thereafter.

11. (Delegate Chong -- Article XVI)

[TWENTY-SIXTH SENATOR, ALLOCATED TO KAUAI

Section 3. Effective for the first general election following ratification of the twelfth paragraph of Section 4 of Article III and until the next reapportionment, one senator shall be added to the twenty-five members of the senate as provided and with the effect set out in the twelfth paragraph of Section 4 of Article III and such senator shall be allocated to the basic island unit of Kauai.

EFFECTIVE DATE FOR APPOINTMENT AND DISTRICTING

Section 4. The senatorial and representative districts and the numbers to be elected from each as set forth in Sections 1A and 1B of this article shall become effective for the first general election following ratification of the amendment to Section 2 of Article III and of Sections 1A and 1B of this article.

REAPPORTIONMENT COMMISSION; ACTIVATION

Section 5. Anything in this constitution to the contrary notwithstanding, if Sections 1A and 1B of this article are not ratified, the reapportionment commission shall be constituted on or before March 1, 1969.

CONFLICTS BETWEEN APPOINTMENT PROVISIONS

Section 6. Sections 2 and 4 of Article III and Sections 1A, 2, 3, 4 and 5 of Article XVI, as amended and added by the constitutional convention of 1968, upon ratification, shall supersede Senate Bill No. 1102 of the Regular Session of 1967 even if the latter shall also be ratified. If less than all of the above sections are ratified, then those ratified shall supersede Senate Bill No. 1102 to the extent they are in conflict therewith, even if the latter should be ratified.]

12. (Delegate O'Toole -- Article XVI)

Section 2. Article III, Section 5, to the contrary notwithstanding, the terms of office of the members of the senate elected in the [1978] 1982 general election shall be as follows: members of the senate shall be divided into two classes. The first class shall consist of the following number elected with the highest number of votes from their respective senatorial districts: first district, one; second district, one; third district, one;

fourth district, two; fifth district, two; sixth district, two; seventh district, two; eighth district, one. Members of the first class shall hold office for a term of four years beginning with their election and ending on the day of the second general election held thereafter. The remaining members elected shall constitute the second class and shall hold office for a term of two years beginning with their election and ending on the day of the next general election held thereafter.

13. (Delegate Laura Ching -- Article III)

Withdrawn.

Committee Proposal No. 9

No amendments.

Committee Proposal No. 10 is amended to read:

1. (Delegate Campbell -- Article V)

Section 1. The judicial power of the State shall be vested in one supreme court, [one intermediate appellate court,] circuit courts, district courts, and in such other courts as the legislature may from time to time establish. The several courts shall have original and appellate jurisdiction as provided by law and shall establish time limits for disposition of cases in accordance with its rules.

Other sections filed.

2. (Delegates Chu/Liu -- Article V)

Section 1. The judicial power of the State shall be vested in one supreme court, [one intermediate appellate court,] circuit courts, district courts, and in such other courts as the legislature may from time to time establish. The several courts shall have original and appellate jurisdiction as provided by law and shall establish time limits for disposition of cases in accordance with its rules.

SUPREME COURT[; APPELLATE COURT]

Section 2. The supreme court shall consist of a chief justice and [four] six associate justices. The chief justice may assign a judge or judges of [the intermediate appellate court or] a circuit court to serve temporarily on the supreme court, [a judge of the circuit court to serve temporarily on the intermediate appellate court,] and a judge of the district court to serve temporarily on the circuit court. As prescribed by law, retired justices of the supreme court also may serve temporarily on the supreme court at the request of the chief justice. In case of a vacancy in the office of chief justice, or if he is ill, absent or otherwise unable to serve, an associate justice designated in accordance with the rules of the supreme court shall serve temporarily in his place.

The supreme court may sit in panels or en banc. The supreme court sitting en banc shall consist of all active justices, and judges and retired justices temporarily assigned, if necessary to constitute a court of five. The size and composition of panels shall be determined in accordance with the rules of the supreme court. Panels may consist of as few as three members, of whom not more than one shall be a judge or retired justice temporarily assigned. Any three active justices may direct the supreme court to conduct a hearing or rehearing en banc.

Section 3. The governor shall, with the consent of the senate, fill a vacancy in the office of the chief justice, supreme court, [intermediate appellate court] and circuit courts, by appointing a person from a list of not less than six nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor should fail to make the appointment within thirty days of presentation, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. If the senate should fail to consent to any appointment, whether by the governor or commission, the commission shall make the appointment from the list, without senate consent.

The chief justice shall fill a vacancy in the district courts by appointing a person from a list of not less than six nominees for the vacancy presented by the judicial commission. If the chief justice fails to make the appointment within 30 days of presentation, the appointment shall be made by the judicial selection commission from the list. The chief justice shall appoint per diem district court judges in accordance with law.

QUALIFICATIONS FOR APPOINTMENT

Justices and judges shall be residents and citizens of the State and of the United States, and licensed to practice law by the supreme court. A justice of the supreme court[, a judge of the intermediate appellate court] and a judge of the circuit court shall have been so licensed for a period of not less than ten years preceding his nomination. A judge of the district court shall have been so licensed for a period of not less than five years preceding his nomination.

No justice or judge shall, during his term of office, engage in the practice of law, or run for or hold any other office or position of profit under the United States, the State, or its political subdivisions.

TENURE; COMPENSATION; RETIREMENT

The term of office of justices and judges of the supreme court[, intermediate appellate court] and

circuit courts shall be ten years. Judges of district courts shall hold office for the periods prescribed by law. At least six months prior to the expiration of his term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of his intention to retire. If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew his term of office for the period prescribed by law.

There shall be a salary commission to review and recommend salaries for justices and judges of all state courts. Justices and judges shall have salaries as prescribed by law. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State. They shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the State.

3. (Delegate Takitani -- Article V)

Section 3. The governor shall[, with the consent of the senate,] fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court, [and] circuit courts[,] and district courts by appointing a person from a list of not less than six nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor should fail to make the appointment within thirty days of presentation, the appointment shall be made by the judicial selection commission from the list [with the consent of the senate. If the senate should fail to consent to any appointment, whether by the governor or commission, the commission shall make the appointment from the list, without senate consent]....

4. (Delegate Burgess -- Article V)

Section 3. The governor shall, with the consent of the senate, fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than [six] three nominees for the vacancy, presented to the governor by the judicial selection commission....

5. (Delegate Campbell -- Article V)

[APPOINTMENT] ELECTION OF JUSTICES AND JUDGES

Section 3. [The governor shall, with the consent of the senate, fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than six nominees for the vacancy, presented to the governor by the judicial selection commission....]

The justices of the supreme court and intermediate, circuit and district court judges shall be elected by the qualified voters of the State at large at a general election. The judicial candidates shall run for election as nonpartisan candidates. The term of office shall commence the first day of January succeeding the election.

VACANCIES

If a vacancy occurs in the office of a justice of the supreme court or the office of an intermediate, circuit or district court judge, the governor shall appoint a person to fill that office until the election of a justice or judge to fill that vacancy. The election shall take place at the next succeeding general election. The justice or judge then elected shall hold office for the unexpired term.

Other sections filed.

6. (Delegate Burgess -- Article V)

Section 3.... The term of office of justices and judges of the supreme court, intermediate appellate court and circuit courts shall be ten years. Judges of district courts shall hold office for the periods prescribed by law. [At least six months prior to the expiration of his term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of his intention to retire. If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew his term of office for the period prescribed by law.

There shall be a salary commission to review and recommend salaries for justices and judges of all state courts. Justices and judges shall have salaries as prescribed by law. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State. They shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the State.] Each justice or judge appointed pursuant to this section shall hold office for a term ending December 31st following the next general election after the expiration of twelve months in office. Any justice or judge holding office, or elected thereto, at the time of the election by which this section becomes applicable to this office, shall, unless removed for cause, remain in office for the term to which the justice or judge would have been entitled had this section not become applicable to judicial office. Not less than sixty days prior to the holding of the general election next preceding the expiration of a justice's or judge's term of office, any justice or judge whose office is subject to this section may file with the chief election officer a declaration of candidacy for election to succeed in office. If a declaration is not filed by any justice or judge, the vacancy resulting from the expiration of the term of office shall be filled by appointment as herein provided. If the declaration is filed, the justice's or judge's name shall be submitted at the next general election to the voters eligible to vote within the State, or circuit if the judicial office is that of circuit judge, on a separate judicial ballot, without party designation, reading:

"Shall (Justice) (Judge)
(Here the name of the justice or judge shall be inserted.)
of the"

13. (Delegate Ikeda -- Article V)

Withdrawn.

14. (Delegate Ikeda -- Article V)

TRANSITION; EFFECTIVE DATE

Section __ . The current terms of justices and judges in office shall terminate as heretofore provided by law, subject to earlier termination and removal as provided in this article. The amendments to Article V shall take effect upon ratification. The judicial selection commission shall be created no later than April 1, 1979.

- 15(new). (Delegate Ikeda -- Article V)

THE JUDICIAL SELECTION COMMISSION

Section ____ No member of the judicial commission shall receive any compensation for commission services, but shall be allowed necessary expenses for travel, board and lodging incurred in the performance of commission duties. The legislature shall provide for [operation, staff and other expenses incidental to the performance of commission duties.] the staff and operating expenses of the commission in a separate budget. The judicial selection commission shall be attached to the judiciary branch of the state government for purposes of administration.

16. (Delegate Burgess -- Article V)

Withdrawn.

17. (Delegate Hokama -- Article V)

Withdrawn.

Committee Proposal No. 11

No amendments.

Committee Proposal No. 12 is amended to read:

1. (Delegate Hale -- Article XIV)

LAND TITLE ACTIONS

Section ____ . The State of Hawaii shall pay for all the expenses, including attorneys' fees, in securing land court titles to all estates or interests in real property when title to these lands is in dispute.

2. (Delegate Hale -- Article I)

[QUIETING TITLE

Section ____ . No person shall be deprived of title to an estate or interest in real property by another person claiming actual, continuous, hostile, exclusive, open and notorious possession of such lands.]

Committee Proposal No. 13 is amended to read:

1. (Delegate De Soto -- Article XI)

[HAWAIIAN HOME LANDS] HAWAIIAN AFFAIRS PUBLIC TRUST

Section 4. The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XIV, Section 8 of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for [those] native Hawaiians[, as defined in the Hawaiian Homes Commission Act, 1920, as amended or may be amended,] and the general public.

OFFICE OF HAWAIIAN AFFAIRS; ESTABLISHMENT OF BOARD OF TRUSTEES

Section 5. There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are [native] Hawaiians, in accordance with law. The board members shall be [native] Hawaiians. There shall be not less than 9 members of the board of trustees; provided that each of the following Islands have one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The Board shall select a chairman from its members.

POWERS OF BOARD OF TRUSTEES

Section 6. The board shall exercise power in accordance with law, to manage and administer the

proceeds from the sale or other disposition of the lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in Section 4 for [those] native Hawaiians [as defined in the Hawaiian Homes Commission Act, 1920, as amended or may be amended]; formulate policy relating to affairs of native Hawaiians and Hawaiians, and exercise control over real and personal property set aside by state, federal, or private sources and transferred to said board for [Native] native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board.

DEFINITION: HAWAIIAN; NATIVE HAWAIIAN

Section 7. The term [Native] "Hawaiian" means any [individual any of whose ancestors were natives of the area which consisted of the Hawaiian Islands prior to 1778.] descendant of the races inhabiting the Hawaiian Islands, previous to 1778.

[Native Hawaiians of one-half blood] The term "native Hawaiian" means any [individual] descendant of not less than one-half part of the blood of races inhabiting the Hawaiian Islands previous to 1778[.] as defined by the Hawaiian Homes Commission Act, 1920, as amended or may be amended.

Committee Proposal No. 14 is amended to read:

A1. (Delegate Kono -- Article VI)

Withdrawn.

A2. (Delegate Ikeda -- Article VI)

Section 3... (h) Bonds constituting instruments of indebtedness under which the State or any political subdivision incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed six percent of the principal amount of all outstanding general obligation bonds not otherwise excluded under this section; provided that the State or political subdivision shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State or political subdivision as is provided by law....

A3. (Delegate Kono -- Article VI)

Section 3... (h) Bonds constituting instruments of indebtedness under which the State or any political subdivision incurs a contingent liability as a guarantor, provided that the State or political subdivision shall establish and maintain a reserve in an amount in [reasonable] prudent proportion to, but in no event to be less than ten percent, the outstanding loans guaranteed by the State or political subdivision as is provided by law....

A4. (Delegate Peterson -- Article VI)

Section 3... No debt obligation, except as shall be repaid within the fiscal year of issuance, shall be authorized for the current operation of any state or local service or program, nor shall the proceeds of any debt obligation be expended for a purpose other than that for which it was authorized.

B1. (Delegate Kono -- Article VI)

Section 3... The legislature by a majority vote of the members to which each house is entitled shall authorize the issuance of all general obligation bonds and revenue bonds issued by or on behalf of the State and shall prescribe by general law the manner and procedure for such issuance. The legislature by general law shall authorize political subdivisions to issue general obligation bonds and revenue bonds and may authorize any board or agency of such political subdivision to issue revenue bonds and, in either case, shall prescribe the manner and procedure for such issuance. All general obligation bonds issued by or on behalf of a political subdivision shall be authorized by the governing body of such political subdivision and all revenue bonds issued by or on behalf of a political subdivision shall be authorized by the governing body of such political subdivision or the governing body of any board or agency of such political subdivision authorized by law to issue revenue bonds. The legislature by general law may authorize the State or political subdivisions, or both, to issue special purpose revenue bonds and, in such case, shall prescribe the manner and procedure for such issuance. No special purpose revenue bonds shall be authorized or issued except to finance facilities of or for, or to loan the proceeds of such bonds to assist[, manufacturing, processing or industrial enterprises,] utilities serving the general public, health care facilities provided to the general public by not-for-profit corporations or low and moderate income government housing programs, which facilities or loan the legislature finds to be in the public interest. No special purpose revenue bond shall be secured directly or indirectly by the general credit of the issuer or by any revenues or taxes of the issuer other than receipts derived from payments by a person under contract or from any security for such contract or special purpose revenue bonds and no moneys other than such receipts shall be applied to the payment thereof....

B2. (Delegate Marion Lee -- Article VI)

Section 3... The legislature by a majority vote of the members to which each house is entitled shall authorize the issuance of all general obligation bonds and revenue bonds issued by or on behalf of the State and shall prescribe by general law the manner and procedure for such issuance. The legislature by general law shall authorize political subdivisions to issue general obligation bonds and revenue bonds and may authorize any board or agency of such political subdivision to issue revenue bonds and, in either case, shall prescribe the manner and procedure for such issuance. All general obligation bonds issued by or on behalf of a political subdivision shall be authorized by the governing body of such political subdivision and all revenue bonds issued by or on behalf of a political subdivision shall be authorized by the governing body

of such political subdivision or the governing body of any board or agency of such political subdivision authorized by law to issue revenue bonds. The legislature, by a two-thirds vote of the members to which each house is entitled and by a separate bill for each authorization and for each different type of project, by general law may authorize the State or political subdivisions, or both, to issue special purpose revenue bonds and, in such case, shall prescribe the manner and procedure for such issuance[.]; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the legislature. No special purpose revenue bonds shall be authorized or issued except to finance facilities of or for, or to loan the proceeds of such bonds to assist, manufacturing, processing or industrial enterprises, utilities serving the general public, health care facilities provided to the general public by not-for-profit corporations or low and moderate income government housing programs[, which facilities or loan the legislature finds to be in the public interest]. No special purpose revenue bond shall be secured directly or indirectly by the general credit of the issuer or by any revenues or taxes of the issuer other than receipts derived from payments by a person under contract or from any security for such contract or special purpose revenue bonds and no moneys other than such receipts shall be applied to the payment thereof. The governor shall provide the legislature in [January] November of each year with a report on the cumulative amount of all special purpose revenue bonds authorized and issued, and such other information as may be necessary....

B3. (Delegate Izu -- Article VI)

Section 3. For the purposes of this section, the term "bonds" shall include bonds, notes and other instruments of indebtedness; the term "general obligation bonds" means all bonds for the payment of the principal and interest of which the full faith and credit of the State or a political subdivision are pledged and, unless otherwise indicated, includes reimbursable general obligation bonds; the term "net revenues" or "net user tax receipts" means the revenues or receipts derived from a public undertaking, improvement or system remaining after the costs of operation, maintenance and repair of such public undertaking, improvement or system and the required payments of the principal of and interest on all revenue bonds issued therefor have been made; the term "person" means an individual, firm, partnership, corporation, association, cooperative or other legal entity, governmental body or agency, board, bureau or other instrumentality thereof, or any combination of the foregoing; the term "rates, rentals and charges" means all revenues and other moneys derived from the operation or lease of a public undertaking, improvement or system, or derived from any payments or return on security under a loan program or a loan thereunder; the term "reimbursable general obligation bonds" means general obligation bonds issued for a public undertaking, improvement or system for which revenues, or user taxes, or a combination of both, may be derived for the payment of the principal and interest as reimbursement to the general fund and for which reimbursement is required by law, and, in the case of general obligation bonds issued by the State for a political subdivision, general obligation bonds for which the payment of the principal and interest as reimbursement to the general fund is required by law to be made from the revenue of the political subdivision; the term "revenue bonds" means all bonds payable from the revenues, or user taxes, or any combination of both, of a public undertaking, improvement, system or loan program and any loan made thereunder and secured as may be provided by law; [the term "special purpose revenue bonds" means all bonds payable from rental or other payments made to an issuer by a person pursuant to contract and secured as may be provided by law;] and the term "user tax" means a tax on goods or services or on the consumption thereof, the receipts of which are substantially derived from the consumption, use or sale of goods and services in the utilization of the functions or services furnished by a public undertaking, improvement or system.

The legislature by a majority vote of the members to which each house is entitled shall authorize the issuance of all general obligation bonds and revenue bonds issued by or on behalf of the State and shall prescribe by general law the manner and procedure for such issuance. The legislature by general law shall authorize political subdivisions to issue general obligation bonds and revenue bonds and may authorize any board or agency of such political subdivision to issue revenue bonds and, in either case, shall prescribe the manner and procedure for such issuance. All general obligation bonds issued by or on behalf of a political subdivision shall be authorized by the governing body of such political subdivision and all revenue bonds issued by or on behalf of a political subdivision shall be authorized by the governing body of such political subdivision or the governing body of any board or agency of such political subdivision authorized by law to issue revenue bonds. [The legislature by general law may authorize the State or political subdivisions, or both, to issue special purpose revenue bonds and, in such case, shall prescribe the manner and procedure for such issuance. No special purpose revenue bonds shall be authorized or issued except to finance facilities of or for, or to loan the proceeds of such bonds to assist, manufacturing, processing or industrial enterprises, utilities serving the general public, health care facilities provided to the general public by not-for-profit corporations or low and moderate income government housing programs, which facilities or loan the legislature finds to be in the public interest. No special purpose revenue bond shall be secured directly or indirectly by the general credit of the issuer or by any revenues or taxes of the issuer other than receipts derived from payments by a person under contract or from any security for such contract or special purpose revenue bonds and no moneys other than such receipts shall be applied to the payment thereof.]...

[(c) Special purpose revenue bonds, if the issuer thereof is required by law to contract with a person obligating such person to make rental or other payments to the issuer in an amount at least sufficient to make the required payment of the principal of and interest on such special purpose revenue bonds.]...

[Subsections (d) to (i) relettered (e) to (h).]

C1. (Delegate Sakima -- Article VI)

Section 5.... All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods, and no such appropriation shall be made for a period exceeding [two] three years. Any such appropriation or any portion of any such appropriation which is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse; provided that no appropriation for which the source is general obligation bond funds nor any portion of any such appropriation shall lapse if the legislature determines such appropriation or any portion of such appropriation is necessary to qualify for federal aid financing and reimbursement. Where general obligation bonds have been authorized for an appropriation, the amount of the bond authorization shall be reduced in an amount equal to the amount lapsed.

Any appropriation for which the source is general obligation bond funds or general funds or any

portion of any such appropriation which is effective on the date of ratification of this amendment and which is unencumbered on June 30, 1980 shall lapse on that date unless earlier lapsed by law; provided that no appropriation for which the source is general obligation bond funds nor any portion of any such appropriation shall lapse if the legislature determines such appropriation or any portion of such appropriation is necessary to qualify for federal aid financing and reimbursement. Where general obligation bonds have been authorized for an appropriation, the amount of the bond authorization shall be reduced in an amount equal to the amount lapsed on June 30, 1980....

C2. (Delegate Izu -- Article VI)

Withdrawn.

D1. (Delegate Pulham -- Article VI)

Section 3.... A sum equal to [fifteen] ten percent of the total of the assessed values for tax rate purposes of real property in each political subdivision, as determined by the last tax assessment rolls pursuant to law, is established as the limit of the funded debt of such political subdivision that is outstanding and unpaid at any time....

E1. (Delegate Marumoto -- Article VI)

Section 5.... Notwithstanding any other provision to the contrary, the legislature shall establish a general fund expenditure ceiling which shall limit the rate of growth of general fund appropriations, excluding federal funds received by the general fund, to the [estimated] rate of growth of the State's [economy as provided by law.] total personal income, utilizing the federal state personal income series. No appropriations in excess of such ceiling shall be authorized during any legislative session unless the legislature shall by a two-thirds vote of the members to which each house of the legislature is entitled set forth the dollar amount and the rate by which the ceiling will be exceeded and the reasons therefor.

E2. (Delegate Andrews -- Article VI)

DISPOSITION OF EXCESS REVENUES

Section . Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, as provided by law.

E3. (Delegate Hale -- Article VI)

Withdrawn.

E4. (Delegate Hale -- Article VI)

INCOME TAX REFUND

Section . An income tax refund shall be made to individual income taxpayers in an amount not less than fifty percent of any general fund surplus at the end of any fiscal year within one year after the end of the fiscal year in accordance with law. Surplus means the excess of general fund revenues over the general operating fund expenditures for each fiscal year.

E5. (Delegate Peterson -- Article VI)

Withdrawn.

E6. (Delegate Peterson -- Article VII)

TRANSFER OF MANDATED PROGRAMS

Section . [If any new program or increase in the level of service under an existing program shall be mandated to any of the political subdivisions by the legislature, it shall provide that the State share in the cost.]

[For any fiscal year, that proportion of state expenditures paid to all units of local government shall not be reduced below that proportion in effect in fiscal 1977-78.] No new program or increase in the level of service under an existing program shall be mandated by the legislature without an appropriation to pay the costs of the mandated program or service.

If, by order of any court or by legislative enactment, the responsibility for funding a program or programs is transferred from one level of government to another subsequent to the adoption of this amendment, it is the intent and objective of this amendment that the expenditure rate limit of the transferring jurisdiction be reduced and that the expenditure limit of the transferee jurisdiction be increased by the same amount, and that no net increase occur in expenditures because of such transfer.

F1. (Delegate Peterson -- Article VI)

Section 6.... No public money shall be expended except [pursuant to appropriations made by law.] for legally authorized appropriations. [General fund expenditures] Expenditures for any fiscal year shall not exceed the [State's current general fund revenues and unencumbered cash balances, except when the governor publicly declares the public health, safety or welfare is threatened as provided by law.] revenues and reserves of the State, including proceeds of any debt obligations and federal funding.

G1. (Delegate O'Toole -- Article VI)

Withdrawn.

H1. (Delegate Izu -- Article VI)

Withdrawn.

I1. (Delegate Blake -- Article VII)

Section 3. The taxing power shall be reserved to the State except so much thereof as may be delegated by the legislature to the political subdivisions, and the legislature shall have the power to apportion state revenues among the several political subdivisions [.] in addition to the apportionment provided for in this section.

Five percent of all state general fund tax revenues shall be reserved for apportionment to the several political subdivisions and shall be distributed quarterly to the subdivisions. One-half of the amount reserved for apportionment to the political subdivisions shall be apportioned equally among the subdivisions and one-half of the amount shall be distributed on a per capita basis and in accordance with each political subdivision's resident population as defined by law.

J1. (Delegate Lewis -- Article XVI)

(START OF BIENNIAL BUDGETING AND APPROPRIATIONS)

Section 8. Anything in this constitution to the contrary notwithstanding, the provisions relating to biennial budgeting and appropriations in Article VI shall take effect for the biennial period beginning July 1, 1971.]

J2. (Delegate Barr -- Article VI)

Section 3. . . . General obligation bonds may be issued by the State when authorized by a two-thirds vote of the members to which each house of the legislature is entitled, provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance. Any bond issue by or on behalf of the State may exceed the debt limit if an emergency condition is declared to exist by the governor and concurred to by a two-thirds vote of the members to which each house of the legislature is entitled. For the purpose of this paragraph, general fund revenues of the State shall not include moneys received as grants from the federal government and receipts in reimbursement of any reimbursable general obligation bonds which are excluded as permitted by this section. . . .

J3. (Delegate Peterson -- Article VI)

Section 5. . . . All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods, and no such appropriation shall be made for a period exceeding two years. Any such appropriation or any portion of any such appropriation which is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse. [Where general obligation bonds have been authorized for an appropriation] Upon the lapsing of any general obligation bond appropriation, the amount of the related bond authorization shall be reduced in an amount equal to the amount lapsed.

Any appropriation for which the source is general obligation bond funds or general funds or any portion of any such appropriation which is effective on the date of ratification of this amendment and which is unencumbered on June 30, 1980 shall lapse on that date unless earlier lapsed by law. [Where general obligation bonds have been authorized for an appropriation] Upon the lapsing of any general obligation bond appropriation, the amount of the bond authorization shall be reduced in an amount equal to the amount lapsed on June 30, 1980. . . .

J4. (Delegate Barr -- Article VI)

CERTAIN TAXATION OF FOOD AND DRUGS PROHIBITED

Section . . . No sales, transaction, gross income, general excise or other similar tax shall be levied on the sale or purchase of food purchased for domestic preparation and consumption or prescription drugs; provided that the food and drugs to which this section applies shall be defined by law and provided that this section shall not apply to any income as taxed under the Hawaii Income Tax law or any successor thereto. This section shall take effect on July 1 following ratification by the electorate.

J5. (Delegate Kono -- Article VI)

Section 3. . . . General obligation bonds may be issued by the State, provided that such bonds at the time of authorization would not cause the total amount of authorized general obligation bonds to exceed one hundred forty percent of the total amount of outstanding general obligation bonds includable within the debt ceiling, and provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance. Any bond issued by or on behalf of the State may exceed the debt limit if an emergency condition is declared to exist by the governor and concurred to by a two-thirds vote of the members to which each house of the legislature is entitled. For the purpose of this paragraph, general fund revenues of the State shall not include moneys received as grants from the federal government and receipts in reimbursement of any reimbursable general obligation bonds which are excluded as permitted by this section. . . .

Committee Proposal No. 15 is amended to read:

- 1, (Delegate Hale -- Article I)

RIGHT TO KNOW

Section . [The people shall have access to all government records and proceedings in the absence of a proven and compelling state interest,] and, in furtherance of the people's right to know, journalists shall not be compelled to divulge their confidential sources of information.

2. (Delegate Barnes -- Article I)

ACCESS TO PUBLIC RECORDS

Section . Each person shall have the right of access to public records of the State and its political subdivisions, subject to reasonable restrictions, as provided by law.

3. (Delegate Tam -- Article I)

[RIGHT TO PRIVACY

Section . The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.]

4. (Delegate Tam -- Article I)

Section 9. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. [The court may dispense with bail if reasonably satisfied that the defendant or witness will appear when directed, except for a defendant charged with an offense punishable by life imprisonment.]

5. (Delegate Penebacker -- Article I)

Section 11. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the district wherein the crime shall have been committed, which district shall have been previously ascertained by law, or of such other district to which the prosecution may be removed with the consent of the accused; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense. Juries, where the crime charged is serious, shall consist of twelve persons. The State shall provide counsel for an indigent defendant charged with an offense punishable by imprisonment.

6. (Delegate Tam -- Article I)

Section 11. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the district wherein the crime shall have been committed, which district shall have been previously ascertained by law, or of such other district to which the prosecution may be removed with the consent of the accused; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense. The State shall provide counsel for an indigent defendant charged with an offense punishable by imprisonment for more than thirty days.

Exhibit 1

FELONIES

A - 20 years	Murder, Rape 1°, Robbery 1°, Kidnapping
B - 10 years	Manslaughter, Rape 2°, Robbery 2°, Burglary 1°, Assault 1°, Forgery 1°
C - 5 years	Negligent Homicide 1°, Assault 2°, Burglary 2°, Theft 1°, Forgery 2°

MISDEMEANORS

1 year	Negligent Homicide 2°, Assault 3°, Theft 2°; Forgery 3°
--------	---

PETTY MISDEMEANORS

30 days	Littering, Harassment, Prostitution, most moving traffic offenses
---------	---

VIOLATIONS

No imprisonment, fine only	Parking and vehicle violations
-------------------------------	-----------------------------------

7. (Delegate Tam -- Article I)

Withdrawn.

8. (Delegate Tam -- Article I)

[GRAND JURY COUNSEL

Section . Whenever a grand jury is empanelled there shall be an independent counsel appointed in accordance with law to advise the members of the grand jury regarding the matters brought before it. Independent counsel shall be selected from among those persons admitted to practice before the supreme court of the state and shall not be a public employee. Term and compensation for independent counsel shall be established by law.]

9. (Delegate Tam -- Article I)

INSANITY DEFENSE

Section . Insanity shall not be a defense to the accused. In the event of a conviction, the mental condition of the accused shall be considered as a mitigating factor before sentence is imposed.

10. (Delegate Chu -- Article I)

[GRAND JURY COUNSEL

Section . Whenever a grand jury is empanelled there shall be an independent counsel appointed in accordance with law to advise the members of the grand jury regarding the matters brought before it. Independent counsel shall be selected from among those persons admitted to practice before the supreme court of the state and shall not be a public employee. Term and compensation for independent counsel shall be established by law.]

[INDICTMENT,] PRELIMINARY HEARING, DOUBLE JEOPARDY, SELF-INCRIMINATION

Section 8. No person shall be held to answer for a capital or otherwise infamous crime, unless on a [presentment or indictment of a grand jury,] finding of probable cause at a preliminary hearing, except in cases arising in the armed forces when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy; nor shall any person be compelled in any criminal case to be a witness against himself.

GRAND JURY INVESTIGATIONS

Section . A grand jury shall be impaneled by each circuit court each January, or more often as provided by law, and shall continue to serve until another grand jury is impaneled. The grand jury may, in its discretion, investigate possible criminal conduct by state and county public officials and employees, and as otherwise provided by law, which comes to its attention from any person. Upon a finding of probable cause that a state or county public official or employee has committed a crime, the grand jury shall make public presentment or indictment. The grand jury may retain counsel and other staff as necessary, and may issue subpoenas on its own motion.

Committee Proposal No. 16 is amended to read:

1. (Delegate Dyer -- Article II)

RESIGNATION FROM PUBLIC OFFICE

Section . Any elected public officer shall resign from that office before being eligible as a candidate for another public office, if the term of the office sought begins before the end of the term of the office held [.] , or if the elected public officer changes his political party prior to or following the forty-fifth working day preceding the day registered voters are permitted to change their party designation for the primary election as provided by law, in the last year of the elected public officer's term.

2. (Delegate Campbell -- Article II)

[RESIGNATION FROM PUBLIC OFFICE

Section . Any elected public officer shall resign from that office before being eligible as a candidate for another public office, if the term of the office sought begins before the end of the term of the office held.]

3. (Delegate Odanaka -- Article II)

Section 4. The legislature shall provide for the registration of voters and for absentee voting; and shall prescribe the method of voting at all elections. The ballots for all elections shall offer, in addition to the names of the candidates for any office, the option to vote for "NONE OF THE ABOVE." Only votes cast for the named candidates shall be counted in determining nomination or election, but for each office the number of ballots on which "NONE OF THE ABOVE" was chosen shall be listed following the names of the candidates and the number of their votes in every official posting, abstract and proclamation of the results of the election.

Secrecy of voting shall be preserved.

4. (Delegate Miller -- Article II)

Section 5. General elections shall be held on the first Tuesday after the first Monday in November in all even-numbered years. Special and primary elections may be held in accordance with the law; provided that in no case shall any primary election precede a general election by less than [forty-five] sixty days.

5. (Delegate Campbell -- Article II)

Section 4. The legislature shall provide for the registration of voters and for absentee voting; and shall prescribe the method of voting at all elections[.]; provided that all candidates for an office shall appear on one ballot, whether a candidate is a nonpartisan or represents a political party. Voters shall be allowed to vote for any candidate for office in a primary election, regardless of the political party or nonpartisanship of the candidate. Secrecy of voting and secrecy of the political party of the person voting, if the person is not a candidate, shall be preserved.

6. (Delegate Rachel Lee -- Article II)

Section 4. The legislature shall provide for the registration of voters and for absentee voting; and shall prescribe the method of voting at all elections[. Secrecy of voting shall be preserved.]; provided that no person shall be required to declare their party preference or nonpartisanship as a condition of voting in any primary or special primary election. Secrecy of voting and choice of political party affiliation or nonpartisanship shall be preserved.

7. (Delegate Dyer -- Article II)

[CAMPAIGN FUND AND CAMPAIGN SPENDING

Section . The legislature shall establish a campaign fund to be used for partial public financing of campaigns for public offices of the state and its political subdivisions, as prescribed by law. The legislature shall provide a limit on the campaign spending of candidates.]

8. (Delegate Barr -- Article II)

[LIMITATION ON CAMPAIGN CONTRIBUTIONS

Section . Limitations on campaign contributions to any political candidate, or authorized political campaign organization for such candidate, for any elective office within the State shall be established by law.]

9. (Delegate Chong -- Article II)

INDIRECT INITIATIVE

Section . The people may propose, enact, or amend laws by the indirect initiative.

APPLICATION

(a) An indirect initiative is proposed by an application containing the bill to be initiated. The application shall be signed by no less than one hundred registered voters who voted in the preceding gubernatorial election, as sponsors, and shall be filed with the chief election officer. The sponsors of an initiative measure shall incorporate therein a ballot title, statement of purpose, full text of the proposal and summary of no more than one hundred fifty words; the aforementioned articles shall be descriptive or expository but not argumentative or prejudicial. If the chief election officer finds the application in proper form, the chief election officer shall so certify. The chief election officer shall not make any judgments as to the substance of the proposed measure. Denial of certification shall be subject to judicial review.

(b) An indirect initiative measure embracing more than one subject or naming an individual to hold any office, or naming or identifying any private corporation to perform any function or to have any power or duty, may not be submitted to the legislature.

PETITION

After certification of the application, a petition containing the text of the proposed measure and a summary of the subject matter shall be prepared by the chief election officer for circulation by the sponsors. All petitions for an indirect initiative measure shall be filed with the chief election officer no later than the first day of the second regular legislative session following a general election. All signatures required for an indirect initiative proposal to be submitted to the legislature and the electorate shall be obtained within the period between the general election preceding its certification and the first day of the regular session of the legislature in the next even-numbered year.

SUBMISSION; APPROVAL

An indirect initiative measure shall be submitted to the legislature by presenting to the chief election officer a petition signed by registered voters from all counties, except the county of Kalawao, and the number of signatures from each such county required on the petition shall be equal in number to no less than ten percent of the votes cast in each such respective county in the last general election for governor.

An indirect initiative, if not enacted in the original form by the legislature to which proposed, shall be submitted by the chief election officer to the voters at the first general election thereafter, together with the legislature's amended version, if any. If both the original and amended versions are approved, the one receiving the greater number of affirmative votes shall prevail.

Each measure proposed by the indirect initiative or the legislature shall be submitted to the voters

by the chief election officer by its ballot title and the question will appear in such form that an affirmative vote is a vote for change. An indirect initiative measure proposing to prohibit a specific activity or to terminate an existing right or privilege shall be submitted to the people in such form that a vote in the affirmative is a vote in favor of the right to engage in the activity or continuance of the right or privilege. Initiative measures shall be effective only if approved at the general election by a majority of all the votes tallied upon the question. All approved measures shall be effective immediately except measures requiring authorization of funds or providing for tax reductions or increases. Such measures shall take effect the following fiscal year.

An initiated law is not subject to veto and may not be repealed by the legislature within two years of its effective date. No measure enacted by a vote of the electors shall be repealed or amended by the legislature, except upon approval by roll call vote of two-thirds of the members of each house.

VOTER EDUCATION

The legislature shall provide methods of publicity of all indirect initiative measures with arguments for and against the statutes or amendments so proposed, including the issuance of a voter education publication. The chief election officer shall distribute such publication in such manner so as to reasonably assure that each voter will have an opportunity to study the initiative measures.

RESTRICTIONS

The initiative shall not be used to make or repeal appropriations for current expenses of programs and state departments, agencies, or other bodies that shall have been in existence for at least two years, to create courts or define the jurisdiction of courts, or prescribe court rules, to alter public employee collective bargaining agreements or to provide for the direct initiative.

DISCLOSURE

Funds contributed and expended to influence the outcome of initiative measures shall be disclosed in accordance with the laws and regulations that shall be prescribed by the campaign spending commission or the legislature. Public disclosure of funds shall be made by both the proponents and opponents of an initiative.

LAWS RELATING TO THIS SECTION

Laws may be enacted to facilitate the operation of this section, but no laws shall be enacted to hamper, restrict or impair the exercise of the rights herein reserved to the people.

This section shall be self-executing upon adoption.

(Article III)

Section 1. The legislative power of the State shall be vested in a legislature, which shall consist of two houses, a senate and a house of representatives. Such power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the Constitution of the United States. But the people reserve the power to propose laws by the indirect initiative.

Section 15. No law shall be passed by the legislature except by bill. Each law shall embrace but one subject, which shall be expressed in its title. The enacting clause of each law shall be, "Be it enacted by the legislature of the State of Hawaii."

10. (Delegate Liu -- Article II)

Withdrawn.

11. (Delegate Eastvold -- Article II)

INITIATIVE

Section . The initiative is the power of the electors to propose statutes and to adopt or reject them.

The sponsors of an initiative measure shall incorporate therein a ballot title, statement of purpose, full text of the proposal, and summary of no more than 150 words; the aforementioned articles shall be descriptive or expository. Sponsors shall submit their initiative petition to the Lieutenant Governor for certification before soliciting any signatures.

The Lieutenant Governor, within ten days thereafter, shall certify the initiative measure's ballot title, statement of purpose, and summary either in its original form or clarified so that it more accurately represents and more nearly conforms to the text of the proposal.

Initiative measures shall require signatures of at least one tenth (.1) of one percent of the number of registered voters of the State of Hawaii in the most recent general election to qualify for a comment period. The sponsors, upon receiving these signatures, shall resubmit the initiative measure to the Lieutenant Governor.

The Lieutenant Governor, within ten days thereafter, shall issue public notice of a thirty-day comment period to begin immediately on the initiative petition and shall schedule public hearings to be held within this period.

Upon termination of the comment period, the sponsors of the measure may amend the specific wording of the text of the measure; any amended measure shall be considered a new proposal and must undergo a new qualifying process.

Initiative measures shall require signatures of eight percent of the number of registered voters in the most recent prior general election.

Initiative measures shall be submitted to the Lieutenant Governor for initial certification no earlier than one day after the most recent prior general election and no later than ninety days prior to the next general election.

Initiative measures which have qualified shall be submitted by the Lieutenant Governor to the voters at the first general election following the certification of the initiative petitions.

The legislature shall provide methods of publicity of all initiative measures with arguments for and against the statutes or amendments so proposed, including the issuance of a voter education publication. The Lieutenant Governor shall send one copy of the publication to each individual place of residence in the state and shall make such additional distribution as he/she shall determine necessary to reasonably assure that each voter will have an opportunity to study the initiative measures prior to the election.

Each measure proposed by the initiative shall be submitted to the voters by the Lieutenant Governor by its ballot title and the question will appear in such form that an affirmative vote is a vote for change. Initiative measures shall be effective only if approved at the general election by a majority of all the votes tallied upon the question. All approved measures shall be effective immediately except measures requiring authorization of funds, or providing for tax reductions or increases. Such measures shall take effect the following fiscal year.

An initiative shall embrace one subject only.

Funds contributed and expended to influence the outcome of initiative shall be disclosed in accordance with the laws and regulations that shall be prescribed by the campaign spending committee or legislature. Public disclosure of funds shall be provided by both opponents and proponents of an initiative measure.

No law adopted by the initiative method shall be subject to veto by the governor. No law adopted by the initiative method shall be repealed or amended by the legislature within a period of two years of adoption except by a three-fourths vote in each house of the legislature.

(Article III)

Section 1. The legislative power of the State shall be vested in a legislature, which shall consist of two houses, a senate and a house of representatives. Such power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the Constitution of the United States. The people reserve the power to propose statutes and to enact or reject such statutes at the polls. This reserved power is the Initiative.

Section 15. No law shall be passed by the legislature except by bill. Each law shall embrace but one subject, which shall be expressed in its title. The enacting clause of each law shall be, "Be it enacted by the legislature of the State of Hawaii."

12. (Delegate Eastvold -- Article XV)

Withdrawn.

13. (Delegate Hale -- Article II)

INITIATIVE

Section . The people reserve the power to propose constitutional amendments and to enact or reject such amendments at an election. This reserved power is the initiative.

Amendments to the constitution may be proposed by direct initiative which means a measure to be submitted directly to the voters. All solicitors of signatures for the initiative measure shall be registered voters in the State.

PETITION REQUIREMENTS

The sponsors of an initiative measure shall incorporate in an initiative petition a ballot title, statement of purpose, full text of the proposal and summary of not more than one hundred fifty words. The aforementioned shall be descriptive or expository but not argumentative or prejudicial. An initiative measure shall embrace one subject only.

Sponsors shall submit the initiative petition to the chief election officer for initial certification before soliciting any signatures. Initiative measures shall be submitted to the chief election officer for initial certification not earlier than one day after a general election in order to be on the ballot for the next general election.

The chief election officer, within ten days after receipt of an initiative petition, shall certify the initiative petition's ballot title, statement of purpose and summary either in its original form or clarified so that it more accurately represents and more nearly conforms to the text of the proposal.

DIRECT INITIATIVES

Prior to the final certification of a direct initiative petition, the initiative measure shall be subject to a comment period during which time public discussion on the proposed initiative measure shall take place. Direct initiative petitions shall require signatures of at least one percent of all votes cast for all candidates for governor at the general election preceding submission of the initiative petition to qualify for a comment period. The sponsors, upon receiving these signatures, shall resubmit the initiative petition to the chief election officer.

The chief election officer, within ten days after receipt of an initiative petition, shall issue public notice of a thirty-day comment period to begin immediately on the initiative petition and shall schedule a public hearing to be held within this period.

Upon termination of the comment period, the sponsors of the initiative petition may amend the

specific wording of the text of the measure. Any amended measure shall be considered a new proposal and shall undergo a new qualifying process.

To qualify for final certification and submission to the voters, initiative petitions shall require signatures of twelve percent of all votes cast for all candidates for governor at the general election preceding submission of the initiative petition.

All initiative petitions shall be filed with the chief election officer for final certification not later than ninety days prior to the forthcoming general election.

Direct initiative measures shall be submitted by the chief election officer to the voters at the first general election following the final certification of the initiative petitions.

PUBLICITY

The legislature shall provide methods of publicity for all initiative measures with arguments for and against the constitutional amendments so proposed, including the issuance of a voter education publication. The chief election officer shall send one copy of the publication to each individual place of residence in the State and shall make such additional distribution as the chief election officer shall determine necessary to reasonably assure that each voter shall have an opportunity to study the initiative measures prior to the election.

SUBMISSION TO VOTERS

Each measure proposed by the initiative shall be submitted to the voters by the chief election officer by its ballot title and the question shall appear in such form that an affirmative vote is a vote for change. Constitutional amendments offered by the initiative shall be effective only if approved at a general election by a majority of all the votes tallied upon the question, this majority constituting at least thirty-five percent of the total vote cast at the election. All approved measures shall be effective immediately except measures requiring authorization of funds, or providing for tax reductions or increases which shall take effect the following fiscal year.

EXPENDITURES; DISCLOSURE

Funds contributed and expended to influence the outcome of initiative measures shall be disclosed as provided by law.

(Article XV)

Section 1. Revisions of or amendments to this constitution may be proposed by constitutional convention or by the legislature [.] or by the electorate under Article II, Section of this constitution.

Section 5. If a revision or amendment proposed by a constitutional convention is in conflict with a revision or amendment proposed by the legislature and both are submitted to the electorate at the same election and both are approved, then the revision or amendment proposed by the convention shall prevail. If conflicting revisions or amendments are proposed by the same body or by the electorate under Article II, Section , and are submitted to the electorate at the same election and [both] all or any combination thereof are approved, then the revision or amendment receiving the highest number of votes shall prevail.

14. (Delegate Barnes -- Article II)

REFERENDUM

Section . The referendum power is reserved to the people. Under this power registered voters of not less in number than eight percent of all votes cast for all candidates for governor at the preceding general election preceding the filing of the referendum petition shall order the submission to the people for the approval, amendment or repeal of any law, section or part thereof; except for measures deemed necessary for the immediate preservation of the public place, health or safety, and for tax levies, bonds and other forms of revenue measures for the usual and current expenses of the State.

A referendum petition shall be filed with the chief election officer not later than ninety days prior to the general election at which it is to be submitted to the people. When a referendum is filed against a law or portion thereof, the law shall remain in effect until the referendum is enacted.

The referendum shall be approved by a majority of votes cast thereon.

If after a referendum petition has been filed with the chief election officer and the law subject to the referendum petition is either repealed or amended by the legislative process in any manner so that, in the opinion of the attorney general, it differs from the referendum measure, both the repealed or amended law and the referendum measure shall be submitted to the people so that they may choose between them, except as provided by the next to last sentence of this paragraph. The measure receiving the highest number of votes shall prevail. If a law is either repealed or amended so that it is the same as or similar to and accomplishes the same purpose as the referendum measure as determined by the attorney general, the chief election officer shall declare the referendum measure void and order it stricken from the ballot by public announcement. A petitioner whose petition is voided by a determination of the attorney general may appeal such determination to the supreme court.

A defeated referendum measure shall not be resubmitted to the people in either the same form or essential substance, as determined by the attorney general, either affirmatively or negatively for a period of two years.

Prior to the circulation of any referendum petition for signatures, a copy shall be submitted to the attorney general who shall prepare a title and summary of the chief purpose and aim of the proposed measure. The title and summary shall not exceed two hundred words.

All referendum petitions shall be submitted to the chief election officer for certification. Each sheet containing petitioners' signatures shall be attached to the title, summary and text of the referendum petition. No

law shall be enacted limiting the number of copies of a petition which may be circulated. Any registered voter of this State shall be competent to solicit signatures. The petition shall be signed by registered voters. All signers shall add their address as shown on their voter registration form and the date upon which they sign the petition. Every sheet of the petition containing signatures shall be verified by affidavit of the petition circulator that each name on the sheet was signed in the presence of the affiant and that in the belief of the affiant each signer is a registered voter of the State. The chief election officer shall certify that the signers are registered voters of this State.

The chief election officer shall not release any petition for inspection by the public or any governmental agency, except where the supreme court orders inspection of the petition when a question has been raised regarding the sufficiency of a petition. If any petition under this section has been determined to be insufficient, the petition shall be returned to the circulators within thirty days of its filing with the notations of specific insufficiencies.

Any measure under this section shall be presented to the people in such a form that a yes vote, on a yes or no ballot, shall indicate an affirmative vote for the measure as the measure is written.

The referendum measure shall be effective, if approved, one day after the election results are announced unless otherwise provided for in the measure.

The veto power of the governor shall not extend to referendum measures approved by the people. No measure enacted by the people shall be repealed or amended by the legislature unless otherwise provided in the measure, or that which shall be submitted to a referendum.

The petitioners shall bear all cost of the preparation and circulation of the petition, except for the services performed by the attorney general under this section. After the petition has been filed with the chief election officer, all further costs shall be part of the usual expenditures of the State.

(Article III)

Section 1. The legislative power of the State shall be vested in a legislature, which shall consist of two houses, a senate and a house of representatives [. Such power] but the people reserve to themselves the referendum power as set forth in Section of Article II. The legislative and referendum power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the Constitution of the United States.

15. (Delegate Barnes -- Article II)

Withdrawn.

16. (Delegate Hanaïke -- Article II)

RECALL OF ELECTED PUBLIC OFFICERS

Section . Every elected public officer in Hawaii is subject to recall by the qualified voters of the State or of the electoral district from which the public officer is elected. There may be required twenty-five percent, but not more, of the number of electors who voted in the district at the preceding general election for governor to file a petition demanding the recall by the people. The petition shall set forth the reasons for the recall. If the officer shall offer a resignation, it shall be accepted and take effect on the day it is offered, and the vacancy shall be filled as provided by law.

If the officer shall not resign within five days after the petition is filed, a special election shall be ordered to be held within twenty days in the officer's electoral district to determine whether the people will recall the officer. On the sample ballot at the election shall be printed in not more than two hundred words the reasons for demanding the recall of the officer as set forth in the recall petition, and, in not more than two hundred words, the officer's justification of the officer's course in office. The officer shall continue to perform the duties of office until the result of the special election is officially declared.

If an officer is recalled from any public office the vacancy shall be filled immediately in the manner provided by law for filling a vacancy in that office arising from any other cause.

The recall petition shall be filed with the officer with whom a petition for nomination to such office should be filed, and that officer shall order the special election when it is required. No petition shall be circulated against any officer until the officer has actually held office six months, save and except that it may be filed against a senator or representative in the legislature at any time after five days from the beginning of the first session after election. After one such petition and special election, no further recall petition shall be filed against the same officer during the term for which the officer was elected unless such further petitioners shall first pay into the general fund which has paid such special election expenses, the whole amount of its expenses for the preceding special election.

Such additional legislation as may aid the operation of this section shall be provided by the legislature, including provision for payment by the general fund of the reasonable special election campaign expenses, of such officer.

Committee Proposal No. 17 is amended to read:

1. (Delegate Fukunaga -- Article X)

WATER RESOURCES

Section . [All waters shall be held by the State as a public trust for the people of Hawaii.] The

State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

The legislature shall provide for a water resources agency which shall, in accordance with law, set overall water conservation, quality and use policies; define beneficial and reasonable uses; protect [ground-water] ground and surface water resources, watersheds, and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses; and establish procedures for regulating all [new] uses of Hawaii's water resources.

2. (Delegate Crozier -- Article X)

WATER RESOURCES

Section . [All waters shall be held by the State as a public trust for the people of Hawaii.

The legislature shall provide for a water resources agency which shall, in accordance with law, set overall water conservation, quality and use policies; define beneficial and reasonable uses; protect ground-water resources, watersheds, and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses; and establish procedures for regulating all new uses of Hawaii's water resources.] The State shall regulate and control all water.

3. (Delegate Souki -- Article X)

[WATER RESOURCES]

Section . All waters shall be held by the State as a public trust for the people of Hawaii.

The legislature shall provide for a water resources agency which shall, in accordance with law, set overall water conservation, quality and use policies; define beneficial and reasonable uses; protect ground-water resources, watersheds, and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses; and establish procedures for regulating all new uses of Hawaii's water resources.]

4. (Delegate Fukunaga -- Article X)

NUCLEAR ENERGY

Section . [Construction of nuclear fission power plants and disposal of radioactive material shall be subject to approval by a two-thirds vote in each house of the legislature.] No nuclear fission power plant shall be constructed or radioactive material disposed of in the State of Hawaii without the prior approval by a two-thirds vote in each house of the legislature.

5. (Delegate Crozier -- Article X)

Withdrawn.

Committee Proposal No. 18 is amended to read:

1. (Delegate Hamilton -- Article V)

[SUPREME COURT

Section 2. The supreme court shall consist of a chief justice and four associate justices. When necessary, the chief justice shall assign a judge or judges of a circuit court to serve temporarily on the supreme court. As prescribed by law, retired justices of the supreme court also may serve temporarily on the supreme court at the request of the chief justice. In case of a vacancy in the office of chief justice, or if the chief justice is ill, absent or otherwise unable to serve, an associate justice designated in accordance with the rules of the supreme court shall serve temporarily in the chief justice's place.

APPOINTMENT OF JUSTICES AND JUDGES

Section 3. The governor shall nominate and, by and with the advice and consent of the senate, appoint the justices of the supreme court and the judges of the circuit courts. No nomination shall be sent to the senate, and no interim appointment shall be made when the senate is not in session, until after ten days' public notice by the governor.

QUALIFICATIONS

No justice or judge shall hold any other office or position of profit under the State or the United States. No person shall be eligible for the office of justice or judge unless the person shall have been admitted to practice law before the supreme court of this State for at least ten years. Any justice or judge who shall become a candidate for an elective office shall thereby forfeit any state judicial office held.

TENURE; COMPENSATION; RETIREMENT

The term of office of a justice of the supreme court and of a judge of a circuit court shall be ten years. They shall receive for their services such compensation as may be prescribed by law, but no less than twenty-eight thousand dollars for the chief justice, twenty-seven thousand dollars for associate justices and twenty-five thousand dollars for circuit court judges, a year. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State. They shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the State.

RETIREMENT FOR INCAPACITY AND REMOVAL

Section 4. Whenever a commission or agency, authorized by law for such purpose, shall certify to the governor that any justice of the supreme court or judge of a circuit court appears to be so incapacitated as substantially to prevent the justice or judge from performing judicial duties or has acted in a manner that constitutes wilful misconduct in office, wilful and persistent failure to perform judicial duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, the governor shall appoint a board of three persons, as provided by law, to inquire into the circumstances. If the board recommends that the justice or judge should not remain in office, the governor shall remove or retire the justice or judge from office.]

Index

- Access**
right to government records and proceedings
(see Right to know, public; "Sunshine" provisions)
traditional native Hawaiian rights of: 426, 432-437, 457
- Admission Act**
state boundaries as set forth in: 40, 43
trust obligation: 423, 457-462, 926
- Adverse possession** (see Quieting title)
- Agriculture** (see also Lands, dedication of agricultural)
effect of water resources and use on: 866-867, 869-873, 875-877, 880
on Hawaiian home lands: 410-415, 421
preservation of: 264, 272, 878
use of bonds and other government aids for: 470, 483, 487, 490-491, 497
- Amemiya v. Sapienza**: 73, 75
- Appropriations** (see also Budget; Finance)
cost-sharing with counties: 570-576, 929
expenditure control: 576-578, 929
grants-in-aid to counties: 260-268, 572-575, 578-583, 930
lapsing of: 464-465, 526-538, 587-592, 928-930
exemption by legislature in federal aid financing: 536-538, 928-929
legislative appropriations: 307-308, 527-539, 930
spending ceiling, general fund
establishment of ceiling: 465-466, 929
using total personal income as indicator: 548-562, 929
- Archipelagic waters** (see Boundaries, state)
- Argersinger v. Hamlin**: 656, 658-659, 662
- Attorney general**
duties: 51, 65-84, 914-915 (see also Local government, county prosecutors)
election: 51, 65-84, 914
merit selection by commission: 70, 85-91, 915
powers: 66, 68-70, 73-75
qualifications: 65, 85, 90, 914-915
- Ballew v. Georgia**: 679
- Bill of rights**
bail, imposition by courts: 650-653, 931
freedom of the press (see Right to know, public)
independent counsel for grand juries: 663-672, 932
insanity as a defense: 684-696, 932
jury of 12 in criminal cases: 679-684, 931
rights
of access (see Access)
of accused
in preliminary hearing: 674-678, 932
to counsel, for indigents: 653-661, 931
under grand jury system: 665, 669, 671, 674-675, 676-678, 932
to know (see Right to know, public; "Sunshine" provisions)
to privacy (see Privacy, right to)
- Binding arbitration** (see also Public services)
as requirement in collective bargaining for public employees: 161-165, 916-917
state provisions for: 125, 158, 164-165
- Bonds**
debt limit (see Debt limitation)
general obligation
authorized but unissued: 464-465, 528, 531-532, 585-592
debt service ratio formula: 464-465, 467, 469, 589-591, 930
funds, lapsing of: 464-465, 526-538, 587-592, 928-930
exemption in federal aid financing: 536-538, 928-929
special purpose revenue
antipollution: 482-484, 487, 489, 493-495
as exclusion from state debt limit: 517-526 (see also Debt limitation, exclusions)
disclosure report by governor: 503, 505-508, 928
for construction of nuclear power plants: 504, 885, 887, 889-890, 903-905
industrial: 465, 474-501, 927-928
prohibitions: 465, 480, 488
public purpose requirement: 475, 479-483, 486, 492, 496, 499, 508-509, 524, 928
tighter controls on authorizations: 502-506, 508-517, 585-596
- Boundaries**, state: 39-44
- Buckley v. Valeo**: 701, 787-791, 795, 797, 800, 806, 807
- Budget** (see also Appropriations; Taxation)
biennial, effective date: 583, 930
council on revenues, preparation of: 466, 508, 561
county operational budget (see Local government, state financial-assistance programs)
in education
board of education: 225, 230
libraries: 176-177, 179-180, 184
university administration: 171, 234-236
powers of governor in: 225, 464, 466, 528-529, 532-536, 577, 585-592
under administration of Hawaiian home lands department: 410-416, 421-423, 468, 470-472
- Capitol**, State, constitutional convention to be held at: 119-122, 915
- Chandler v. City of Louisville**: 251
- Collective bargaining**, in public employment (see also Public services)

binding arbitration in: 125, 158, 161-165, 916-917
 legislative role in negotiations: 165-167, 917
 right to strike in public employment: 157, 162-165
 state provisions for: 125, 157, 158, 164-165, 916-917

Commissions

constitutional revision: 109-112, 915
 ethics
 political restrictions on members: 3, 6-15, 33-34, 384-386, 913
 responsibilities: 3, 25, 30-34, 36-37
 selection of members: 3, 6, 12, 913
 Hawaiian homes (see Hawaiian homes programs)
 judicial discipline: 371
 judicial salary: 346, 399, 924
 judicial selection
 composition: 345, 367, 372-378, 925
 confidentiality of deliberations: 345, 391, 397-400, 925
 responsibilities and procedures: 345, 360-366, 369-370, 391, 397-400, 923-925
 restrictions: 345, 367-368, 379-396, 925
 terms: 345, 375, 378, 925
 use of, in selection of attorney general: 70, 85-91, 915
 land use commission (see Land use)
 legislative salary: 278, 297-305, 920
 reapportionment: 278, 329, 338
 tax review: 466
 water: 863, 873-874, 879

Committee proposals*

- CP 1. Code of Ethics: 1-38, 913-914
 2. State Boundaries, Capital, Flag and Motto: 39-47, 914
 3. The Executive: 48-92, 914-915
 4. Preamble, General and Miscellaneous Provisions, Revision and Amendment: 93-122, 915
 5. Public Health and Welfare; Labor and Industry: 123-169, 915-917
 6. Education: 170-245, 917-919
 7. Local Government: 246-275, 919
 8. The Legislature, Reapportionment: 276-341, 919-923
 9. The Executive - Executive and Administrative Offices and Departments: 342-343
 10. The Judiciary: 344-409, 923-926
 11. Hawaiian Affairs: 410-424
 12. Hawaiian Affairs: 425-455, 926
 13. Hawaiian Affairs: 456-462, 926-927
 14. Taxation and Finance: 463-605, 927-930
 15. Bill of Rights: 606-697, 931-932
 16. Suffrage and Elections: 698-854, 932-937
 17. Conservation, Control and Development of Resources: 855-910, 937-938
 18. Style: 911-912, 938

Conlin v. Board of Supervisors of City and County of San Francisco: 251

Conservation (see also Natural resources)

for agriculture (see Agriculture, preservation of; Lands, dedication of agricultural)
 of lands: 264, 272-273, 878
 of water resources: 857-880, 938

Constitutional convention

effect of constitutional revision commission on: 110-112
 ethics code for delegates: 3, 4, 23-26, 161-162, 913
 exclusion of delegates from candidate resignation requirement: 708, 709, 711, 713, 718

provisions for convention

convening of: 108-109, 916
 electoral districts: 108
 necessary facilities for: 108, 109, 119-120
 number of delegates: 108
 submission of question to voters: 106-107, 915
 State Capitol as site for: 119-122, 915

Constitution, State

articles**

- I. Bill of Rights: 606-697
 II. Suffrage and Elections: 698-854
 III. The Legislature: 276-317, 331-339
 IV. Reapportionment: 317-331
 V. The Executive: 48-92, 342-343
 VI. The Judiciary: 344-409
 VII. Taxation and Finance: 463-605
 VIII. Local Government: 246-275
 IX. Public Health and Welfare: 123-156
 X. Education: 170-245
 XI. Conservation, Control and Development of Resources: 855-910
 XII. Hawaiian Affairs: 410-462
 XIII. Organization; Collective Bargaining: 157-167
 XIV. Code of Ethics: 1-38
 XV. State Boundaries; Capital; Flag; Language and Motto: 39-47, 426, 432
 XVI. General and Miscellaneous Provisions: 93-105
 XVII. Revision and Amendment: 106-112, 119-122
 XVIII. Schedule (see individual articles as appropriate)

Preamble: 112-118

revision commission for: 109-112, 915

Coray v. Koga: 773n

Council on revenues: 343, 466, 508, 561

Counsel

independent, for grand juries: 663-672, 932
 right to, for indigents: 653-661, 931

Counties (see Local government)

Criminal law

ball, imposition by courts: 650-653, 931
 effect of journalists' source-protection law: 612-619, 622
 Freedom of Information Act, abuse of: 625, 627
 grand jury
 counsel, role of: 663-672, 932
 investigations by: 676-678, 932
 in right to privacy cases: 629-634, 638, 640-643, 644
 insanity, as a defense: 684-696, 932
 rights of accused (see Bill of rights)

Cultural resources, preservation and development of: 124, 150-151, 916

Debt limitation (see also Bonds)

ceiling on amount: 464, 468-469, 477, 530, 585-592, 930
 county: 539-542, 929
 debt service ratio formula: 464-465, 467, 469, 589-591, 930
 exclusions
 debt issued for current operations: 472-473, 927
 for governor: 464, 930
 self-supporting activities and functions: 465, 482
 special purpose and other revenue bonds: 465, 467, 473, 482, 517-526

*For texts of committee proposals, see the Committee Proposals section of the Convention Documents in Volume I.

**Article numbers are those in the Constitution as revised in November 1978.

- state-guaranteed loan agreements: 465, 468-472, 927
 10-percent reserve requirement: 469-472, 927
- Disloyalty, requirement of conviction to disqualify from public office or employment: 93-94
- Downing v. Bird: 449 n
- Dusch v. Davis: 207
- Economic security (see Elderly)
- Education (see also University of Hawaii)
 advisory councils: 186, 187, 196, 198, 200, 208, 238-245, 917
 boards of education
 district/local
 powers: 185-187, 192, 196-215, 217-222, 917-918
 structure: 172-173, 185-188, 192-215, 217-222, 917-918
 state
 election of members: 171, 172, 188-190, 198-215, 217-221, 228, 917-918
 powers: 171-173, 192, 195-215, 218-221, 223-231, 917-918
 reapportionment of: 171, 172, 198, 208-211, 215, 226, 917
 structure: 172, 185-187, 192, 194-215, 217-222, 917
 terms of members: 171, 188-191, 917-918
 department of education
 administrative policy: 172, 196, 201-202, 239-245
 library system, removal from: 174-185, 917
 Hawaiian education program: 171, 425-432
 legislative powers over (see Legislature)
 public school system
 equal opportunity in: 170-171
 internal organization and management: 223-231, 918
 superintendent of
 election: 232-233, 918
 powers: 172-173, 192, 195-197, 202-203, 205-214, 232-233, 918
 selection: 192, 197-198, 213-215, 917-918
- Elderly
 economic security of: 124-125, 151-153, 916
 elimination of 4-percent food and drug tax, as relief for: 598-601, 604
 needs of: 151-153
- Elections (see also Initiative; Recall; Referendum)
 campaign contribution limit: 701, 801, 804-807, 933
 campaign fund, for partial public financing: 701, 784-803, 933
 campaign spending limit: 701, 784-803, 933
 chief election officer: 60-63, 736-737, 740-743, 751-753, 755-763, 914
 constitutional convention delegates (see Constitutional convention, provisions for)
 disfranchisement: 744, 747, 749, 764-768, 772
 education
 boards of (see Education, boards of)
 superintendent of: 232-233, 918
 general, date of: 701, 740-743, 933
 Hawaiian affairs, board of trustees: 458-460, 926
 judges and justices: 367-372, 924-925
 method of voting
 addition of "none of the above" option on ballots: 702, 718-739, 932
 convention method: 749, 771, 773, 781-782
 inclusion of legislative salary commission recommendations on ballot: 297-298, 301-302, 920
 secrecy of voter's political party: 744-783, 933
 of legislators (see Legislature)
 primary
 type
 blanket: 744-763, 777, 933
 open: 701, 744-783, 933
 presidential: 749, 779-780, 782
 when held: 701, 740-743, 933
 reapportionment (see Reapportionment)
 regents, board of: 237-238, 918
 resignation of elected officers before running for another office: 701-718, 932
 switching of political parties by candidates: 702-707, 932
- Employees' retirement system (see Retirement system, employees')
- Environment (see also Natural resources; Water resources)
 nuclear plant construction and radioactive waste disposal, effect on: 882-888, 894-898, 900-902, 905, 907-910
 pollution control: 482-484, 487, 489, 493-495, 880, 881
 preservation and promotion of healthful environment: 124, 125, 128-132, 881, 883, 916
- Ethics, code of
 administration of (see Commissions, ethics)
 judiciary: 34-37, 393, 397, 914
 provisions to be included: 2-3, 15-26, 29-37, 913-914
 to apply to
 constitutional convention delegates: 3, 4, 23-26, 161-162, 913
 political candidates: 3, 21-23, 30-34, 913
 state and county officers and employees: 2-5, 10-12, 15-20, 23-26, 30-34, 913
- Ethics commission (see Commissions, ethics)
- Executive (see also Governor)
 bond authorizations by: 479, 486, 488, 493, 503, 507, 527-528, 530-531, 534-535
 functioning of departments: 50, 58-62, 75-78, 80, 342-343
- Finance (see also Appropriations; Budget; Taxation)
 federal
 funds and subsidies appropriated
 to state: 307, 414, 492, 500, 536, 577-580
 to university: 171, 234
 grants-in-aid to state: 256, 263, 579-580
 government financing sources available to small businesses: 465, 468, 475, 483-487, 490-491, 497, 500, 521
- First National Bank of Boston v. Francis X. Bellotti: 806
- Fisheries (see Native Hawaiian rights)
- Freedom of Information Act, federal: 624, 625, 627, 628, 639
- Gion v. Santa Cruz: 433
- Governor (see also Executive; Separation of powers)
 limitation on terms: 50, 73, 189
 powers and responsibilities
 budgetary (see Budget, powers of governor in)
 disclosure report on special purpose bonds: 503, 505-508, 928
 general: 67-68, 70, 890
 in appointments
 attorney general: 51, 66-91, 914-915
 board of regents: 237, 918
 judicial selection commission: 345, 367-368, 377, 925
 justices and judges: 345, 360-367, 369-

- 370, 398, 401, 923-924
 legislative salary commission: 297-301, 920
 lieutenant governor: 51-52, 56, 914
 school advisory council: 200
 superintendent of education: 192, 196-198, 213-215, 917-918
 in educational matters: 171-172, 196, 205, 209-210
 over board of education: 224-231
 over board of regents: 236
 in legislative salary recommendations: 278, 297-302, 304, 920
- Grand jury
 counsel for: 663-672, 932
 function of and proceedings: 664-672, 674-675
 investigations: 676-678, 932
- Griswold v. Connecticut: 631
- Growth management (see Population growth, state)
- Handicapped, care of: 123-124
- Hawaiian affairs
 office of
 board of trustees
 composition: 459-460, 926
 responsibilities: 457-460, 462, 926-927
 establishment and goals: 457-459, 926
 public trust entity: 435, 456-462, 926
 traditional rights, protection of: 426, 432-437, 457
- Hawaiian education and cultural provisions
 Hawaiian as state language: 426, 432
 Hawaiian education program: 171, 425-432
 traditional and customary rights of native Hawaiians: 426, 432-437, 457
- Hawaiian Homes Commission Act (see Hawaiian homes programs)
- Hawaiian homes programs
 Hawaiian home lands
 ceded lands, trust provisions for (see Public trust)
 department of
 applicants eligible for program: 414, 416, 422-423
 funding and budget problems: 410-416, 421-423, 468, 470-472
 use of water resources: 426, 437, 457, 859, 871
 utilization of lands: 410-415, 421-423
 Hawaiian Homes Commission Act
 financial assistance available to homesteaders: 411, 412, 414, 421, 471-472
 influence of sugar industry on: 410-413
 intent and purpose of: 410-414, 422
 lands available under: 410-413, 415, 422-423
 requirement of congressional consent to amend: 418, 420-421, 423
 native Hawaiians
 definitions: 456, 459, 461-462, 927
 rehabilitation fund and programs: 410-416, 418, 421-422
 rights of (see Native Hawaiian rights)
- Hawai Government Employees Association et al. v. County of Maui, and Elmer F. Cravalho, Mayor: 879
- Higher education (see University of Hawaii)
- Historic places, preservation and development: 124, 151, 916
- Initiative
 concept of: 701-702, 813-814, 816-836
 direct
 concept and mechanics: 838-840, 934-935
 for constitutional amendments: 841, 935-936
 indirect
 concept and mechanics: 813-817, 820, 825-828, 830-836, 933-934
 restrictions: 813, 934
- Insanity as a defense (see Criminal law)
- Judiciary (see also Separation of powers)
 bail, imposition by courts: 650-653, 931
 code of ethics: 34-37, 393, 397, 914
 district courts
 appointments: 345, 360, 362, 367, 923-924
 qualifications for judges: 346, 923
 grand jury system (see Grand jury)
 intermediate appellate court: 346-351, 353-358, 923
 justices and judges
 appointments: 345, 360-367, 923-924
 compensation: 346, 399, 924
 discipline, retirement and removal: 346, 371, 399, 924, 926 (see also Retirement system, employees')
 election of: 367-372, 924-925
 merit selection of nominees (see Commissions, judicial selection)
 qualifications: 345-346, 368, 923
 retention and renomination: 345-346, 369-372, 389-396, 924-925
 temporary assignments: 353, 354, 923
 term of office: 369, 924-926
 supreme court
 appointments of judicial selection commission members: 345, 367, 373, 375-377, 925
 chief justice, responsibilities: 345, 362, 366, 375-377, 923, 925
 disciplinary authority: 346, 371
 organization and functioning of: 348-358, 923
- Jury, of 12 persons in criminal cases: 679-684, 931 (see also Grand jury)
- Lands (see also Land use; Native Hawaiian rights, to land)
 dedication of agricultural (see also Agriculture; Hawaiian homes programs)
 importance of state planning for: 258-259, 261-262, 270, 272-274
 preferred treatment: 259, 261
 quieting title actions: 427, 437-453, 926
 preservation of (see Conservation)
- Land title actions (see Quieting title)
- Land use (see also Lands)
 county powers in: 247-248, 259, 263-264, 267, 269-274, 919
 land use commission, jurisdiction in: 248, 270-274, 877
 provisions for highest and best: 258-259, 262
 state plan, for land management: 267, 273
- Language
 Hawaiian
 as official state and in motto: 103-104, 426, 432
 study of, in public education: 171, 425-432
 use in government writing: 102, 432
 in state motto: 44-47, 914
 plain, in government writing: 100-105, 915
- Law of the Sea: 41, 43
- Laws
 constitutional: 110, 111
 enacted prior to statehood, unconstitutional: 93-94
 general and special, application to counties: 142, 146-150, 249-251, 916, 919

Legislative mandates by convention*

- bill of rights
 - grand jury, provide independent counsel for: 670, 677-678, 932
 - in right of access to public records, specify exemptions: 624, 627-628, 931
 - right to privacy, take affirmative steps to implement: 630-631, 635-639, 641, 931
- collective bargaining
 - legislative role in negotiations: 165-167, 917
 - right to strike by public employees, restrict if necessary: 125, 163-165
- constitutional
 - convention facilities, provide for: 107-109, 121-122, 915
 - revision commission, establish: 109-112, 915
- counties, allocation of power: 247-248, 252-275, 919
- education
 - board of education
 - internal management and control, define areas: 223-231, 918
 - membership, make determination of: 217-218, 221, 917
 - board of regents, define areas of internal management and control: 171, 234-236, 918
 - libraries, create independent system of: 174-185, 917
 - schools, provide for public input: 174, 244, 917
- elections
 - campaign contribution limit, provide for: 701, 804-807, 933
 - campaign fund for partial public financing, establish: 701, 784-791, 795-803, 933
 - campaign spending limit, establish: 701, 784-791, 795-803, 933
 - date of primary election, provide for: 701, 740-741, 933
 - methods of voting and ballot options, provide for: 732, 737, 739, 772-773, 776, 932-933
 - publicity and voter education publications for initiative measures, arrange for: 813, 934-936
- Hawaiian affairs, provide for
 - educational and cultural programs in public schools: 425-426, 428
 - funding of Hawaiian home lands programs: 412-415, 418, 421-422
 - procedures for board of trustees elections: 459-460, 462, 926
 - regulations for traditional native Hawaiian rights of access: 437
- judiciary
 - intermediate appellate court, establish: 349
 - judicial selection commission, provide for appointments or elections of members: 378, 925
 - staff and operating expenses: 401-402, 926
- land court, provide for all expenses in securing disputed titles: 437, 440-444, 926
- public health and welfare, formulate programs for: 123-160, 915-916
- taxation and finance
 - council on revenues, establish: 466
 - define food and drugs in elimination of tax on: 597-599, 603, 605, 930
 - set spending ceiling for state's operating budget: 465-466, 548-559, 561-562, 929
 - tax refund or credit of excess revenues, provide for: 565-569, 929
 - tax review commission, establish: 466
- water resources, establish agency: 857-858, 866-870, 873-878, 938

Legislature (see also Finance; Legislative mandates by convention)

- bills
 - cutoff on introduction: 278
 - review period extension: 278-279
 - separate bills for bond authorizations: 503-506, 508-517, 928
- bonds
 - authorization by: 464-473, 502-506, 508-517, 522-525, 585-596, 927-928, 930
 - lapsing period: 464-465, 526-538, 587-592, 928-930
 - nonlapsing, determination by: 536-538, 928-929
- council on revenues, for appropriations estimates: 466, 561
- initiative measures: 813-817, 832, 933-935
- legislators
 - retirement benefits (see Retirement system, employees')
 - role in collective bargaining negotiations: 165-167, 917
 - salary and allowances, setting of: 278-279, 297-305, 920
 - terms
 - for senate: 278, 330-339, 922
 - limitation on: 288-296, 920
- organization
 - by committee of the whole only: 310-314, 921
 - through committee structure: 310-317, 921
- powers
 - assignment of duties of lieutenant governor: 51, 55, 61-64
 - as watchdog of executive: 68, 72, 74, 80
 - budgetary appropriations (see Appropriations)
 - division of, with counties: 246-275, 919
 - in appointing commission members for attorney general: 85, 87-89, 915
 - judicial selection: 345, 367-368, 375-378, 925
 - in education: 204-205, 224-231
 - in nuclear energy regulation: 881-910, 938
 - judicial salary approval: 346
 - of senate, in confirmations of attorney general: 51, 86-87, 915
 - board of regents: 237, 918
 - justices and judges: 360-365, 367, 923-924
 - secretary of state: 52, 914
 - superintendent of education: 192, 214, 918
 - water*resources, regulation and protection: 857-881, 937-938
- reapportionment (see Reapportionment)
- sessions
 - convening: 305-309, 920-921
 - mandatory recess: 278-279, 306, 921
- "sunshine" provisions for: 278-280, 310-311, 315-317, 921
- tax policy, periodic review: 466
- unicameral v. bicameral: 277-288, 919

Libraries, public

- as independent system: 174-185, 917
- community-school libraries, establishment of: 181-183
- role of school libraries: 175-177

Lieutenant governor

- appointment of: 51-52, 56, 914
- as secretary of state: 52-57, 60-63, 914
- duties: 54-55, 60-65, 914 (see also Elections, chief election officer)
- elected independently of governor: 57-60, 914
- limitation on terms: 50-52, 57, 914

Local government

- bonds
 - authorization of: 524, 927-928
 - authorization of CIP projects: 528-531

*These are the constitutional mandates in committee proposals and delegate amendments that were discussed during the debates--not necessarily those that were adopted and ratified.

- debt limit: 539-542, 929
- county prosecutors, function: 70, 74-75, 81
- elected officers, resignation before running for another office: 708, 710-711, 713, 717
- Kalawao, status of: 248, 253, 919
- powers
 - in land use: 247-248, 259, 264, 267, 269-274, 919
 - in water supply for domestic use: 858, 860, 866, 868-873, 875-881
 - population growth, planning and management by each county: 135-143, 145-150, 916
 - taxing power
 - general excise: 255-258, 581, 919
 - Kalawao, exception: 252-253, 255, 919
 - of real property: 247-248, 252-255, 258-268, 275, 582, 919
 - state financial-assistance programs
 - cost-sharing in mandated programs: 466, 570-576, 579, 929
 - county use of federal funds: 579-580
 - state revenue-sharing: 256, 260-268, 572-573, 578-583, 930
 - state regulation in: 247-251
 - application of general and special laws: 146-150, 249-251, 919
- Marbury v. Madison: 360
- Marine resources (see Natural resources; Ocean resources; Water resources)
- McBryde Sugar Co. v. Robinson: 862, 865, 867, 877, 878
- Motto, state: 44-47, 104, 112, 914
- Native Hawaiian rights
 - fishing and water rights: 426, 436, 437, 457, 859, 871
 - to land (see also Quieting title)
 - by ancient Hawaiians: 410, 426, 433, 435-436, 447, 457-458
 - lands held as public trust (see Public trust)
 - on Hawaiian home lands: 410-415, 421-423
 - traditional and customary: 426, 432-437, 457
- Natural resources (see also Conservation; Water resources)
 - as alternative energy sources: 259, 261, 883, 885, 887, 889, 890, 892-897, 903-905
 - use of special purpose revenue bonds for developing: 479, 489, 492-494, 500, 520
 - need for balance between preservation and development and use of: 857, 878
 - prevention of excessive demands on: 128-132, 916
 - trust doctrine for management of: 866-867, 878
- New York Times v. Sullivan: 72
- Northern States Power Company v. State of Minnesota: 898
- Nuclear energy
 - alternative energy sources (see Natural resources)
 - government agencies dealing with: 884, 890, 892-893, 898
 - restrictions by state
 - in construction of nuclear fission power plant: 881-910, 938
 - in disposal and storage of radioactive material: 881-888, 896-897, 900-902, 907-910, 938
 - use of revenue bonds for nuclear fission plant construction: 504, 885, 887, 889-890, 903-905
- Ocean resources, effect of state boundaries on: 39-41 (see also Natural resources; Water resources)
- Population growth, state
 - planning and management of: 124, 132-150, 916
 - by counties: 135-143, 145-150, 916
- Preamble: 112-118, 915
- Predham v. Holfester: 448 n
- Preliminary hearing: 674-678, 932
- Press, freedom of (see Right to know, public)
- Privacy, right to
 - federal act: 399, 639, 640, 642
 - provisions and effects: 624, 628-644, 931
 - violation: 765-769, 771-772, 777, 783
- Public assistance: 124
- Public health and welfare
 - policy: 123-160, 915-916
 - programs and services
 - cultural resources: 124, 150-151, 916
 - elderly, economic security of (see Elderly)
 - handicapped, care of: 123-124
 - healthful environment: 124, 125, 128-132, 881, 883, 916
 - mandatory comprehensive health plan: 153-156, 916
 - population growth, planning and management of: 124, 132-150, 916
 - public assistance: 124
 - public safety: 124
 - public sightliness and good order: 124
 - right to continuity of public services: 157-160, 916
- Public lands (see Public trust)
- Public officers and employees
 - code of ethics for: 2-5, 10-12, 15-20, 23-26, 30-34, 913
 - collective bargaining (see Collective bargaining, in public employment; Public services)
 - criminal conduct by, grand jury investigations: 676-677, 932
 - disqualification for disloyalty, requirement of conviction: 93-94
 - elected officer, resignation before running for another office: 701-718, 932
 - recall, of elected public officers (see Recall)
 - retirement system for (see Retirement system, employees')
- Public safety: 124 (see also Environment)
- Public services, right to continuity of: 157-160, 916
- Public trust
 - natural resources, trust doctrine for management of: 866-867, 878
 - public lands held as, under Hawaiian Homes Commission Act: 413-414, 417, 461-462
 - trust entity for Hawaiian affairs: 435, 456-462, 926
 - water resources, as public trust: 857, 859-861, 865-869, 873-876, 937-938
- Quieting title: 427, 437-453, 926
- Radioactive material, disposal of (see Nuclear energy)
- Real property
 - county debt limit, as percentage of assessments: 540-542, 929
 - quieting title actions: 427, 437-453, 926
 - taxing power to counties: 247-248, 252-255, 258-268, 275, 582, 919
- Reapportionment
 - for board of trustees of Office of Hawaiian Affairs: 459
 - of board of education: 171, 172, 198, 208-211, 215, 226, 917
 - of congressional districts: 278
 - of state legislative districts: 278, 317-331, 921-922

- placement of holdover senators and staggering of terms: 278, 330-339, 922
- Recall, of elected public officers: 851-853, 937
- Referendum, petition: 825-826, 842, 845-850, 936-937
- Retirement system, employees'
differences in benefits provided
for elected officers: 94-100
for judiciary: 94-100, 399
restrictions: 94-100, 915
for legislators
liberalizing of: 289-290
recommendations: 297, 299-300, 303-304, 920
- Revenue bonds (see Bonds)
- Reynolds v. Sims: 215
- Rights (see Access; Bill of rights; Native Hawaiian rights; Privacy, right to)
- Rights of accused (see Bill of rights)
- Right to continuity of public services: 157-160, 916
- Right to know, public
access to public records: 278, 608-610, 623-628, 931 (see also "Sunshine" provisions)
journalists' right to confidentiality of sources: 608-623, 931
- Right to strike (see Collective bargaining; Public services)
- Senate (see Legislature)
- Separation of powers, doctrine of
effect of political parties on: 748, 833
judicial independence: 35-36, 346, 359-363, 367-368, 370
legislative/executive violations: 64, 68, 69, 80, 91, 226, 298, 306, 309
- Shield law (see Right to know, public)
- State growth (see Population growth, state)
- State plan (see Lands; Land use; Population growth, state)
- State v. Roy: 631
- Suffrage (see Elections)
- "Sunshine" provisions
for legislature: 278-280, 310-311, 315-317, 624, 640, 921 (see also Right to know, public)
in public employment collective bargaining negotiations: 165-167, 917
- Taxation (see also Finance)
county powers
debt limit: 539-542
general excise: 255-258, 581, 919
real property: 247-248, 252-255, 258-268, 275, 582, 919
state tax revenue apportionment to: 260-268, 572-573, 578-583, 930
effect of tax-exempt status of state bonds: 465, 475, 477-479, 481, 492-499
elimination of 4-percent tax on food and drugs: 597-605, 930
refund or credit on general fund excess: 563-569, 929
review commission: 466
- Tax review commission, establishment of: 466
- Unicameral legislature (see Legislature)
- University of Hawaii
board of regents
election of: 237-238, 918
jurisdictional powers: 171, 234-236, 237, 918-919
governance of university: 235-238
- Voting (see Elections)
- Water resources (see also Environment, pollution control)
agency, establishment of: 858-881, 938
as public trust (see Public trust)
state management and protection of: 857-881, 937-938
use of, by native Hawaiians: 426, 437, 457, 859, 871
water uses and rights, protection of: 858-860, 862, 867, 869-878, 880, 938
well and other groundwater resources: 860, 866-867, 869, 871-876, 938
- Williams v. Florida: 679