ALASKA CONSTITUTIONAL CONVENTION

January 5, 1956

FORTY-FOURTH DAY

PRESIDENT EGAN: The Convention will come to order. Reverend Londborg, would you give our daily invocation?

REVEREND LONDBORG: Our Heavenly Father, we pray that You will bless us in our deliberations this day. We pray for clear minds that we may be able to think through these problems and to decide wisely. We ask in Thy name, Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll.)

CHIEF CLERK: Seven absent.

DAVIS: Mr. President, Mr. Hellenthal is sick this morning.

PRESIDENT EGAN: A quorum is present. The Convention will proceed with the regular order of business. Mr. Riley is present also. Does the special Committee to read the journal have a report to make at this time? Mr. White.

WHITE: Mr. President, the Committee to read the journal recommends the approval of the journals for the first, second, third and fourth Convention days with the corrections noted on the mimeographed sheets, provided the delegates agree.

PRESIDENT EGAN: Does everyone have copies of the suggested corrections to the journals for the first, second, third and fourth days? Is there objection to the approval of the minutes to those days as suggested by the special Committee to read the journal? If not, the journals of the first, second, third and fourth days are ordered approved as corrected and read by the special Committee to read the journal. The record will show Mr. Barr as being present. Mr. McCutcheon, also. Are there any petitions, memorials or communications from outside the Convention? Mr. Hilscher.

HILSCHER: I rise to a point of personal privilege. We are short one report from one of our members. We would like to have a report on the hearings held by our member recently returned from Hawaii.

PRESIDENT EGAN: Does the Delegate who was recently from Hawaii have a report to make? We are very happy to have you back with us, Mr. Davis.

DAVIS: Mr. President, I report progress. (Laughter)

PRESIDENT EGAN: We are pleased to see our absent members here with us this morning. The weather has allowed them to be with us again. Are there any communications from outside the Convention? Are there reports of standing committees? Of select committees? Mr. Smith.

SMITH: Mr. President, I would like to ask unanimous consent for the withdrawal of Committee Proposal No. 8 for Committee revision.

PRESIDENT EGAN: Is that the resources?

SMITH: That is the resources article. I would call your attention to the fact that this proposal was marked "No. 8" and to the effect that the withdrawal would not, as I see it, affect its place on the calendar.

PRESIDENT EGAN: Mr. Smith asks unanimous consent that the Committee be allowed to withdraw Committee Proposal No. 8 for suggested revision. If there is no objection, it is so ordered and the proposal will be turned over to the Committee. Are there other reports? Mrs. Sweeney.

SWEENEY: Mr. President, your Committee on Engrossment and Enrollment to whom was referred Committee Proposal No. 1 has compared same with the original and find it correctly engrossed and the first enrolled copy in proper form. Mr. President, I would like to move that the rules be suspended and that Committee Proposal No. 1 be returned to second reading for the purpose of rescinding our action on the voting age and I ask unanimous consent.

PRESIDENT EGAN: Mrs. Sweeney moves and asks unanimous consent that Committee Proposal No. 1, which is the proposal dealing with the election provisions of the suffrage proposal, be returned to second reading for specific amendment.

SWEENEY: We would be rescinding the action on the voting age.

PRESlDENT EGAN: You ask unanimous consent?

COGHILL: I object.

SWEENEY: I so move.

WHITE: I second the motion.

PRESIDENT EGAN: The question is on a suspension of the rules. It is not debatable, Mrs. Sweeney. The question is, "Shall Committee Proposal No. 1 be returned to second reading?" Well, Mrs. Sweeney, as the Chair sees it, and the Chair would stand corrected if the Chair does not see it correctly, the Chair feels that your first motion would have to be the suspension of

the rules to return it to the second reading. A rescinding motion would have to be made in second reading after.

SWEENEY: I just did not want to get tied up with the wrong motion.

PRESIDENT EGAN: Is that the feeling of the delegates, that we would have to suspend the rules first, get it into second reading, then you could offer your motion to rescind if it went to second reading?

SWEENEY: May we have a roll call on that please?

COGHILL: Mr. President, it was my understanding that no proposal has left second reading until after the recess. So therefore it would still be in second reading.

PRESIDENT EGAN: No, Mr. Coghill, when it went to the Engrossment and Enrollment Committee, it is still technically in second reading until the Style and Drafting Committee completes its work on the proposal. However, so far as the rules are concerned, the moment it went to the Engrossment and Enrollment Committee, to get it back into second reading for any amendment or any action whatsoever it would take a suspension of the rules. The question is, "Shall the rules be suspended and Committee Proposal No. 1 be returned to second reading?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 22 - Boswell, Cooper, Gray, Hermann, Hinckel, Johnson, King, Knight, Laws, Londborg, McNealy, Metcalf, Nolan, Reader, R. Rivers, V. Rivers, Robertson, Rosswog, Sweeney, Walsh, White, Wien.

Nays: 28 - Awes, Barr, Coghill, Collins, Cross, Davis, Emberg, H. Fischer, V. Fischer, Harris, Hilscher, Hurley, Kilcher, Lee, McCutcheon, McLaughlin, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Riley, Smith, Stewart, Sundborg, VanderLeest, Mr. President.

Absent: 5 - Armstrong, Buckalew, Doogan, Hellenthal, Taylor.)

CHIEF CLERK: 22 yeas, 28 nays, and 5 absent.

PRESIDENT EGAN: The "nays" have it and the proposed motion to suspend the rules has failed of adoption. Mrs. Sweeney.

SWEENEY: Mr. President, I now forward the enrolled copies and I believe that the mimeographed and first enrolled copies have

been placed on the delegates' desks.

PRESIDENT EGAN: Do you ask for the adoption of the report of the Committee?

SWEENEY: I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked that the report of the Committee on Engrossment and Enrollment be adopted by the Convention. Is there objection? Hearing no objection it is so ordered. The proposal will proceed on its regular course to the Style and Drafting Committee. Are there any proposals to be introduced at this time? Are there any motions or resolutions? Miss Awes, did you have something?

AWES: Mr. President, if we could revert to committee reports for a minute.

PRESIDENT EGAN: If there is no objection the Convention will revert to committee reports. Miss Awes.

AWES: I would like to announce a meeting of the Bill of Rights Committee just as soon as we recess for noon.

PRESIDENT EGAN: A meeting of the Bill of Rights Committee will be held immediately upon recess. Are there other committee announcements to be made? The Chair would like to announce that there will be a meeting of the committee chairmen at 12:30. Is there unfinished business? We have before us Committee Proposal No. 3 in second reading. We are on Section 6 of Committee Proposal No. 3. Is there an amendment pending at this time?

CHIEF CLERK: Yes, Mr. Fischer's amendment.

PRESIDENT EGAN: Mr. Fischer's proposed amendment to Committee Proposal No. 3, Section 6. Would the Chief Clerk please read that proposed amendment?

CHIEF CLERK: "Section 6, delete lines 5 and 6 on page 3."

PRESIDENT EGAN: A motion has been made and seconded for the adoption of that amendment. Is that correct?

CHIEF CLERK: Yes.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Just to refresh everyone's memory, the motion to amend was made in order to remove the limitation on the grounds for recall and leave the way open to recall by the voters for any reason that the voters may see fit, as is done in practically every state. In connection with that it should be pointed

out that this recall is not only against state officers but would apply also to elective officers in local government where the grounds may be justifiable or of a different nature.

PRESIDENT EGAN: Is there further discussion of the proposed amendment? If not, the question is, "Shall the amendment as proposed by Mr. Victor Fischer be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 6? Mr. Ralph Rivers.

R. RIVERS: Mr. President, now that that amendment has passed, I propose an amendment to line 7 on page 3. Line 7 on page 3 now reads as follows: "The legislature shall prescribe the recall procedures." I move to amend that by adding to the end of that sentence "and grounds for recall".

PRESIDENT EGAN: Do you strike the period?

R. RIVERS: Yes, strike the period at the end.

PRESIDENT EGAN: And add the words "and grounds for recall".

R. RIVERS: I ask unanimous consent.

PRESIDENT EGAN: Mr. Ralph Rivers asks unanimous consent for the adoption of the proposed amendment. Mr. Fischer.

V. FISCHER: I would like to check, Mr. President, for the purpose of possibly making a little further amendment in a few minutes, and I would like to ask Mr. Rivers' consent to possibly go on to some other amendments that are pending and then we might be able to work out a more comprehensive amendment to this section.

PRESIDENT EGAN: Would it take you very long, Mr. Fischer?

V. FISCHER: About five minutes.

PRESIDENT EGAN: Do the delegates feel we should have a five minute recess to get this cleared up before we do proceed? If there is no objection, the Convention will stand at recess while Mr. Fischer and Mr. Rivers get together.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Ralph Rivers.

R. RIVERS: Mr. Chairman, I could well see that the amendment I proposed would hinge on whether or not Mr. Fischer's amendment carries, so I wish to have mine suspended or withheld until

Mr. Fischer's amendment is acted upon.

PRESlDENT EGAN: If there is no objection, we will hold Mr. Ralph Rivers' amendment in abeyance until the amendment that will be proposed by Mr. Victor Fischer can be mimeographed. Mr. Victor Fischer.

V. FISCHER: Mr. President, could I have permission to have this mimeographed since it consists of several sentences?

PRESIDENT EGAN: The Chair has seen the proposed amendment and feels that a copy should be in the hands of each delegate. You have permission to have it mimeographed. Are there other amendments to Proposal No. 3 on the initiative and referendum? Does Mr. Smith have an amendment to Section 3? Mr. Londborg.

LONDBORG: I have one on the Clerk's desk.

PRESIDENT EGAN: Mr. Londborg has an amendment to Section 6 which has nothing to do with the proposed amendment we are holding in abeyance. The Chief Clerk will please read the proposed amendment by Mr. Londborg.

CHIEF CLERK: "Page 3, line 3, strike the words 'except judicial officers'."

PRESIDENT EGAN: What is your pleasure, Mr. Londborg?

LONDBORG: I move the adoption of that amendment.

PRESIDENT EGAN: Mr. Londborg moves the adoption of the amendment, that is, to strike the three words from line 3, Section 6, "except judicial officers". Is there a second to the motion?

MCCUTCHEON: I object.

COGHILL: I second the motion.

MCCUTCHEON: I will give notice at this time that,if the vote is called on this, I will call the assembly.

PRESIDENT EGAN: Mr. Londborg, were you trying to get the floor?

LONDBORG: I feel that, inasmuch as the Judiciary Committee has taken care of the judges through the fact that they are not elected, that they are already exempt from the recall, and I am thinking of probably the judicial officers down in the lower courts that may be elected by the people. We don't know what will be set up in local governments or anything of that nature, and certainly they should not be protected from the people and have a cloak put around them so that they could not be recalled. I think you will find that there will have to be some substitute made for the present United States Commissioner who is

acting out in places. Now, if they should be elected by the people, if that should be the form set up, then certainly there would have to be some way of recalling them, because they would not come under the impeachment act set up in the Judiciary Committee. As far as the judges under the judiciary proposal, I do not believe this affects them in any way. It is not necessarily intended to because they are not elected officials to begin with, and this article of Section 6 only pertains to elected officials, but I think all elected ones should be included, and I am thinking particularly of the judges in the lower courts.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, the historical precedent for Mr. Londborg, as I mentioned yesterday -- in l91l, President Taft turned down, vetoed the admission of Arizona into the Union because specifically in their constitution they had a provision providing for the recall of the judiciary. It was solely on that grounds that President Taft turned down the admission of Arizona into the Union. The fact is that it does have that provision in its constitution now. But historically that was the only reason and true reason given by President Taft for rejecting the whole proposed constitution of the State of Arizona, because to him, and it does exist in other constitutions. but to him at that time, the provision for recall was so offensive that he in substance turned down the whole constitution. In substance what you are doing by this recall petition is you are providing for a recall or an election. You are amending the judiciary article to provide that an election, in substance, can be held at any time to recall any judicial officer. That means that,if his decision is unpopular at any given time, that promptly he can be reversed. It is roughly equivalent to one other provision that was at one time in one state constitution providing that by referendum, it is a rough equivalent of that where the state supreme court determined that something was in violation of the constitution, that people by referendum could reverse the supreme court and declare it constitutional. In substance you are doing the same thing by permitting a recall, you could recall every one of the supreme court justices because of the fact you felt that their decision was improper, they could be recalled and another panel substituted immediately for them. You would be getting reversal of decisions by recalling your judicial officers. That is the offensive part of the article. I believe the Convention voted in substance that we had adequate provisions in our judiciary article for the removal of incompetent or inadequate personnel. The recall provision, as I say, historically might be grounds for the rejection of this constitution, and I feel that we are moving on very dangerous grounds when we consider the proposal.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: I must have misunderstood Mr. Londborg's motion if Mr. McLaughlin is talking to the point, because I thought he was making an exception of judicial officers. They should not be recalled.

PRESIDENT EGAN: He was striking the three words "except judicial officers". Mr. Ralph Rivers.

R. RIVERS: I would like to say, too, that all judicial officers are under the general impeachment clause and the legislature will be providing for these courts of limited jurisdiction, like juvenile justices and justices of the peace courts and all that sort of thing. Those courts will be set up as the legislature shall prescribe, and I think the legislature should take care of the hiring and the firing. If the legislature chooses to call for elective justices of the peace, then they can be under the impeachment clause. They are under the early retirement based on recommendation of the judicial council. They are subject to being removed for being incapacitated or infirm under the procedure set up in the judiciary, so I believe we have got that very well covered the way it is. I might also say that Mr. Londborg does not think that his language would be construed to apply to the justices of the supreme court or the judges of the superior courts, but the fact remains that they are elective officials in the sense that their names go on the ballot, so then you are starting up another argument as to whether judges are elected or not. We know they are screened and appointed, but they are still subject to the approval of the voters periodically, so you are just fouling it up.

LONDBORG: May I direct one or two questions through the Chair? First, I would like to ask Mr. Rivers if a governor appoints someone and a senate confirms it, then we don't say they are elected by the senate and the same way if the judges are appointed they serve awhile and the people confirm their appointment in three years. This is not an election is it?

R. RIVERS: No, you are talking strictly of appointive officers confirmed by the senate and they wouldn't come under this at all, but the very fact that you subject your judges to approval or rejection at the polls raises the argument whether they are elected or not.

LONDBORG: I would like to ask Mr. McLaughlin, he mentions a state that was refused admission. How were they selecting their judges at that time? Was that by your present setup or were they elected judges?

MCLAUGHLIN: I frankly do not know, Mr. Londborg.

LONDBORG: That puts it in an entirely different situation than we have here. I don't think we should operate on the fear we are going to be rejected by the United States or not, it is

whether we feel it is right or not. I am just throwing that out that that should govern us, not pick a state that has a different situation and use that as a basis for argument.

MCLAUGHLIN: Mr. Londborg, I feel that $300,000 and three months of work, that if it is going to be turned down by the Congress of the United States, it is a matter of great concern to the Convention.

LONDBORG: I agree with you entirely on that, but we can use that same argument in many other instances and pick something that may not be entirely related and use it as a threat to the voting.

PRESIDENT EGAN: Mr. McLaughlin, do you have the floor?

MCLAUGHLIN: Forgive me, I do not, I am out of order.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: In order to allay Mr. Londborg's fears, assuming that at least a portion of the legislative branch article shall be adopted, we have in that two different devices which should protect the public from any type of an officer that Mr. Londborg fears might remain in office. One is by method of impeachment by the legislature and another is by joint address wherein any civil officer may be removed from office by the legislature. It would appear to me that there would be no need to strike these particular words that Mr. Londborg objects to at this particular time in view of the fact that we have other devices in other sections of the proposed constitution which would give ample public protection.

PRESIDENT EGAN: Is there further discussion? Mrs. Sweeney.

SWEENEY: Mr. President, just a point of information. Since we have had the threat once already of calling of the assembly, I would like to know under what rules we are operating on a call of the house.

PRESIDENT EGAN: The Chair would feel that we are operating under the Robert's Rules of Order and any rule that might be in the proposed rules relative to the call of the assembly which--is there a specific number who has to call under the rules?

RILEY: Mr. President, our own rules do not specify. They say the house may take such means as it feels necessary.

SWEENEY: That is what I am wondering. If we have a call of the house, does that mean we are going to have to sit and wait until 55 come or are we going to suspend operation on the issue and go on with other things?

PRESIDENT EGAN: Mrs. Sweeney, that would have to be decided by the assembly. If Mr. McCutcheon did call the assembly, it would mean that we would either have to sit here until all delegates arrived here or by general agreement suspend further action on this proposal until they were all present.

SWEENEY: That is something we take care of at that time? We don't have any rules yet?

PRESIDENT EGAN: The rule is there, that any number may make a call of the assembly. It would take a suspension of the rules to overrule any motion of that nature, but we are operating under Robert's Rules of Order and our own rules which mention the call of the assembly.

SWEENEY: It seems to me that we ought to have something definite on it because we certainly don't want to have to sit here on one issue and wait until we have a full house. We ought to have some rule whereby we can definitely know that we can suspend or go on with other things.

PRESIDENT EGAN: The feeling of the Chair is that we have a rule in Robert's Rules that relates to a call of the assembly and a call of the house, and it takes just one person to make a call.

SWEENEY: I understand that, Mr. President, but I don't believe that Robert's Rules of Order say we can go on with other business by holding this one issue in suspension.

PRESIDENT EGAN: By general agreement which would be suspension of all rules, it can be done, of course. Mr. Sundborg.

SUNDBORG: At the time the rules were being drafted by the Rules Committee I recall we consulted Robert's Rules on this point to see what it did provide, and what it does provide is something quite different from what those who have served in Alaska legislatures may be accustomed to. In other words, all business of the house does not stop. I think Robert's provide that when there is a call of the house, that a vote on the measure in connection with which the call is made shall be withheld until the absent members have been summoned, but the house may go on with other business.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: As a matter of information, I do not intend to call the house if you bring this matter to issue.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: I believe about the only thing about the judiciary bill that I agree with is that we should not subject the judges

to recall. However, I don't believe either that the legislative proposal, for example, if justices of the peace are to be elected and that sort of procedure set up at a later time, I don't believe we should have to wait until the time that the legislature met in order to endeavor to impeach a justice of the peace in some far-flung community, and I believe that probably would be a matter of separate amendment and possibly somewhere else in the constitution.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: Mr. Chairman, I raised this same question sometime ago and discussed it with Mr. McLaughlin and then I had proposed to make the same amendment as Mr. Londborg made. After discussing it with Mr. McLaughlin I tore it up. But now that Mr. Londborg has raised a question and there seems to be an objection, I am just wondering, and I will ask somebody a question. Maybe they can answer it. Instead of striking the three words "except judicial officers", I am wondering about adding to that except judicial officers of the superior and supreme courts" and then if that would not protect the judiciary article, and at the same time provide for the fear that Mr. Londborg seems to have. We have discussed in Local Government, particularly under the home rule charters where we have most of our officials elected, etc., that there should be some provision for setting up justices of the peace, and then being able to recall them if necessary.

PRESIDENT EGAN: Mr. Doogan, we have this proposed amendment by Mr. Londborg. Unless he would desire to amend his proposed amendment, the other discussion would be in order later after this has been dispensed with. Mr. Victor Rivers.

V. RIVERS: Mr. President, it seems to me that while I am not especially fearful of the need for the recall for the judiciary at the lower levels, it seems to me there should be a little amplification for perhaps some of the members, the delegates who may want to vote for this amendment. It seems that the historical precedent cited to us, that of Arizona and the rejection of their constitution by Taft, on account of it would not be in the nature of a majority historical precedent. The Hawaiian Handbook says, Constitutional and statutory provisions of twelve states have made the recall applicable to state officers, judges being specifically excluded in four of these states, which are Idaho, Louisiana, Michigan and Washington." Now as the Chairman of the Judiciary Branch stated the other day, they put that clause back in, that they could recall the state judiciary in Arizona after their constitution was approved, but it seems to me that the historical precedent would be that there are a greater number that allow the recall of judicial officers than the number that do not so allow, and it seems to me that for the benefit of those who want to vote for this amendment they should have that information rather than the one case

of Arizona.

PRESIDENT EGAN: If there is no further discussion, the question is, "Shall the proposed amendment as offered by Mr. Londborg be adopted by the Convention?"

ROBERTSON: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 7 - Kilcher, Laws, Londborg, Poulsen, Reader, Sweeney, Walsh.

Nays: 44 - Awes, Barr, Boswell, Coghill, Collins, Cooper, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hermann, Hilscher, Hinckel, Hurley, Johnson, King, Knight, Lee, McCutcheon, McLaughlin. McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, VanderLeest, White, Wien, Mr. President.

Absent: 4 - Armstrong, Buckalew, Hellenthal, Taylor.)

CHIEF CLERK: 7 yeas, 44 nays and 4 absent.

PRESIDENT EGAN: The "nays" have it and the proposed amendment has failed of adoption. Mr. Doogan, do you have an amendment to Section 6, a proposed amendment?

DOOGAN: Yes. I brought it to the desk.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as offered by Mr. Doogan.

CHIEF CLERK: "Section 6, page 3, line 3, add after the word 'officers' the following, 'of the Superior and Supreme Courts'."

PRESIDENT EGAN: What is your pleasure, Mr. Doogan?

DOOGAN: I move and ask unanimous consent.

PRESIDENT EGAN: Mr. Doogan moves and asks unanimous consent for his proposed amendment.

MCCUTCHEON: Objection.

DOOGAN: I so move.

MCNEALY: I second the motion.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, Section 16 of the article on the judiciary which we have going into third reading, "Impeachment of any justice or judge for malfeasance or misfeasance may be carried on." In case there was some question in minds as to whether the local judges would be subject to impeachment, I think they would be subject to it regardless of what the legislature did if we adopt our present judiciary article.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: May I have that sentence read as it would be?

PRESIDENT EGAN: Would the Chief Clerk please read the sentence as it would appear if the proposed amendment is adopted.

CHIEF CLERK: "Every elected public official in the state except elected judicial officers of superior or supreme courts is subject to recall", etc.

PRESIDENT EGAN: Is there further discussion of the proposed amendment? If not, the question is, "Shall the proposed amendment as offered by Mr. Doogan be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye," all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 6? If not, the Chief Clerk may read the proposed amendment to Section 3 as offered by Mr. Smith.

CHIEF CLERK: "Page 1, line 9, strike the period after 'referendum' and insert a comma and add 'except as herein provided'."

PRESIDENT EGAN: What is your pleasure, Mr. Smith?

SMITH: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Smith moves the adoption of the proposed amendment. Is there a second?

R. RIVERS: I second the motion.

PRESIDENT EGAN: Mr. Ralph Rivers seconds the motion. Mr. Smith.

SMITH: I would like to say that the addition of those words is merely for the purposes of clarifying the intent. This section as I see it makes it mandatory that the legislature prescribe the procedures to be followed in the exercise of the powers of initiative and referendum, then the article goes

ahead and prescribes those procedures so I think that it might save confusion by the adoption of the amendment.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I think it would not save any confusion at all. Of course, if we provide in the constitution conditions under which these things must be done, those things are mandatory. You don't have to say "except as provided herein". It's already in there. It is just unnecessary.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I differ with Mr. Sundborg. We have spelled in enough procedure here so that this could be self-executing if we say "except" as provided herein. Otherwise, we say "the legislature shall", but we have practically done the job, and it makes better sense to persons who are not familiar with constitutional interpretations if we put those three words in there, and in the absence of action by the legislature you still have got a self-executing procedure here. So I strongly advocate Mr. Smith's amendment.

SUNDBORG: May I address a question to Mr. Ralph Rivers?

PRESIDENT EGAN: You may, Mr. Sundborg, if there is no objection.

SUNDBORG: Mr. Rivers, would you contend that if we defeat this amendment and do not put in those words that the legislature would not be governed by the specific provisions later appearing in Sections 4 and 5?

R. RIVERS: This says, "The legislature shall prescribe the procedure". Now the legislature might pass an act that is just simply declaratory of the procedure that is set in here. If the legislature did not pass an act that is declaratory of this language here, then it could be argued that there is no initiative or referendum until the legislature passes that kind of act. Mr. Sundborg doesn't object to those words except he thinks they are surplus verbiage, but I think they do serve a useful purpose. I don't want to say a legislature's going to fail its duty but it might be several sessions before the legislature gets around to it. It simply helps matters.

SUNDBORG: May I hear from some other learned attorney on this point, perhaps Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, I am not learned on the point.

PRESIDENT EGAN: Is there further discussion? If not the question is, "Shall the proposed amendment as offered by Mr. Smith be adopted by the Convention?" All those in favor of the

adoption of the amendment will signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following results)

MARSTON: I wish to change my vote here.

PRESIDENT EGAN: You will have to wait to the end.

MARSTON: I wish to change it to "yes".

CHIEF CLERK: That is what it is.

PRESIDENT EGAN: Do you wish to leave it at "yes"?

MARSTON: Yes, I do.

(The following is the result of the roll call:

Yeas: 33 - Boswell, Collins, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hermann, Hilscher, Hinckel, Hurley, Kilcher, King, Knight, Lee, Marston, Nerland, Nolan, Nordale, Peratrovich, Riley, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sweeney, Walsh, White, Wien, Mr. President.

Nays: 18 - Awes, Barr, Coghill, Cooper, Cross, Johnson, Laws, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Metcalf, Poulsen, Reader, Robertson, Sundborg, VanderLeest.

Absent: 4 - Armstrong, Buckalew, Hellenthal, Taylor.)

CHIEF CLERK: 33 yeas, 18 nays, and 4 absent.

PRESIDENT EGAN: The "ayes" have it and the proposed amendment is ordered adopted by the Convention. Mr. Victor Fischer.

V. FISCHER: Mr. President, an amendment proposed by me has been mimeographed and distributed. Before it is read I would like to make two grammatical corrections. In the fifth line, after "recall petition" insert a comma. Also in the fifth line, after "recall" change a comma to a period, change the "t" to a capital "T".

PRESIDENT EGAN: Mr. Fischer, the Chair would wonder if you would have any objection, we are on Section 3 now, and had Mr. Smith offered another amendment to Section 3?

CHIEF CLERK: No.

PRESIDENT EGAN: Then you may proceed, Mr. Fischer.

V. FISCHER: Does this have to be read or can I move its adoption?

PRESIDENT EGAN: The Chief Clerk should read the proposed amendment before you move its adoption. The Chief Clerk will please read the amendment.

CHIEF CLERK: "Insert the following before the last sentence of Sec. 6: 'Such number of such voters as shall equal twenty per cent of the number of votes cast at the preceding general election for all of the candidates for the office held by such official, may,by petition which shall be known as a recall petition, demand his recall. The petition shall contain a statement in not more than 200 words of the grounds for recall. If the official concerned shall not have resigned within 5 days after the required number of voters have signed a recall petition, a special election shall be ordered to be held within the state or political subdivision as the case may be, not less than 60 nor more than 90 days after such order, to determine whether such official shall be recalled.'"

PRESIDENT EGAN: What is your pleasure, Mr. Fischer?

V. FISCHER: I move the adoption of this amendment and ask unanimous consent.

MCCUTCHEON: I object.

PRESIDENT EGAN: Objection is heard to the unanimous consent request. Is there a second to the proposed motion?

KILCHER: I second the motion.

PRESIDENT EGAN: Mr. Kilcher seconds Mr. Fischer's motion. Mr. Victor Fischer.

V. FISCHER: Mr. President, the recall power is a means of direct participation of the voters in their government just as the initiative and referendum. The initiative and referendum would be useless if you say, "The voters may enact laws by the initiative and may vote upon referred laws according" to such procedures as may be established by the legislature. We have spelled the procedures out at length. The same thing must be done in the case of recall if it is to be effective. I would like to refer to the Hawaiian Manual in which you will find that out of twelve states that authorize the recall, ten provide for the procedure. Also, in those ten the grounds for the recall are left to the statement of the petitioners as is provided here in the second sentence which says that, "The petition shall contain a statement in not more than two hundred words of the grounds for recall." That is where the grounds will be found. The procedure as set up here, you will note, would set up a special election held within the state or the political

subdivision, as the case may be. This is so that in case a petition is filed against an official who may have another year or two or three to serve, that he can be recalled before the next general election which may be two years away. I believe that if we are to have the recall section included in this article we should adopt this amendment.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, I would like to direct a question to Mr. Fischer, if I may. Mr. Fischer, when you proposed your amendment yesterday which was passed today, deleting lines 5 and 6, I asked you if you did that with the understanding that line 7 would allow the legislature to prescribe the grounds for recall. As I recall, your answer was "yes". Now, if I understand correctly, you maintain that this sentence in your proposed amendment would allow the grounds to be set forth there on the further assumption that the grounds outlined would be legal grounds for recall. It seems to me that is contradictory. It seems to me the legislature can still probably prescribe the grounds for recall and that,if they can, your whole amendment is contradictory with the deletion of lines 5 and 6 because the grounds, it seems to me, are the most important factor to set forth, if you wish to spell this out.

V. FISCHER: When I rose yesterday to move the deletion of 5 and 6 I stated that I agreed with Mr. McCutcheon's remarks to the effect that the voters should be able to recall for any reason that the voters deemed proper. If I gave the impression that I felt the legislature should establish the grounds, I may have given the wrong impression. I did not fully intend that. I might say in this connection that if this amendment is adopted the last sentence should then of course be amended to read, "The legislature may then provide additional recall procedures." I feel that the grounds should be left up to the people.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, would you please look at this book I have in my hand. That is the Constitution of the State of California. It is about five times as thick as any other state constitution. It is full of legislative matters such as this long detailed procedure for recall which is now proposed as an amendment. Another reason for its length is that it has been amended some 500 times. The reason that had to be amended was because it was full of long involved procedures such as this. The only way I could vote for an amendment like this is that at the same time we abolish the legislature. Some of us forget that we were sent here to write a constitution, not to make detailed laws.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. Barr practically took the words out of my mouth. I just wanted to add that if we continue we may not have the best constitution in the United States but we will sure have the longest.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: Our trip out to the Ladd Air Force Base should have taught us a lesson, when we see one of these million dollar jets where it is modern today and outmoded tomorrow. I for one am going to vote against this amendment and leave it to the legislature.

PRESIDENT EGAN: Mr. Gray.

GRAY: I probably would agree with the process by Mr. Fischer but I look with askance at 20 per cent, 200 words within five days, 60 or 90 days. It will take us about four days to get through this recall because everyone has a different idea on the exact figure. I believe the authority for the recall is all that is necessary, and the legislature can take care of this affair. I just feel that putting through another recall will take another three or four days in this delegation. I will vote against the amendment.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I am in agreement with Mr. Fischer's amendment, most of it anyway. I seconded it. I think the arguments brought against it are valid only in part. Especially those among us here who have been legislators, we fail to grasp the sense of truth that this is an article about direct legislation. It is something that is parallel, and maybe, if you look at it the way I do, superseding in some instance the legislature. It is an article that should not be subject to the legislature. You can't harp on that enough. It is the very nature of direct legislation that it has to be described in all of its aspects in the constitution. This amendment would certainly add about 10 more lines to the constitution. It won't add 100 pages or 10 pages but 10 lines. If we want to include the whole article on direct legislation, we have spent more than 10 lines to describe the procedure for initiative and referendum. Recall is the triplicate brother of the same article. We have to give as much space and certainly as much consideration as Mr. Fischer justly said. The article actually stands and falls with the recall as much as it would have stood and fallen with the initiative and referendum. They are three integral parts and they all have the same weight and should all get the same treatment. It is not a loss of time and much less a loss of space in that constitution of ours if we take 10 more lines to include it. It is in the nature of direct legislation, that which you can spell in the constitution. That is the only recourse people have in direct legislation and it should not be subject to the

legislature, that is the fallacy involved. I strongly urge that you give this consideration.

PRESIDENT EGAN: If there is no further discussion, the question -- Mr. Fischer.

V. FISCHER: I would just again like to say that you are not giving the power of recall to the people unless you establish the procedure in this, and, if we have to put a few more words in the constitution, that is why we are writing a constitution. It is just as important here as it is in the initiative and referendum.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: I just want to say very briefly that I support this amendment. I feel that a provision of this type is necessary in our constitution. I don't think that anyone here can deny the fact that we do want to give the public some consideration in drawing up this constitution, and the object of the initiative, referendum and recall I think is to give that power to the voters. We have gone over the first two parts, and it seems to me that, if we are going to have this privilege extended to the voters, this provision here adequately covers it. I think the people are entitled to have this provision in the constitution for their own safety. I don't think it is a question of mistrusting their legislature. We have had very good men down there, and of course some of us have failed in a good many respects while we were public servants. However, we should not assume that we are going to have a perfect body of legislators all the time, and I think the people are entitled to some protection. I, therefore, support this amendment, and I think it is a good provision.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I feel there is all the difference in the words between the subjects covered in the previous sections of this article and the one on which we are now dwelling. In the case of the initiative, it is a provision whereby the people may do something that a legislature has failed to do or that a legislature has refused to do, and in that case it would not be proper to leave it to the legislature to set up the provisions. You have to have the provisions in the constitution. In the second case, the case of the referendum, it is a provision whereby the people may have their say on something they feel the legislature has done wrong and may want to override. The recall is something different, it doesn't deal with the legislature, it deals with public officials and I think it is proper, and the way to do it is to leave the procedure to the legislature. There is nothing permissive about this language. It says, "The legislature shall provide the recall procedures." I say let them do it and let them have the right to

change it from time to time to meet conditions which cannot be done if we write into the constitution a provision which I don't think is very well thought out and might require amendment in a very short time.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Fischer be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Mr. White.

WHITE: Mr. President, I have a proposed amendment to Section 6.

PRESIDENT EGAN: Can we hold the other amendment of yours, Mr. Ralph Rivers?

R. RIVERS: I consent to have it held, pending this.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as offered by Mr. White.

CHIEF CLERK: "Insert before the last line of Section 6 'Grounds for recall shall be set forth in a recall petition'."

WHITE: Mr. President, I move the adoption of the amendment and ask unanimous consent.

PRESIDENT EGAN: Mr. White moves the adoption of the proposed amendment and asks unanimous consent.

MCCUTCHEON: Objection.

WHITE: I so move.

GRAY: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. White.

WHITE: Mr. President, it appeared to me that the desirable part of the amendment as offered by Mr. Fischer was that it would allow the grounds for recall to be set forth by the people demanding the recall. As it stands now, without my proposed amendment I feel that the legislature is to prescribe the grounds for recall. In fact, with this bill we will probably have an amendment to set that forth clearly. The vital part of the recall movement it seems to me is that the people retain not only the right to recall a public official but to name the reasons for instituting such action and let the action itself stand or fall on the merits of the case. I think this logically follows removing of lines 5 and 6 as we did previously.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, the reason I was willing to have my proposed amendment withheld is that Mr. White's amendment gives us a clear-cut issue. If his language is adopted here then I will withdraw my amendment because we are to decide now whether the voters shall decide the grounds for recall to be stated in a petition or whether you wish to vote down this amendment and leave it to the legislature to prescribe the grounds for recall. I think that a good clear-cut issue is to be desired and here we have a good clear-cut issue. I am going to hold for having the legislature prescribe the grounds for recall as well as the procedures, but I approve of the way this is presented.

PRESIDENT EGAN: Mr. Riley.

RILEY: Mr. President, I am a little at sea here on one point. I can see some merit in both positions. It seems to me that the legislature may prescribe the area within which a recall may occur, that we struck lines 5 and 6 in order to leave that open to the legislature. But Mr. White's amendment calls for a petition which will state an individual case. What grounds within that area prescribed by the legislature shall apply in a particular recall? If I am on the track here I would like to suggest a two-minute recess to discuss the matter with Mr. Rivers and Mr. White to see if these matters are not readily reconciled.

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess for just two minutes. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. White.

WHITE: Mr. President, I think the two points of view as set forth in the two proposed amendments are not reconcilable. Should my amendment pass,Mr. Ralph Rivers' proposed amendment could logically also be passed, but it would limit the meaning of mine. I intend through my amendment to leave it to the people to establish the grounds, the basis of recall, be it as frivolous as it may, and let the case stand or fall on its merits. I feel that that really carries out the intent we had in striking lines 5 and 6. I feel it is not the intent of the body not to limit the grounds of recall.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I was against the elimination of lines 5 and 6 and I am also against the adoption of this amendment because I feel that it does create a nuisance value to which public officials should not be subjected. I recognize that they should be subject to recall, but I think that the grounds should be sincere and they should be. I think it is fair to

leave it to the legislature to prescribe the grounds under which a recall petition should be circulated so as to prevent circulation of recall petitions for petty grounds in local jurisdictions by some recalcitrant officer who was not elected, which I have seen happen in my own community.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, it would appear to me that a petition for a recall certainly could have no merit or stand by itself without stating some ground in it. It appears to me that the addition of these words is merely loading the constitution up with things that are not necessarily pertinent. I don't see how anyone can circulate a petition for recall unless there were substantial grounds stated in it.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: I am way behind the parade here, but did we pass an amendment adding "and grounds for recall" to the last sentence?

PRESIDENT EGAN: That was the proposed amendment that Mr. Ralph Rivers has. Mr. White.

WHITE: I am speaking for the third time, Mr. President. If there is objection I will sit down. I just wanted to point out that the last sentence will still remain, "that the legislature shall prescribe recall procedures". It does not necessarily follow that they would say that any two voters could initiate a recall petition.

PRESIDENT EGAN: If there is no further discussion, the question is, "Shall the proposed amendment as offered by Mr. White be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. We now have before us the proposed amendment as offered by Mr. Ralph Rivers. The Chief Clerk may read that proposed amendment.

CHIEF CLERK: "Line 7, page 3, strike the period and add to the end of that sentence 'and grounds for recall'."

PRESIDENT EGAN: Was that moved and seconded?

CHIEF CLERK: Yes, it was. No, it was not seconded.

R. RIVERS: Now I ask unanimous consent. I so move.

METCALF: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Is there discussion?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Is there discussion? If not, the question is, "Shall the proposed amendment as offered by Mr. Ralph Rivers be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 39 - Awes, Boswell, Coghill, Collins, Cooper, Cross, Davis, Emberg, H. Fischer, Gray, Harris, Hermann, Hilscher, Hinckel, Hurley, King, Knight, Lee, Londborg, McLaughlin, McNealy, Metcalf, Nerland, Nolan, Nordale, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, VanderLeest, Walsh, Wien, Mr. President.

Nays: 11 - Barr, V. Fischer, Johnson, Kilcher, Laws, McCutcheon, McNees, Marston, Peratrovich, Poulsen, White.

Absent: 5 - Armstrong, Buckalew, Doogan, Hellenthal, Taylor.)

CHIEF CLERK: 39 yeas, 11 nays and 5 absent.

PRESIDENT EGAN: The "ayes" have it and the proposed amendment is ordered adopted by the Convention. Are there other amendments to Proposal No. 3? Mr. Barr.

BARR: Mr. President, may I have the floor on a point of personal privilege."

PRESlDENT EGAN: Mr. Barr requests the floor on a point of personal privilege. If there is no objection, Mr. Barr.

(Mr. Barr spoke on a matter of personal privilege.)

SUNDBORG: Mr. President, I move and ask unanimous consent that we recess until 10:45 a.m.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess until 10:45 a.m. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Riley.

RILEY: Mr. President, when there are no further amendments to the first article of the proposal now before us, because there are two articles in that proposal, I should like to ask unanimous

consent that the first article be referred separately to Engrossment and Enrollment so that they may commence work on it, only because we may spend some time on the next article.

PRESIDENT EGAN: That is right, Mr. Riley, but that question came into the mind of the President and both of these articles are a part of Committee Proposal No. 3. We can't segregate them to the extent that they can be taken out of second reading until both articles are ready to go, but if the body wishes to give the first article to the Committee on Engrossment and Enrollment for the purposes that they can start working on the amendments, but it would still, if a member of the delegation offered an amendment after we consider Article 2, the article on revision and amendment, it would still be in order in second reading.

RILEY: That is my entire purpose, Mr. President. I wish simply to ask a suspension of the rules in order to start the process in Engrossment and Enrollment with that understanding.

PRESIDENT EGAN: That does not preclude the further amendment of the article on initiative and referendum if, after we have considered Article No. 2, anyone wishes to do so. In other words, someone who is strongly for the initiative and referendum might wish to offer some amendment after we get through with this second article. If there is no objection,the article will be referred to the Engrossment and Enrollment Committee under those circumstances. If there is no objection,it is so ordered. Are there further amendments? If not,we will proceed with the article on revision and amendment. Mr. Cooper.

COOPER: Mr. President, I have an amendment.

R. RIVERS: Are we taking these section by section now?

PRESIDENT EGAN: We will start with Section 1.

R. RIVERS: Mr. President, I was wondering if the Clerk might not read this entire thing for us to review our minds before we start amending.

PRESIDENT EGAN: Have we had it read previously?

CHIEF CLERK: I don't recall.

PRESIDENT EGAN: The Chief Clerk may read the entire article before we start any amendments if that is the wish of the delegates.

(Clerk read article on revision and amendment.)

PRESIDENT EGAN: Are there amendments to the article on revision and amendment? Mr. Cooper.

COOPER: Mr. President, I have an amendment on the Secretary's desk to Section 1 and also Section 2 because it is tied in with the section.

PRESIDENT EGAN: The Chief Clerk may proceed with the reading of the amendment.

CHIEF CLERK: "Strike Section 1 in its entirety and insert in lieu thereof a new Section 1: 'Revisions of this constitution may be adopted by a two-thirds affirmative vote of two successive legislatures, a constitutional convention, or by a three fourths affirmative vote of the legislature. Amendments to this constitution may be adopted by the affirmative vote of three-fifths of all votes cast by qualified voters, voting on such amendment'." "Section 2,line 5, delete 'two-thirds' and insert 'three-fourths'." "Section 2, line 9, after the word 'a' before 'majority' insert 'three-fifths'.

COOPER: I move the adoption of this amendment.

HELLENTHAL: I object.

COGHILL: I second the motion.

PRESIDENT EGAN: Mr. Coghill seconds the motion. Mr. Cooper.

COOPER: Mr. President, I have this in mind. It should not be so easy as outlined in this article at present to amend or revise the constitution. We have been told we were doing a good job with it. I felt quite sure when the constitution leaves this Convention and goes to the people it will be good. The revisions of the constitution as provided in Section 1 says, "may be adopted by two succeeding legislatures, or be proposed by constitutional convention or by the legislature." It does not make itself clear. My amendment would be revisions of the constitution may be adopted by a two-thirds vote of two successive legislatures, a constitutional convention, or by a three-fourths affirmative vote of a legislature. The amendments to the constitution which would be voted on by the people would be by a three-fifths majority of all votes cast in the affirmative for such an amendment. In Section 2, line 5, is merely inserting the fractions as outlined in Section 1.

PRESIDENT EGAN: Mr. Smith.

SMITH: I would like to point out that,under Section 1 as outlined here, it is not possible for one legislature to amend the constitution. It is only possible for them to propose amendment and then submit that to the people, and it provides further for amendment by constitutional convention. It is not possible for one legislature to amend the constitution.

PRESIDENT EGAN: Is there further discussion? Mr. Ralph Rivers.

R. RIVERS: Mr. President, I would like to ask a question of perhaps someone on the Committee. Does Section 1 as now written mean that the amendments can be adopted by the two succeeding legislatures without any referral to the people?

SMITH: Mr. President, I am certain that that is the intent of Section 1 that an amendment may be adopted if it is proposed by one legislature and approved by the second legislature.

PRESIDENT EGAN: Mr. Ralph Rivers, was your question there relating to the clarity of the wording even if that section were adopted as it is?

R. RIVERS: If we kept it the way it was, Section 2 says that, "Any legislature may by a two-thirds vote of each house propose amendments to the constitution." And those proposed amendments may be submitted by ballot title to the voters. That, of course, would be a different procedure than Section 1 which merely says that two legislatures may amend the constitution. But the thing is that it does not seem to register clearly that these are alternative methods. You have got to stop and start analyzing to see just what they mean. Now then on line 12 it says," Proposed amendments may be submitted to the next legislature . That would mean the proposals set forth in Section 2 I suppose. Up here it says the revision in Section 1, "Revisions of or amendments to this constitution may be adopted by two succeeding legislatures, or be proposed by constitutional convention." The only way you can get a constitutional convention, as set forth on the second line of Section 3, is that the legislature may provide for a constitutional convention.

PRESIDENT EGAN: Can anyone on the Committee answer that? Mr. Marston.

MARSTON: It is clear. We went over it for three weeks. The experts were in there. We adopted from previous states the program, the language is clear. There are two ways of amending the constitution. It is clear as can be, and I don't believe that we can in quick judgment charge in and make it better. I think snap judgment has gone far enough on this thing. I think this should be taken seriously as it is. There are two ways to amend the constitution, by two succeeding legislatures or by request of the legislature for amendment. It is clear and concise and this snap judgment of waiting time to write a new amendment, it is clear.

PRESIDENT EGAN: If the Chair understood correctly, Mr. Ralph Rivers' question was not dealing with the intent of the Committee, it was in dealing with the actual wording as it appears here, whether or not it does in effect do the things that you think it will do.

R. RIVERS: Yes, exactly. I have no quarrel with what is in

here. But what the intent is, I can't quite understand it.

MARSTON: That is the decision of the experts and that is the way they passed on it.

R. RIVERS: Maybe they were so expert that they don't write it so ordinary people can understand it.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. Rivers made the remark that up here in this section, "proposed by constitutional convention", then he said that only the legislature can do that. The first sentence in Section 3 states that, "The legislature may provide for constitutional conventions."

R. RIVERS: When they speak of amendments being proposed by constitutional convention, constitutional conventions do the amending, they don't propose amendments.

HERMANN: They have to be ratified.

R. RIVERS: That is more than a proposition though.

BARR: I don't have the floor but I would like to answer that. I think they're using that language, proposed, in reference to a proposal. Everything we put in here is a proposal. We proposed.

R. RIVERS: That is the trouble. We think we mean something but we have not said so.

PRESIDENT EGAN: We have before us Mr. Cooper's proposed amendment. The question is, "Shall the proposed amendment as offered by Mr. Cooper be adopted by the Convention?" Mr. Victor Rivers.

V. RIVERS: I request a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 5 - Coghill, Cooper, Kilcher, Reader, Rosswog.

Nays: 45 - Awes, Barr, Boswell, Collins, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hermann, Hinckel, Hurley, Johnson, King, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Riley, R. Rivers, V. Rivers, Robertson, Smith, Stewart, Sundborg, Sweeney, VanderLeest, Walsh, White, Wien, Mr. President.

Absent: 5 - Armstrong, Buckalew, Hellenthal, Hilscher, Taylor.)

CHIEF CLERK: 5 yeas, 45 nays and 5 absent.

PRESIDENT EGAN: The "nays" have it and the proposed amendment has failed of adoption. Are there other amendments to the article on revision and amendment? Mr. Hurley.

HURLEY: Mr. President, I have an amendment.

PRESIDENT EGAN: You may submit your amendment. Mr. Johnson.

JOHNSON: Mr. President, I also have an amendment on the Secretary's desk.

PRESIDENT EGAN: Mr. Hurley had been recognized and Mr. Johnson's amendment can come after Mr. Hurley's. I am sorry, Mr. Johnson.

CHIEF CLERK: "Section 1, lines 2 and 3, strike 'adopted by two succeeding legislatures, or be', and change 'proposed' to 'adopted' and add 'proposed' after 'or'.

PRESIDENT EGAN: Read that again.

CHIEF CLERK: "Section 1, lines 2 and 3, strike 'adopted by two succeeding legislatures, or be', and change 'proposed' to 'adopted' and add 'proposed' after 'or'". And then Section 2" -- is that a separate amendment?

HURLEY: No, they are together.

CHIEF CLERK: "Section 2, strike lines 12, 13, 14, 15 and 16."

PRESIDENT EGAN: The Chair will hold that we will have to act upon that as being the amendment. If Mr. Hurley proposes to move that, he should move on that as an amendment in its own right.

HURLEY: The last paragraph in Section 2 is surplus verbiage, it refers to something I propose to eliminate.

PRESIDENT EGAN: If there is no objection you might include it, if there is no objection you can include the whole thing in your motion.

HURLEY: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Hurley moves the adoption of the proposed motion as read.

HARRIS: I second the motion.

COGHILL: Through the Chair, Mr. President, I would like to ask a question of Mr. Hurley.

PRESIDENT EGAN: Mr. Coghill, if there is no objection, you may ask your question.

COGHILL: In the language therefore set, the constitutional convention would not have to have ratification of amendments by the people, is that correct? Under the language that you have now set, it would not be necessary?

HURLEY: Perhaps I too hurriedly changed the word "proposed" to "adopted". There was some discussion on that. My thought was that the constitutional convention would be submitted to the voters. If I changed that, I certainly did not intend to. It was pointed out a little different between proposing a constitutional convention and the convention actually proposing amendments which will be submitted to the people. It was my intention that anything be submitted to the people for referendum, but, if I did it wrong, I regret it and I'll change it.

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess for a minute to decide that.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Hinckel.

HINCKEL: I rise to a point of personal privilege.

PRESIDENT EGAN: Your point of personal privilege, Mr. Hinckel. If there is no objection, you have the floor on personal privilege.

(Mr. Hinckel spoke on a matter of personal privilege.)

DAVIS: Mr. President, may I ask Mr. Hinckel a question?

PRESIDENT EGAN: If there is no objection, Mr. Davis.

DAVIS: I am wondering if Section 1 adds anything at all. Actually, is not everything in Section 1 covered completely by Sections 2 and 3?

PRESIDENT EGAN: Mr. Hinckel, do you care to answer that question?

HINCKEL: I would have to take another look at it to answer that intelligently. The object of Section 1 of course was the statement of the intent and the other sections went into the procedures.

DAVIS: It seems to me that Section 1 is a summary of the whole proposal and Sections 2 and 3 spell it out. If that is the case, it seems to me Section 1 is probably a surplus.

HINCKEL: That may be correct in your opinion, sir. However, it seems to me that most of the articles start out with the intent.

AWES: May I comment that I not only agree with Mr. Davis, but that I found it confusing, and I read it several times to find out what the purpose of it was other than to summarize the later propositions. I found it definitely confusing.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: I am inclined to agree with Mr. Hinckel that Section 1 could be eliminated by Style and Drafting if the Committee felt that all the intent was fully stated in the remainder of the sections, and,if I may go on, I think that in some ways the most important thing right now is to find out the intent of the Committee and,if I may, I would like to point out something and ask a question for guidance of the Committee. The way Section 1 reads now, it states that, "Revisions of or amendments to this constitution may be adopted by two succeeding legislatures." There is a big difference between revisions, which implies rewriting the constitution, and making amendments to specific articles or sections of the constitution. In talking to a few of the members of the Committee during the short recess, it appears that the Committee has in mind that revisions be undertaken by constitutional conventions and be adopted by vote of the people rather than by the legislature itself, and I just would like to have confirmation from one or more members of the Committee.

HINCKEL: We discussed that in Committee and we felt that if two separate legislative bodies agreed on the change or revision that it should be adequate, but we did not want one single legislature to make a change of that nature. If two succeeding separate legislatures concurred,we felt that probably that would be satisfactory.

V. FISCHER: If I may continue to ask a question, Mr. Hinckel, is it your intention then that the legislature be authorized in two succeeding sessions to sit as this constitutional convention here and revise the whole constitution from beginning to the end?

HINCKEL: I don't think there is any legislature that would even attempt to do such a thing. They would not want to assume the responsibility and it was not our intention that they do that. I don't think that they would ever try it.

V. FISCHER: Was it your intention that the legislature could

rewrite the whole constitution by the process of revision and submit a completely revised constitution to the voters for adoption or should that process go through constitutional convention?

HINCKEL: As far as I personally am concerned, my personal opinion is that the legislature should not do that and I don't think it was our intent that they be permitted to. If we discussed it at all, as I state, I think we probably figured that they would call a convention for such a purpose.

V. FISCHER: That was my impression of the intent of the Committee.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. Hurley's amendment, or proposed amendment, poses a real question of substance, not just one for Style and Drafting. Mr. Hurley's amendment would require action by a constitutional convention to be ratified by the people, and it would also require action by the state legislature by a two-thirds vote of both houses in two successive sessions to be ratified by the people. The way the thing is now written, the legislature could amend the constitution or revise the constitution by action of two successive sessions without submitting it to the people. So we have more than a matter of Style and Drafting here. I think this body has got to take the responsibility of making these basic substantive decisions, but I for one, if we don't run too late here, would like to meet with the standing committee and various others that are particularly interested and have a conference during the noon hour with the standing committee and perhaps we could all come up with something that would be helpful.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I agree that Mr. Hurley's intention is a matter of substance, something that the Convention is going to have to decide,but it seems to me we are going after it backwards. The substance of his amendment is his motion to strike the last paragraph of Section 2. Since I think it is pretty generally agreed that Section 1 is merely a matter of statement of intent, we could actually drop that whole section without hurting what we're doing, and therefore to move now to amend Section 1 is not getting anywhere. What we are really after here is finding out whether the Convention wants to allow the constitution to be amended by the legislature or not. I wonder if Mr. Hurley or the Chair would object to passing on his motion to strike which is the substance of what we are after here. You see his motion is a two-barrelled motion, it is a motion to strike the last paragraph of Section 2. Now if that should pass, then there is no use of worrying about the wording of Section 1 because it is completely surplus verbiage

or would follow as a matter of course, but what we want to do is to find out whether the group does or does not agree that the constitution can be amended by the legislature.

PRESIDENT EGAN: Your suggestion is that Mr. Hurley's proposed amendment be amended to not say anything about Section 1, is that right, Mr. Davis?

DAVIS: I thought we might pass on the portion of his amendment that had to do with Section 2 first.

PRESIDENT EGAN: Is that in line with your desire, Mr. Hurley?

HURLEY: It would be quite adequate with me if we divide the question into two parts. Vote first on the amendment to Section 2. If the second part carries Section 1 will not be applicable, and then we can either strike it or amend it.

PRESIDENT EGAN: Mr. Hurley asks unanimous consent that his original motion be divided in two parts and that the Convention act first on that.

HURLEY: In order to make it more simple, I will ask that my amendment be amended by striking the reference to Section 1.

PRESIDENT EGAN: If there is no objection, Mr. Hurley asks unanimous consent that his amendment be amended by striking all reference to Section 1. Is there objection?

HINCKEL: I object.

V. RIVERS: I second the motion.

HURLEY: I so move.

PRESIDENT EGAN: It has been moved and seconded that Mr. Hurley's proposed amendment be amended by striking all reference to Section 1. The question is open for discussion. Mr. Hinckel.

HINCKEL: As I stated before, the object is to save the state expenses. If they have a proposed amendment that is urgent and is worthwhile, it can be handled in a manner that is not going to cost the state a lot of money. If you want to spend the money for special elections, you can.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I feel that it is basic that a constitution is a charter handed down by the people.

HURLEY: I rise to a point of order. We are speaking now on the amendment to the amendment. If we are going to speak on the original amendment I would like to have something to say

about it, but the amendment to the amendment is simply to strike this thing and vote on one thing at a time.

PRESIDENT EGAN: Of course in determining just whether a person is in the proper latitude, Mr. Hurley, it might include reference to what the meat of the original amendment was.

HURLEY: I withdraw my point of order.

PRESIDENT EGAN: Mr. Riley.

RlLEY: If I understand Mr. Hurley's present suggestion, the pending one, there is a little misunderstanding in that Mr. Hinckel's comments I don't believe are responsive. Mr. Hurley seeks only to strike his reference to Section 1, he does not seek to strike Section 1 in the pending amendment.

PRESIDENT EGAN: That is correct, Mr. Hinckel. If the Chair did not make that clear, Mr. Hurley is not attempting to delete Section 1. He is striking the reference that he originally made to Section 1, asking that that be stricken from his proposed amendment. Section 1 will remain as it is if this amendment is adopted.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall Mr. Hurley's proposed amendment to the amendment be adopted by the Convention? All those in favor of the adoption of"the"proposed amendment to the amendment will signify by saying aye , all opposed by saying "no". The "ayes have it and the proposed amendment to the amendment is adopted. Mr. Hurley.

HURLEY: Mr. President, I would just like to give my reasons for proposing the amendment now before us. That is that both myself and the people who attended the hearings which I held felt that any amendment to the constitution should be submitted to a referendum by the people. I recognize that it would be cheaper, by the cost of a ballot at any rate,for the two successive legislatures to amend the constitution, but I think it is somewhat contrary to the general methods of amending constitutions, and I have felt sometimes it would be better to take this matter up of amending the constitution after we have finished the constitution. When we get through I might be quite happy to have two legislatures amend it, but at the present time I think I would prefer to have any proposed amendment to the constitution submitted to the people for the referendum and that is the reason I proposed the amendment.

PRESIDENT EGAN: Is there further discussion? Mr. McCutcheon.

MCCUTCHEON: Mr. President, I feel inclined to support the matter as it stands rather than by amendment to strike out the proposition

of the two legislatures. I feel that some of our group here are a little too suspicious of the legislators. If we will think in terms of the number of people who must be elected to the legislature in order to change the constitution, I think we will be a little less suspicious. It will actually require 110 different people to be elected at large over the Territory in order to change the constitution because it must be submitted to one, assuming that we have a total legislature of 60, then we elect in the next legislature 50, it will be a total of 110 people. That certainly should be a cross section and representation of the whole population of Alaska, and I can't see why two legislatures, if they are in accord by two-thirds, why that shouldn't be sufficient protection for the public.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Many other issues will be before the people when they are considering what men they should elect to their legislature. They will not be thinking primarily of the proposed amendment to the constitution. I feel strongly that the constitution of the State of Alaska should be amended, if at all.only by the people directly, and that their ratification be secured by their own votes and not through electing some man to the legislature whenever an amendment is proposed. So I favor Mr. Hurley's amendment.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, as we all know from the studies we have made, you have to tread a middle ground on amending constitutions. You must not make it so hard that they cannot be amended when amendment is necessary. You must not make it so easy that they can be amended at the whim of any particular segment of the population. It seems to me that the Committee here has done a good job. They have set up three alternative methods for amending the constitution. I am going to propose an amendment on the amount of votes that it will be necessary to carry an amendment in the event it is submitted to the people, but,so far as the methods, I like the way they have set it up.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, it is my opinion here we are, in this amendment, voting on whether we wish to adopt the method of amendment by the legislature, whether it's two, three or four successive legislatures, this does not particularly matter to me. I feel that this being supreme, the charter or law, should be an instrument of the people and they and they alone delegate power to the governing bodies. I do not feel that the legislative power should extend to an ability to change the constitution, no matter how many successive legislatures it may go to. This is a principle that we in this body must decide on. However, in the course of the morning I have heard a number of

incidents brought up that we are being too detailed in our amendments. That is the democratic process and that is the right of every member on this floor and I will defend that right. However, this is a matter that I feel should be given careful consideration. I don't think that we should delegate the supreme power to the legislature to alter the document by which they themselves are constituted and they themselves are governed.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: It was the thought of the Committee, I think, that it is going to be quite difficult for the legislature to amend the constitution by the first method. The first legislature by majority proposes, and the second by two-thirds majority adopts, and it seems to me the odds of a second entirely different group of men that are elected adopting the method by a two-thirds majority would be almost as great as winning the ice pool, and it seems to me that if the need was great enough and a two-thirds could be gotten together, a two-thirds majority, it seems to me it would be a good amendment. Just remember we are living in a jet age, and, as suggested by Mr. Rivers, if you are going to take nine or ten months to put all this before the people, you may need this done quickly, and I think a two-thirds majority is a safe check and balance.

PRESIDENT EGAN: Is there further discussion? If not, the question is, "Shall the proposed amendment as amended and offered by Mr. Hurley be adopted by the Convention?" Mr. Victor Rivers.

V. RIVERS: I would like to see a roll call on this issue, Mr. President.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Amendment to Section 2, strike lines 12, 13, 14, 15 and 16."

PRESIDENT EGAN: The question is, "Shall the proposed amendment as amended be adopted by the Convention?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 33 - Barr, Boswell, Coghill, Cooper, H. Fischer, Gray, Harris, Hilscher, Hurley, Johnson, Kilcher, Knight, Laws, Lee, Londborg, McNealy, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Smith, Stewart, Sundborg, Sweeney, VanderLeest, Walsh, White, Mr. President.

Nays: 18 - Awes, Collins, Cross, Davis, Doogan, Emberg, V. Fischer, Hermann, Hinckel, King, McCutcheon, McLaughlin. McNees, Marston, Metcalf, Nolan, Rosswog, Wien.

Absent: 4 - Armstrong, Buckalew, Hellenthal, Taylor.)

CHIEF CLERK: 33 yeas, 18 nays and 4 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment is ordered adopted by the Convention. Mr. Johnson.

JOHNSON: Mr. President, I have an amendment on the Secretary's desk.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as offered by Mr. Johnson. Mr. Ralph Rivers.

R. RIVERS: Mr. President, I have one to offer.

CHIEF CLERK: "Section 2, line 7, page 1, strike the word 'may' and insert the word 'shall'."

JOHNSON: Mr. President, I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Johnson moves the adoption of the proposed amendment.

ROBERTSON: I second the motion.

R. RIVERS: I ask unanimous consent.

PRESIDENT EGAN: Mr. Ralph Rivers asks unanimous consent that the proposed amendment be adopted. Is there objection? Hearing no objection it is so ordered and the proposed amendment is adopted. Are there other amendments? Does Mr. Ralph Rivers have an amendment on the Chief Clerk's desk?

CHIEF CLERK: Yes.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Section 1, strike Section 1 and substitute the following new Section 1: 'Revisions of or amendments to this constitution may be adopted by the legislature or by constitutional convention as hereinafter authorized subject to ratification by the people.'"

R. RIVERS: I move the adoption of that amendment.

HURLEY: I second the motion.

PRESlDENT EGAN: It has been moved and seconded that the proposed

amendment by Mr. Ralph Rivers be adopted. Mr. Ralph Rivers.

R. RIVERS: I won't even ask unanimous consent. Mr. President, this motion is made in conformity with the action we have already taken, that whatever amending is done must be subjected to ratification by the people. It is also made out of respect to the standing committee and the desire of the standing committee that there be an expression of intention as Article 1. The way this would read is that, "Revisions of or amendments to this constitution may be adopted by the legislature or by constitutional convention as hereinafter authorized subject; to ratification by the people." Now I have used the words "adopted by the legislature", and that deals with the voting procedure in any case. Now, you don't want to have to call a constitutional convention every time you want to amend something necessarily. Perhaps the legislature is confronted with an important point, and everybody is generally agreed that there should be an amendment. Nevertheless, if the legislature takes that type of action it is still subject to the ratification by the people. I have used the word "adopted" because what the people ratify is not just something that has been proposed, but what the people ratify is something that has been adopted subject to ratification. The same thing is true of a constitutional convention. The convention does not just propose something, the constitutional convention adopts it but subject to confirmation or ratification by the people. Accordingly, the expression of intention, if this motion is carried, would simply be that our constitution may be revised or amended either by the legislature or by constitutional convention as hereinafter authorized subject to ratification by the people. Now that is clear, and it preserves the intention of our standing committee that they should have an expression of intent as Section 1.

PRESIDENT EGAN: You ask unanimous consent?

R. RIVERS: Now I ask for unanimous consent.

MCCUTCHEON: I object. I think the heart has been stricken from the very authority of it here. I don't see how on one hand he bows down now to the committee by trying to make some amends by adding a bunch of verbiage in the front of it. As far as I can see, just strike Section 1 and be done with it. Section 2 is absolutely plain as far as its intent is concerned. Why do you have to say the same thing twice?

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I will close then. He says Section 2 is absolutely plain. It says,' "Proposed amendments shall be submitted by ballot title. This does not state in so many words how the amendment is adopted. It imports that the people are adopting the amendment. It does not stack up too well unless we do preserve some expression in Section 1, I think.

PRESIDENT EGAN: The question is, "Shall the amendment as proposed by Mr. Ralph Rivers be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 38 - Awes, Boswell, Coghill, Collins, Cross, Davis, Emberg, H. Fischer, Gray, Harris, Hermann, Hilscher, Hinckel, Hurley, Johnson, King, Knight, Laws, Lee, Londborg, Marston, Metcalf, Nerland, Nordale, Peratrovich, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, VanderLeest, Walsh, Wien, Mr. President.

Nays: 13 - Barr, Cooper, Doogan, V. Fischer, Kilcher, McCutcheon, McLaughlin, McNealy, McNees, Nolan, Poulsen, Reader, White.

Absent: 4 - Armstrong, Buckalew, Hellenthal, Taylor.)

CHIEF CLERK: 38 yeas, 13 nays and 4 absent.

PRESIDENT EGAN: The "ayes" have it and the proposed amendment is ordered adopted. Mr. Johnson.

JOHNSON: Mr. President, if further amendments are in order to Section 2, I would like to suggest that in view of the action by the Convention in adopting the amendment just now and in view of Mr. Rivers' explanation of the meaning of the word "adopted", then, perhaps in the lines 10 and 11 in Section 2 on page 1, rather in line 10 where the word "adoption" appears, we ought to"put in the word "ratification" and,in line 11 where the word "adopted" appears, the word "ratified" should be substituted, and I move that the section be amended in line 10 to strike the word "adoption" and insert the word "ratification", and also in line 11 to strike the word "adopted" and insert the word "ratified".

PRESIDENT EGAN: You move the adoption?

JOHNSON: I move the adoption of the amendment.

R. RIVERS: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Victor Rivers.

V. RIVERS: There is a question I would like to ask Mr. Johnson. Would it be advisable to change the last word "adopted" to "ratified"? Would it not be better to say "the amendment is adopted"?

JOHNSON: Following out the argument as advanced by Mr. Ralph Rivers, it occurs to me that the word should be changed to "ratified" since the word "adopted" signifies action by the legislature or the constitutional convention and that that action would subsequently be ratified by the people in a vote. I think the word "ratified" should be substituted for the word "adopted".

KILCHER: May I address a question to Mr. Johnson?

PRESIDENT EGAN: If there is no objection, Mr. Kilcher, you may address the question.

KILCHER: Should you not possibly consider in following the logic of Mr. Rivers' statement to substitute in line 6 the word "adopt" for "propose", and in line 7 the word "adopted" for "proposed"? In other words,if the popular vote ratifies, then the legislature has adopted something that has to be ratified not just proposed.

JOHNSON: That is a little outside my amendment then.

KILCHER: If we change the one we should change the whole sequence of it. I can see that a committee in the legislature would propose, and the legislature would adopt it, and then people would ratify. There is probably where the sequence of ratified and adopted comes in. The whole thing should be switched.

PRESIDENT EGAN: It might be best to see what happens to this and then if you felt that was in order, Mr. Kilcher, you could offer an amendment.

KILCHER: I thought maybe we could save time if he wanted to possibly include it and follow it all the way through. It is the same thought.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: This amendment by Mr. Johnson and the comments by Mr. Kilcher I think have to do with what I now think is the clearly expressed opinion of the Convention on what it means by the word "adopted" and what it means by the word "ratified", and I think the intent is perfectly clear. I wonder if Mr. Johnson would consent and then we could have unanimous consent here to make the language conform and,when we get it into the Committee on Style and Drafting, make it conform with the amendment by Mr. Rivers which we have just adopted for Section 1.

JOHNSON: I have no objection to that procedure provided that is permissible under the rules. We are in second reading and the article is subject to amendment and since I believe these

matters are substance rather than form, we would not have a valid right to change it.

PRESIDENT EGAN: If you feel that way, Mr. Johnson, it would be better to go through with your amendment. Mr. Riley.

RILEY: In line with Mr. Johnson's amendment, I would wonder if he would be agreeable to language that might clean up the last sentence by striking the period after the word "election" on line 9 and continuing "a majority of the votes cast on a question shall be necessary to ratification." Just throwing that out, it is a change in construction, but I think it is a little less awkward.

JOHNSON: This I think is a matter for the Committee on Style and Drafting, once we have adopted this substance we have proposed.

PRESIDENT EGAN: Then the question is, "Shall the amendment as proposed by Mr. Johnson be adopted by the Convention?"

SUNDBORG: May I hear it read?

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment again.

CHIEF CLERK: "Line 10, strike the word 'adoption' and insert the word 'ratification' and on line 11 strike the word 'adopted' and insert the word 'ratified'."

PRESIDENT EGAN: Is there further discussion? If not, the question is, "Shall Mr. Johnson's proposed amendment be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments? Mr. Fischer.

KILCHER: There is an amendment on the board.

CHIEF CLERK: I have one to Section 2 here.

PRESIDENT EGAN: The Chair had recognized Mr. Fischer.

V. FISCHER: Mr. President, I would accede to an amendment to Section 2 although I would prefer to --

KILCHER: Mine is on 3.

V. FISCHER: Mine is on 3, but I would like to get it in prior to Mr. Kilcher's because I don't think it would affect his proposal.

R. RIVERS: Point of order. Is Mr. Kilcher's amendment on Section 2?

PRESIDENT EGAN: On Section 3. The Chief Clerk will please read Mr. Fischer's amendment.

CHIEF CLERK: What about the Section 2 amendment?

DAVIS: That is my proposed amendment.

PRESIDENT EGAN: Then it would be in order to recognize Mr. Davis, if it is to Section 2. It may be read at this time.

DAVIS: I offer a proposed amendment to Section 2. The proposed amendment is on the Clerk's desk.

PRESIDENT EGAN: Would the Chief Clerk please read the amendment as offered by Mr. Davis.

CHIEF CLERK: "Section 2, line 10, strike the words 'tallied on the question' and substitute the words 'cast at the election'." If the amendment is adopted the last sentence of the section will read as follows: "If a majority of the votes cast at the election favor the adoption of the amendment, the amendment is adopted."

PRESIDENT EGAN: What is your pleasure, Mr. Davis?

DAVIS: I move the adoption of the amendment and in making the motion would like to state that I discussed this matter with at least a majority of the members of the Committee, and I think they will have no objection to the proposed amendment. The purpose for the amendment is that I think it is common knowledge that when propositions are on a ballot many people do not vote for propositions that do vote at the election. I think it would be entirely possible as the language is written for a very small minority to carry a constitutional proposition because only a majority of those voting on the question would carry it. I would like to see that changed to a majority of those voting at the election in question.

PRESIDENT EGAN: Mr. Davis moved the adoption of the amendment. Mr. Victor Rivers.

V. RIVERS: Point of order. His statement as to how the last two lines will read, the words "adopted" have been changed to "ratified" and "ratification". I believe that his amendment should so read for the record.

PRESIDENT EGAN: Are you seeking to change those words back again, Mr. Davis?

DAVIS: No, my amendment was in before the last amendment was adopted.

PRESIDENT EGAN: Do you wish that those words be changed in your amendment?

CHIEF CLERK: That is not part of the amendment. That is just a statement that he had down here, how it would read. Does that satisfy your inquiry, Mr. Rivers?

JOHNSON: I ask unanimous consent.

R. RIVERS: I object.

RILEY: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Ralph Rivers.

R. RIVERS: Mr. President, you are going to have these ratification elections take place at a general election, and of course there may be more people vote on the general ballot than actually ballot on the special proposition, on the separate ballot for ratifying a constitutional amendment, but every voter is going to have that separate ballot handed to him, and I think the bulk of the people voting are going to cast their vote on that special ballot. I think that the people that take the trouble to do the thinking, to decide how they are going to cast their ballot on a constitutional amendment, are the people whose ballots should be counted, and the majority of those votes are the ones that should govern. If you take a few hundred additional people who did not even cast a ballot on the business of ratifying our constitution and make a majority of those who did not think about or didn't even cast a ballot on it, determine what the outcome to be on a close election, I don't think you are actually regarding the citizenry who thought about it and who cast a ballot upon it. So I am opposed to Mr. Davis's proposed amendment.

PRESIDENT EGAN: Is there further discussion? Mr. Kilcher.

KILCHER: Mr. President, if Mr. Davis's amendment should be accepted, I think it would be a discrimination against the voters that are only interested in the amendment itself. In a way I would not mind that, to have a restriction put upon the vote, but then we should also put a restriction on line 5, on the two-thirds votes of each house, we should then change it possibly to two-thirds of the votes to which each house is entitled to make sure that they are all there. That would be in the same category of the thought. In other words, not two-thirds majority of a quorum but two-thirds of what each house is entitled to. But I am willing to forego that amendment if Mr. Davis's amendment is defeated, which I suggest should be done.

PRESIDENT EGAN: Mr. Gray.

GRAY: I favor the amendment. In changing the constitution which is the will of the people, I think there should be no question about a clear majority. In a great many cases, people who are satisfied with conditions do not vote, but those people who are for the change will vote. It may not be so much a matter of a lack of interest, it may be that they are acceptable, and the ones who desire the change are the ones who are going to get out to vote. But basically it is the principle of the thing, let's establish a clear majority, let's not have a minority of the electors change the constitution. I am in favor of the amendment.

PRESIDENT EGAN: Mr. Victor Fischer.

V. FISCHER: I am opposed to the amendment, Mr. President. I think the Committee certainly seems to have had in mind that those who are interested in the constitutional amendments, one way or the other, should be the ones to make the decision, and that the Committee recommendation is not something made they thought out, it is the practice in 34 states. Only nine states require a majority of those voting at the election. Thirty-four require a majority of those voting on a specific amendment.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Mr. Chairman, I believe the changes or the amendments to the constitution should be well thought out, and I would like to see a majority voting for it. I would hate to see amendments or changes made by a minority vote.

PRESIDENT EGAN: Mr. Marston.

MARSTON: We have a hard time getting people out to vote. If they are there, I don't think that the people who have a proposition on the ballot should have to carry a lot of dead wood. I think it is a fair proposition that the people express themselves. They are there at the voting booth, they have that proposition. If they are not interested enough to vote on it one way or the other, then there should not be a penalty to those who are out working. I am going to vote against it.

PRESIDENT EGAN: Mr. Hinckel.

HINCKEL: I think I agree with Mr. Marston in substance, but I would like to state that our election laws are rather lax and if we are going to permit the people to cast a negative vote by just not voting due to the fact that they possibly cannot read or understand the proposal, why I don't see that that is very fair, and I am against this proposed amendment.

PRESIDENT EGAN: Is there further discussion? If not, the question is, "Shall the proposed amendment as offered by Mr. Davis be adopted by the Convention?" Mr. Victor Rivers.

V. RIVERS: I ask for a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll on the proposed amendment.

(The Chief Clerk called the roll with the following result:

Yeas: 25 - Awes, Barr, Boswell, Davis, Gray, Hermann, Hurley, Johnson, Laws, Londborg, McCutcheon, McNealy, McNees, Nerland, Nolan, Nordale, Poulsen, Riley, V. Rivers, Robertson, Rosswog, Sundborg, Sweeney, VanderLeest, Walsh.

Nays: 26 - Coghill, Collins, Cooper, Cross, Doogan, Emberg, H. Fischer, V. Fischer, Harris, Hilscher, Hinckel, Kilcher, King, Knight, Lee, McLaughlin, Marston, Metcalf, Peratrovich, Reader, R. Rivers, Smith, Stewart, White, Wien, Mr. President.

Absent: 4 - Armstrong, Buckalew, Hellenthal, Taylor.)

CHIEF CLERK: 25 yeas, 26 nays and 4 absent.

PRESIDENT EGAN: The "nays" have it and so the proposed amendment has failed of adoption. Mr. Sundborg.

SUNDBORG: Mr. President, I move and ask unanimous consent that we recess until 1:30 p.m.

PRESIDENT EGAN: The Chair would like to announce that the meeting of committee chairmen, the luncheon meeting, will be held in this end of the building instead of the regular luncheon room. Are there other committee announcements to be made before we recess? If not, the Convention will stand at recess until 1:30 p.m.

RECESS

PRESIDENT EGAN: The Convention will come to order. We have before us the article on the referendum. Before we proceed with this article would the Chief Clerk please read the communications that have been received.

CHIEF CLERK: A telegram from the Juneau Chamber of Commerce. (The Chief Clerk read in full the telegram congratulating the Convention on its accomplishments to date and extending best wishes for success.)

PRESIDENT EGAN: The communication will be filed.

(The Chief Clerk read in full a letter from the Honorable Clair Engle, Chairman of the Committee on Interior and Insular Affairs of the United States House of Representatives, commending

the Convention on the necessary and important work being done, extending good wishes and sincere and vigorous support toward the final objective, statehood for Alaska.,

PRESIDENT EGAN: The communication will be filed. Mr. Rosswog.

ROSSWOG: Mr. Chairman, before proceeding, I would like to refer to committee announcements.

PRESIDENT EGAN: If there is no objection, Mr. Rosswog, the Convention will refer to committee announcements.

ROSSWOG: For the Committee on Local Government, I would like to again ask that if any of the delegates have suggestions for us that they give them to us at the finish of this session and we will have a meeting of the Local Government Committee tonight. at 8 o'clock at Apartment 19, in the Alaskan Inn.

PRESIDENT EGAN: You have heard Mr. Rosswog's announcement. If there are any suggestions for the Local Government Committee, he would like to have them at the earliest possible time. Mr. Smith.

SMITH: I merely wanted to make the same suggestion, that anyone who has suggested amendments to the resources article, I would like to have them and the Committee will meet this evening at 7:30. They will meet in the lobby of the Northward Building at the meeting place to be named later. The object in meeting in the lobby is to have a central place to meet and then we will have to determine where the meeting is to be held.

PRESIDENT EGAN: You will get your committee members together at 7:30 in the lobby of the Northward Building?

SMITH: That is right.

PRESIDENT EGAN: Does anybody else have an announcement? Are there other committee announcements? If not, we will proceed with the amending of the article on revision and amendment. Mr. Kilcher.

KILCHER: There is an amendment on the desk of the Chief Clerk.

PRESIDENT EGAN: Would the Chief Clerk please read the amendment as proposed by Mr. Kilcher?

CHIEF CLERK: "Page 1, line 18, strike the word 'if' and all that follows in the first paragraph of Section 3 through line 3 on page 2, and substitute the following: 'After the lapse of fifteen years during which a constitutional convention has not been convened, delegates to a constitutional convention shall be elected at the next regular election.'"

PRESIDENT EGAN: What is your pleasure, Mr. Kilcher?

KILCHER: I move that the amendment be adopted.

PRESIDENT EGAN: Mr. Kilcher moves that the proposed amendment be adopted.

HERMANN: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Ralph Rivers .

R. RIVERS: I would like to hear Mr. Kilcher's approach and thinking on this.

KILCHER: I think that we have an amendment here that will surely be in the spirit of a simple constitution in as far as we are saving possibly eight lines in the present proposal, and in the first sentence of Section 3 has given the legislature wide and not specifically defined powers to arrange for a constitutional convention. The legislature may provide for a constitutional convention as they see fit, but if no constitutional convention has been held during a period of 15 or 20 years (that can be amendable) if none has been held then there shall be one, and the last paragraph of Section 3 will be retained in whole and explained in what way this convention should come about unless provided differently by the legislature.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I would like to rise to a point of information. Mr. Kilcher, what would be the reason of just arbitrarily calling a convention, a constitutional convention, unless there was some decided need for it, some public clamor or the legislature certified that there should be a convention called? Why would you call a constitutional convention where there is no apparent need for it?

KILCHER: I have, after speaking the matter over with a number of people, delegates and others, I have come to the conclusion and I for one am certain that in, let's say 15 years, we will have a need for a convention, and whether this convention will last a week, and I hope it might only, or whether there is a need to have it last a month, which only the future will show, I am convinced that there will be some need for a convention at that time. If we have a certainty, a guarantee of having one in 15 years, I think we would expedite a lot of matters in this Convention here. We will feel much less equitable in accepting small compromises, in not haggling over little things and small matters, and we possibly will also save time in the future. For instance, I could foresee within 9, 10 or 11 years after attainment of statehood, there might be some need for an amendment and a slight need for revision. There might be several such

needs for amendment, and they would all be tabled for that convention that will happen no matter how, in 15 years. Instead of having, for instance, four or five or six referendums or amendments for the approval and lengthy legislative debate and arguments, we could refer these matters equitably to the future. I could even see where a thing that seems very important in nine or ten years from now, if it is referred to that convention that is going to happen anyway in 15 years, maybe three years later the need may have changed or is less important, but certainly we can bunch together a small batch of amendments, maybe a lot of important amendments, maybe that in the future are going to bring up. I am convinced that at least the first time in 15 years we will have a good use for the convention, if at that time after having practiced statehood for 15 years and after having had a lot of experience that points to the contrary, if at that time we decide we will not have it repetitious from there on, that could maybe be one of the articles that we change at that time. I would like to have a guaranteed whack at it in 15 years.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: It would appear to me that under this Section 3 as it exists here there is a guaranteed whack at it, and it may not take 15 years.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I would like to ask a question of Mr. Kilcher. The way this is written here this would give us a constitutional convention every 15 years until it was repealed, if they had not had a constitutional convention within that period. In a course of 150 years it would automatically call for 10 constitutional conventions if it was not repealed. Is that right?

KILCHER: That is right. If the need will not occur any more I would expect it to be repealed, so this is rather an academic question. To answer Mr. McCutcheon's question which I think it was, that Section 3 already contains a guarantee of even less than 15 years, I did not want to make my amendment 10 years because there is a greater demand in there on the electorate. Ten years of experience is not enough for a convention, I think, but the automatic convention provision and the automatic referendum for a convention is, in substance, very different. As history has shown in the case of the New York Constitution, where they have a 20-year automatic referendum if I am not mistaken, history has shown there that when the time approaches that the referendum is due, there will for one thing, the people at that time are made tax or budget conscious. We can assume that if changes should be in the wind that are essentially not in the interests of those powers that have it in their hands to handle the referendum, if changes are in the coming that are in the middle to people interested in the status quo, and

as a rule those people of those that hold the actual political power, then they will find ways and means of advising against it. I trust the electorate, if they are given all the facts, but the choice of making all the facts available always has and always will rest with those that have access to the facts and also have the power to publicize these facts. So if a case arises where the people interested in the status quo of any sort are against a change, they will find ways and means to advise against and in such a way influence the otherwise free will of the people. The people will not have a true picture. Whereas, with this provision here, there will be a convention nohow, and I am personally convinced, and, judging by the past performance here and projecting it in the next four weeks, we will make mistakes. We will make compromises. We certainly should say there would be a great need for a first trial of this here method.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. President, I see that, since Mr. Kilcher has reversed his stand, I must now rise in defense of the people. On the beginning of this initiative proposal here, the first part of the article, Mr. Kilcher was afraid the people would not have the right to vote. I am going to have to vote against his amendment because under the present language of the proposal here it gives the people the right to vote every 10 years, and I don't think we should take the right away from the people.

PRESIDENT EGAN: Mr. Hinckel.

HINCKEL: Mr. Kilcher proposed practically the same thing in an individual proposal that was handled by the Committee, and he also addressed the Committee, and we discussed the thing thoroughly and decided against including this proposal. We just could not see that there was much sense in committing the state to the expense of a $300,000 or better convention whether we needed it or not. We felt there was plenty of opportunity in the article as we presented it to assure the people that they could have a convention if it was needed.

PRESIDENT EGAN: Mr. Barr.

BARR: I will pass, Mr. President, if we are going to vote on the question now.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I would like to reply to both Mr. McNealy's and Mr. Hinckel's arguments there. The sum of $300,000 should not be in our minds because, as I said, the need for this convention might only be for a short convention, possibly a week or 10 days, which would cut it to 50 or so thousand dollars, which would not be very much more than one or two elections. Actually, it might prove to be a saving. If we, in a short convention, can

bunch together five, six or seven referendum votes or amendments that otherwise would have to come in general elections all along, so I think the cost angle works the other way around. As far as protecting the people is concerned, I think the first sentence in Section 3 will take care of that. It still stands in there, and if they have a convention there will be no automatic convention. It will take 15 years from that. That is evident by the wording. The people can have a convention any time, the legislature can provide for one any time.

PRESIDENT EGAN: If there is no further discussion, the question is, "Shall the proposed amendment as offered by Mr. Kilcher be adopted by the Convention?" Mr. Kilcher.

KILCHER: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 10 - Emberg, V. Fischer, Harris, Hermann, Hurley, Kilcher, Londborg, McNees, Peratrovich, Poulsen.

Nays: 42 - Awes, Barr, Boswell, Coghill, Collins, Cooper, Cross, Davis, Doogan, H. Fischer, Gray, Hilscher, Hinckel, Johnson, King, Knight, Laws, Lee. McCutcheon, McLaughlin, McNealy, Marston, Metcalf, Nerland, Nolan, Nordale, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Wien, Mr. President.

Absent: 3 - Armstrong, Buckalew, Hellenthal.)

CHIEF CLERK: 10 yeas, 42 nays and 3 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption. Mr. Ralph Rivers.

R. RIVERS: I offer an amendment to Section 3.

PRESIDENT EGAN: Mr. Ralph Rivers offers an amendment to Section 3. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Page 1, Section 3, line 18, change the words, 'ten-year' to 'twenty-year'."

R. RIVERS: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Ralph Rivers moves the adoption of the

proposed amendment.

ROBERTSON: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Ralph Rivers.

R. RIVERS: Mr. President, having the governor compelled to certify the question to the public every 10 years as to whether the public wants another constitutional convention strikes me as being too frequent. We have the system here whereby the legislature can take care of specific amendments on a two-thirds vote with a ratification of the voters, and if we take care of these little snarls that come up from time to time through that process, there would not be any need for a convention at the end of 10 years, but the trouble is that when the voters go to the polls they are given the regular ballot at the general election. They are given a special referendum ballot and a lot of voters are going to think that there must be some need for it, otherwise it would not be presented to them. A lot of people are going to vote for it, and you might end up with a constitutional convention that is not needed. On the other hand, over a period of 20 years, there could be an accumulation of matters and changes of viewpoint. So I don't mind having the governor certify the question or have it on the special referendum ballot every 20 years, but I think 10 years is too close. That is why I have submitted it to change it to 20.

PRESIDENT EGAN: If there is no further discussion, the question is, "Shall the proposed amendment as offered by Mr. Ralph Rivers be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes have it and the proposed amendment has failed of adoption. Mr. Johnson.

JOHNSON: Mr. President, I have an amendment on the Secretary's desk. It is not to Section 3. It is a new section to be added.

PRESIDENT EGAN: Are there other amendments to Section 3? If not, then Mr. Johnson's proposed amendment is in order. The Chief Clerk will read the proposed amendment.

CHIEF CLERK: "New Section 4: 'No amendment to this constitution shall alter the republican form of government established by it or abolish its bill of rights.'"

JOHNSON: I move the adoption of the amendment.

GRAY: May we have it read again, Mr. Chairman?

COOPER: I second the motion.

PRESIDENT EGAN: The question is open for discussion. The Chief

Clerk will read the amendment again.

CHIEF CLERK: "New Section 4: 'No amendment to this Constitution shall alter the republican form of government established by it or abolish its bill of rights.'"

PRESIDENT EGAN: Is there discussion of the proposed amendment. Mr. Taylor.

TAYLOR: Mr. President, that is just a reiteration of what we already have got in the constitution, and it is also a reiteration of a provision of the Federal Constitution which says that we must maintain the republican form of government, so as I say that would only be a further reiteration of the Federal Constitution and what we have already got because we could not legally change the form of government from a republican form of government. I think it would just be gilding the lily.

RILL.Y: Mr. President, I would like to address a question to Mr. Johnson. I am not sure how effective this language would be unless carried to its logical conclusion that this sentence itself be preserved intact by any future amendment.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Well, Mr. President, I borrowed the section from the constitution of the government of Puerto Rico which is contained in their section on amendments and as a separate section, and I thought that it was an added safeguard that we probably had just overlooked. This constitution, I might add, has been approved by the Congress of the United States. While it may be in the sense somewhat a duplication, there is no language that I have seen anywhere in the constitution yet or any of the proposals, and certainly not in this amending process, that would prohibit a possible amendment to change our form of government from the republican form to some other form or to abolish the bill of rights, and in order to spell it out in a separate section of this kind seemed to me just an added safeguard.

PRESIDENT EGAN: Mr. Gray.

GRAY: Mr. President, there is no way that we can tell another constitutional convention that they can't change anything that we do because they have the same authority. Now, our bill of rights is a little different from the others. We can say, "You can't change our bill of rights." They may want to improve it but there is no way we can protect our own writing from future delegations. Actually, it has no place in this group.

JOHNSON: Mr. President, this amendment does not seek to prevent an amendment of the bill of rights. It simply seeks to prevent the abolishment of the bill of rights.

PRESIDENT EGAN: Mr. Stewart.

STEWART: Would it be possible for a convention to abolish the bill of rights under the Federal Constitution?

JOHNSON: I think they certainly could try it.

PRESIDENT EGAN: If there is no further discussion, the question is, "Shall the amendment as proposed by Mr. Johnson be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to the article on revision and amendment? Mr. Victor Rivers.

V. RIVERS: Mr. President, I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Page 1, Section 3, line 18, strike the words 'ten-year' and insert in lieu thereof the words 'sixteen-year'."

V. RIVERS: I move and ask unanimous consent.

MCCUTCHEON: I object.

H. FISCHER: I second the motion.

V. RIVERS: I ask for a roll call.

PRESIDENT EGAN: Would the Chief Clerk please read the amendment once more?

CHIEF CLERK: "Section 3, page 1, line 18, strike the words 'ten-year' and insert in lieu thereof the words 'sixteen-year'."

PRESIDENT EGAN: If there is no further discussion Mr. Victor Rivers.

V. RIVERS: I set the period at 16 years so it would come every fourth gubernatorial election rather than coming in the 10-year interval, if it is passed.

PRESIDENT EGAN: Mr. Barr.

BARR: As it reads now,"it would not come at the end of a 10-year period. It says, if at the end of a 10-year period if there has been no constitutional convention, then the governor shall put the question on the ballot at the next general election."

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Victor Rivers be adopted by the Convention?"

The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 20 - Boswell, H. Fischer, Harris, Johnson, Laws, Londborg, McNealy, Nerland, Nolan, Nordale, Reader, Riley, R. Rivers, V. Rivers, Robertson, Sundborg, Sweeney, Walsh, Wien, Mr. President.

Nays: 32 - Awes, Barr, Coghill, Collins, Cooper, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Hermann, Hilscher, Hinckel, Hurley, Kilcher, King, Knight, Lee, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Peratrovich, Poulsen, Rosswog, Smith, Stewart, Taylor, VanderLeest, White.

Absent: 3 - Armstrong, Buckalew, Hellenthal.)

CHIEF CLERK: 20 yeas, 32 nays and 3 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption. Are there other amendments to this article? Mr. Victor Rivers.

V. RIVERS: Mr. President, I would like to ask the Chairman of the Committee a question before we close the article. I notice that the initiative cannot be applied to the constitutional amendments by popular action. Could the members of the Committee or any member of the Committee give me the thinking of the Committee on why it was not made applicable?

PRESIDENT EGAN: Mr. Collins, could you answer the question? COLLINS: I could not hear Mr. Rivers.

V. RIVERS: I notice that the initiative is not made applicable to the amendments of the constitution. I wonder what the thinking and the reasoning of the Committee was in not allowing it to be so.

COLLINS: We considered all those questions in Committee and, as I have said, there were two lines of thought on that. We met on common ground and presented that just as the Committee decided upon, and we discussed all those questions and we had the advantage of consultants and the language in here is plain English.

V. RIVERS: I was asking for a little discussion on your Committee on that point. I know you folks discussed it but I was asking for the reasoning behind not including it. I know many states do and some don't.

COLLINS: We thought it was all covered in this.

SMITH: Mr. President, while I can't recall all of the Committee's discussion, I think that it should be clear that the right of the initiative, at least in every instance where I have seen it defined, is the right of the people to initiate and enact laws. It has no connection with the amendment to the constitutions. I feel that was the thinking of the Committee.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I am in a unique position to have a discussion of my amendment before I put it on the Secretary's desk.

PRESIDENT EGAN: If there is going to be such an amendment offered, if we're not through amending, then we will allow Mr. Kilcher to offer his amendment, Mr. Rivers, and then perhaps we will be on safer ground. Mr. Kilcher, you may offer your amendment. The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Amend Section 1, line 2, to add after the first word 'laws', the words, 'and amendments to this constitution' and add after the second word 'laws' the words, 'and amendments to this constitution'. Add a new section to be numbered Section 7 and to read as follows: 'Section 7. An initiative petition proposing a constitutional amendment shall be signed by twenty per cent of the number of votes cast for governor in the next preceding general election in which the governor was chosen. Initiative petitions proposing constitutional amendments shall be filed with the attorney general. If the proposed constitutional amendment, in substantially this form in which it was submitted, is not presented by the Legislature to the voters for their approval or rejection by the next regular session of the Legislature, the proposed constitutional amendment shall be submitted to the voters for their approval or rejection at the next general election, and be enforced, if sixty-five per cent of the votes cast are in favor of the amendment.'"

PRESIDENT EGAN: Copies of the proposed amendment are being distributed to the delegates. Mr. McCutcheon.

MCCUTCHEON: Mr. President, that appears to me to be dealing with two different subject terms inasmuch as it deals with one section and then seeks to add another. Unless the mover of this amendment will do it himself I am going to seek to divide the question.

PRESIDENT EGAN: Mr. Kilcher has not moved to adopt it.

KILCHER: I was afraid that might be necessary, but I hoped it might save time if we had it in one since the one part necessitates

the other. I just thought it would save time if we had it together.

PRESIDENT EGAN: Do you wish to offer a motion?

KILCHER: I would like to move that the amendment in its entirety be adopted.

PRESIDENT EGAN: Mr. Kilcher moves that the proposed amendment be adopted. Is there a second?

V. RIVERS: I second the motion.

TAYLOR: Question.

PRESIDENT EGAN: Is there discussion on the proposed amendment? Mr. Doogan.

DOOGAN: We are back to the beginning of this thing that we spent so much time on. Should we not finish the other, be sure we are through the amendment and revision section before we go on?

PRESIDENT EGAN: Mr. Doogan, the Chair asked whether or not there might be more amendments to the revision and amendment section and for a minute or two no one spoke. The Chair was about to state that the proposal would be assigned to the Engrossment and Enrollment Committee. Mr. Victor Rivers rose and asked a question that related to the initiative question, and the amendment is in order to be presented. Mr. Victor Rivers seconded the motion, and the proposed amendment is open for discussion. Mr. Hinckel.

HINCKEL: I would like to go back and answer Mr. Rivers' question. The Committee was very deliberate about writing this the way we did. We did not feel that the initiative should be used to propose constitutional amendments. We discussed it very thoroughly and there was no divided opinion. The Committee was unanimous, but we felt that it should not be handled that way. It would be burdensome on the state to have constitutional amendments proposed by the people, and I think there is plenty of opportunity for amendments to be effected from the article as it reads now, and I do not think it needs further amendment.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: I was confused about Section 7, where Section 7 is.

PRESIDENT EGAN: It should be the article on the initiative and referendum. The mimeographing was in error evidently.

KILCHER: It happened in the boiler room.

PRESIDENT EGAN: It should read "Amendment of Article on Initiative, Referendum and Recall, Amendment and Revision".

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Kilcher be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Committee Proposal No. 3? Mr. Sundborg.

SUNDBORG: Mr. President, I have an amendment to the article on revision and amendment.

PRESIDENT EGAN: This is to the article on revision and amendment.

CHIEF CLERK: "Section 3, page 1, line 21, after the word 'Convention' insert before the question mark the words, 'for the purpose of revising the Constitution of the State of Alaska'."

SUNDBORG: I move and ask unanimous consent for the adoption of the amendment.

PRESIDENT EGAN: Mr. Sundborg moves and asks unanimous consent for the adoption of the amendment.

DOOGAN: I object.

TAYLOR: I would like to have it read.

HERMANN: I second the motion.

PRESIDENT EGAN: The matter is open for discussion. The Chief Clerk will please read the amendment.

CHIEF CLERK: "Section 3, page 1, line 21, after the word 'Convention' insert before the question mark the words, 'for the purpose of revising the Constitution of the State of Alaska'."

PRESlDENT EGAN: The question is -- Mr. Sundborg.

SUNDBORG: The sentence then would read, "If any sixteen-year period elapses during which the legislature has not called a convention', is it "10"? Excuse me, I missed a chapter here then, "shall etc., "for the purpose of revising the Constitution of the State of Alaska". I just think it makes it clear to the people what it is they are voting for on that ballot. It seems up in the air to just say "Shall there be a constitutional convention".

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: I cannot see that at all. I cast my vote against the initiative on constitutional amendments. However, I did that because I felt that the people still could, if they wanted to, adopt a specific amendment, could vote in favor of a constitutional convention. Should the constitutional convention be limited to revision, it implies that they could not amend, and I don't think that is a proper amendment.

PRESIDENT EGAN: Is there further discussion? Mr. Doogan.

DOOGAN: I withdraw my objection.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I am a little amazed at Mr. Sundborg because I think he is putting some of those words in that he is always anxious to take out. Section 1, as I have it, states that revisions and amendments to this constitution may be made in certain ways, and it spells out that one of them is by constitutional convention. I think it already says that.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: The difference that would be brought into the matter if my amendment is adopted would be that you would not call a constitutional convention with all the attendant expense and the special elections, etc., just for the purpose of making some simple amendment. There is a process provided here for amending the constitution. It is not expensive or time-consuming, and the only purpose in calling together as many as 55 delegates, I would say, would be to go over the convention in some detail and revise its articles and study them and submit them to committees in the way we have been doing here. If some simple amendment is desired, the way to do it is by the provision that is set up in Section 2 and not by that as allowed under Section 3, as it now reads, but which I think should not be allowed and which would not be allowed if my amendment is adopted.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Point of information. Would not revision include amending, Mr. Sundborg?

SUNDBORG: It would include it, yes.

KILCHER: Why mention it?

V. RIVERS: Question.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, before I vote on this issue, I do not believe that revision includes amendment. I spent this morning after getting off into hot water and submitting an amendment without having it mimeographed and presented to the delegates, I spent a few minutes back there at that large volume called a dictionary, and revision is one thing and amendment is another, and they should be treated separately in here. Just saying revision alone is not enough.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I was not asked whether revision and amendment were identical. I was asked whether revision includes amendment and it does but they're not identical. Revision includes amendment but amendment does not include revision.

COOPER: I say it does not. Revision does not allow a change, but amendment does.

PRESIDENT EGAN: Mrs. Hermann, could you answer that question?

HERMANN: I could very well take a leaf from Mr. McLaughlin's book and say, "I am not learned on this subject." I am of the impression that you would have difficulty revising the constitution without making amendments, but I would hate to be pinned down to an absolute definition of the two terms.

PRESIDENT EGAN: Is there further discussion? Mr. Londborg?

LONDBORG: Just a point of information. May I ask Mr. Sundborg a question?

PRESIDENT EGAN: You may, Mr. Londborg.

LONDBORG: The purpose of your amendment would be to make the ballot read a little more inclusive, is that not right, so when the people read it they will know exactly that they are voting on a convention and what it is for?

SUNDBORG: Right.

LONDBORG: Rather than just throw them out a piece of paper and say, "Shall there be a convention?" It might be for some other purpose.

SUNDBORG: That's right.

LONDBORG: I think it would make a little better sense.

SUNDBORG: I think it would make better sense and I think it would make the people fully cognizant at the time they went to the polls that what they were voting for if they voted for it is a body that could completely revise their state constitution.

LONDBORG: And that it specifically refers to the constitution of the State of Alaska, they may be living under some other constitution, that is, within the state.

SUNDBORG: Of course they will be living under the Federal Constitution. This ties it right down and tells why there will be a constitutional convention.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: It seems like the amendments to this particular article lose sight of the fact that the future legislature should have something to do regarding the calling of these conventions, and, in this particular section which Mr. Sundborg is attempting to limit the constitutional convention only to revision, it would preclude you having and making an amendment during that period. I believe all revisions would be amendments but all amendments are not revisions, so I think it should be left out, and the legislature when they by a proper act provide for a constitutional convention, they are not only not going to put in a bill that says constitutional conventions will be held on such and such a date and leave it go at that, they are going to spell out a few details. Why should we tell them what the details are going to be? Leave it up to the legislature. We purposely left it that way so that the future legislatures would at least have something to say when and where and how many delegates were going to be at a convention called for the purpose of revising and amending the constitution.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: The question before us has only to do with the form of the ballot that would be submitted to the public every 10 years. Now I agree with Mr. Sundborg that you might as well give them, if you are going to pin it down in so many words, give them an adequate ballot which shows the scope and the reason for it so that the people that are voting won't be in the dark. But I do think that,inasmuch as there is some uncertainty as to whether revising includes amending, I think we should also specifically mention amendments. So I move to amend Mr. Sundborg's proposed amendment by inserting after the word "revising and amending".

PRESIDENT EGAN: Mr. Ralph Rivers moves that the proposed amendment by Mr. Sundborg be amended by inserting after the word "revising" insert the words "and amending". Is there a second to the motion?

R. RIVERS: I ask unanimous consent.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: May I address a question to Mr. Rivers? Would you consider possibly in your amendment to drop the word "constitutional" so that it would read, "Shall there be a Convention with the purpose to amend and revise the constitution?"

R. RIVERS: That is what mine would accomplish. Mine would then read "for the purpose of revising and amending the constitution of the State of Alaska".

PRESIDENT EGAN: Mr. Rivers, I wonder if it might be better if we had a one- or two-minute recess and, Mr. Sundborg, yourself and Mr. Kilcher could form

R. RIVERS: Mr. President, I would leave that to Style and Drafting, omitting the word "constitution" in line 21, it is immaterial to me. I leave that to Style and Drafting.

NORDALE: Mr. President, I would just like to say that apparently some of us have a low opinion of the intelligence of the future citizens of the State of Alaska, implying that they don't know what a constitutional convention is.

PRESIDENT EGAN: Mr. Ralph Rivers asks unanimous consent that his proposed amendment be adopted.

TAYLOR: I object.

R. RIVERS: I so move.

LONDBORG: I second the motion.

DOOGAN: May we have a two-minute recess?

PRESIDENT EGAN: If there is no objection the Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. We have before us the proposed amendment by Mr. Ralph Rivers. Mr. Sundborg.

SUNDBORG: Mr. President, I approve of Mr. Ralph Rivers' amendment and would accept it as part of my original amendment.

PRESIDENT EGAN: Is there objection to the unanimous consent request of Mr. Ralph Rivers?

TAYLOR: I object.

PRESIDENT EGAN: Objection had been heard and it was seconded, that is correct. The question is, "Shall the proposed amendment as offered by Mr. Ralph Rivers be adopted by the Convention?"

KILCHER: Would you read the amendment?

PRESIDENT EGAN: Would the Chief Clerk please read the amendment?

CHIEF CLERK: It is an amendment to the amendment. I will have to read the amendment first. "Page 1, line 21, after the word 'convention' insert before the question mark the words, 'for the purpose of revising the constitution of the State of Alaska'", and Mr. Rivers moves to insert after "revising" the words "and amending".

PRESIDENT EGAN: The question is, "shall the proposed amendment to the amendment as offered by Mr. Ralph Rivers be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no".

R. RIVERS: I ask for a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 26 - Awes, Boswell, Coghill, Cross, Davis, H. Fischer, V. Fischer, Gray, Hermann, Hinckel, Kilcher, Laws, Londborg, Nolan, Nordale, Peratrovich, Poulsen, Reader, R. Rivers, V. Rivers, Robertson, Smith, Stewart, Sundborg, Walsh, Mr. President.

Nays: 24 - Barr, Collins, Cooper, Doogan, Emberg, Harris, Hurley, Johnson, King, Knight, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Riley, Rosswog, Sweeney, Taylor, VanderLeest, Wien.

Absent: 5 - Armstrong, Buckalew, Hellenthal, Hilscher, White.)

CHIEF CLERK: 26 yeas, 24 nays and 5 absent.

PRESIDENT EGAN: The "ayes" have it and the proposed amendment to the amendment is ordered adopted. We now have the proposed amendment as amended before us for a discussion. Mr. Sundborg.

SUNDBORG: Mr. President, I feel I have probably not made myself clear to many here as to just what I intend by this. Of course, we know now what a constitutional convention is because we are in the middle of one, but this is a provision that comes up automatically on the ballot. It may come up without any discussion on the part of the people at all. There may be no great desire to have a constitutional convention and I am sure for

many voters it may be the very first time they have ever been confronted with the question when into the polling booth and see this simple little question, there be a constitutional convention?" I want it to at least be explanatory, of what a constitutional convention is for.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as amended be adopted by the Convention?" Mr. Victor Rivers.

V. RIVERS: I request a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 17 - Boswell, Coghill, H. Fischer, Hinckel, Kilcher, Laws, Londborg, Peratrovich, Poulsen, Reader, R. Rivers, V. Rivers, Stewart, Sundborg, Sweeney, Walsh, Mr. President.

Nays: 33 - Awes, Barr, Collins, Cooper, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Harris, Hermann, Hurley, Johnson, King, Knight, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Riley, Robertson, Rosswog, Smith, Taylor, VanderLeest, Wien.

Absent: 5 - Armstrong, Buckalew, Hellenthal, Hilscher, White.)

CHIEF CLERK: 17 yeas, 33 nays and 5 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment as amended has failed of adoption. Are there other amendments to the proposal? If there are no further amendments to Committee Proposal No. 3 -- Mr. Kilcher?

KILCHER: Mr. McNees and I are working on one.

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess for two minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Kilcher.

KILCHER: It is on the Secretary's desk.

PRESIDENT EGAN: The Chief Clerk will read the proposed amendment as offered by Mr. Kilcher, and by Mr. McNees.

CHIEF CLERK: "Page 2. line 3, add 'If 20 years should lapse

during which a constitutional convention has not been convened, delegates to a constitutional convention shall be elected at the next regular election specifically for the purpose of amendment and revision.'"

PRESIDENT EGAN: What is your pleasure, Mr. McNees?

MCNEES: I move the adoption of the amendment and ask unanimous consent.

UNIDENTIFIED DELEGATE: Objection.

PRESIDENT EGAN: Objection is heard. Is there a second to the motion?

KILCHER: I second the motion.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Will the Chief Clerk please read the proposed amendment.

CHIEF CLERK: "Page 2, line 3, add the words 'If 20 years should lapse during which a constitutional convention has not been convened, delegates to a constitutional convention shall be elected at the next regular election specifically for the purpose of amendment and revision.'"

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. McNees and Mr. Kilcher be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye," all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Committee Proposal No. 3? Are there any other amendments? Mr. Taylor.

TAYLOR: I move it be advanced to third reading.

MARSTON: I second that motion.

R. RIVERS: Point of order. I suggest it be sent to Engrossment and Enrollment.

PRESIDENT EGAN: If there is no objection and there are no further amendments to Committee Proposal No. 3, it is referred to the Committee on Engrossment and Enrollment. We now have before us the proposal of the Committee on Preamble and Bill of Rights. Committee Proposal No. 7. Has the Rules Committee had a proposed calendar mimeographed, Mr. Riley?

RILEY: Yes, it was distributed yesterday.

PRESIDENT EGAN: Has every member a copy of that proposed

calendar as submitted by the Rules Committee? The Chief Clerk may proceed with the second reading of Committee Proposal No. 7.

(The Chief Clerk read Committee Proposal No. 4 introduced by the Committee on the Preamble and Bill of Rights.)

PRESIDENT EGAN: Are there amendments to the preamble of Committee Proposal No. 7? Mr. Ralph Rivers.

R. RIVERS: Point of information. I would like to ask Delegate Awes (my book just closed on me, I am trying to find the place); it is on line 10 of page 3. It says, No person shall be prosecuted criminally for felony other than by indictment or information". Under the present procedure a person cannot be prosecuted for a felony except upon an indictment by a grand jury unless he waives the indictment and consents to be tried on the information filed by the district attorney. This says that the indictment and information shall be concurrent remedies. Now, actually, this is not a matter of remedy because the individual charged in any case is presumed to be innocent. It is a matter of procedure, and in the second place I wonder whether we should make it absolutely unnecessary to prosecute a man on a felony without an indictment unless he waives the indictment and consents to be tried upon the information, and I was wondering what the Committee's thinking was on that.

PRESIDENT EGAN: Miss Awes.

AWES: We considered that and we looked into what the other states had done and some of the other states have provisions similar to this one we adopted and it seems to work out pretty well. The defendant's rights still seem to be protected. It speeds up the criminal process. Sometimes it is a matter of getting these informations. You can get these men into court quicker than you can if you wait for a grand jury. By retaining the grand jury and the indictment, if you should have a district attorney, say, who is bringing in too many informations and acting in a pre-emptory matter, then the governor has the right to call the grand jury.

R. RIVERS: That is another thing that bothers me because the grand jury is essentially a part of the judiciary process and is called by the courts. There should be a grand jury every year to carry out the particular purposes, but I am wondering if we would ever have a grand jury. What other part of a constitution would provide for a grand jury? I don't have that clear in my mind. We may never have one. If the district attorney can prosecute by information, and doesn't have to get indictments, there may never be a grand jury. I just want your thinking.

AWES: That, too, was considered and it is usual to have a provision in the bill of rights preserving the grand jury. Any

states that have a similar provision, I think that it has proved out that whenever there is a need for a grand jury that it is called by the proper official of the government and still you're not spending a lot of money by calling a grand jury when there is no real need for it.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: If we could sort of make clear who the proper official is, I will go along.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: It says in here on Section 7, page 3, at the top of the page, "that no grand jury shall be convened except upon an order of a judge", etc.

TAYLOR: I was going to rise for the purpose of getting this thing in an orderly manner. Why don't we start at Section 1 and go through?

PRESIDENT EGAN: That is correct for amendatory purposes, but evidently these people were just asking questions for information purposes of the Chairman of the Committee. Mr. Robertson.

ROBERTSON: I rise to a point of inquiry. I thought we discussed several sections of this Committee Proposal No. 7 before we took our recess.

PRESIDENT EGAN: Not on this proposal, Mr. Robertson. It was on the suffrage proposal, Proposal No. 1.

R. RIVERS: The Committee gave us a briefing on this before the recess.

PRESIDENT EGAN: That is correct. Mr. Gray.

GRAY: Mr. Chairman, I would like to ask Miss Awes a little information. On page 2, Section 3, line 10, it says, "No person is to be denied the "enjoyment of any civil or political right..." Is that phrase, any civil or political right", is that all inclusive? Is that all-inclusive as far as the government is concerned? Are there any rights being denied under that phrase?

AWES: I think that I can speak for the Committee that it was our feeling that we wanted to make that as broad as we could and that was intended to be an all-inclusive term.

GRAY: Along about the same thing on page 3, Section 8, line 17, it says, "No person shall be compelled in any criminal proceeding to be a witness against himself." Now you have the words "criminal proceeding". Is there any time a person shall be

compelled to be a witness against himself, particularly in a noncriminal case?

PRESIDENT EGAN: Miss Awes, do you care to answer that?

AWES: Yes, first we had a draft that just said, "No person shall be"compelled in any proceedings to be a witness against himself. Then we thought of civil suits, for instance, if John Jones sues John Smith over a land title or something, and that was so broad that the plaintiff or defendant would not have to testify, and we did not want to go that far, so in noncriminal suits we did not want to protect him against testifying against himself.

GRAY: I am wondering if,in testimony in hearings for instance legislative hearings, would it be possible to compel a person to become a witness against himself under this phrase?

AWES: I think I will let Mr. McNealy speak.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. Gray, I raised that point particularly in Committee because I was very much concerned about these legislative investigations. The Federal Constitution holds that, "nor shall he be compelled in any criminal case," and we felt here that the nearest the Committee could unanimously agree was to substitute the word "proceeding" for "case" and our rundown on that, it would cover any hearings before any administrative bodies if they were criminal in nature. As the Federal Constitution holds, it is merely a court case more by using the word "proceeding" rather than case", why, it expands the latitude, gives greater latitude, probably takes in, at least we hope it takes in,matters before legislative committees, such as senate committee hearings and things of that type.

GRAY: You think if there was a criminal background or the outcome of the hearing may prove to have such a thing as being charged with a crime, if that should come out in administrative hearing, would this criminal hearing include that kind of investigation?

MCNEALY: The basis for this to cover, the investigation would have to be of criminal nature.

GRAY: This being a bill of rights, I just wanted these definitive terms explained to me. On page 4, Section 12, line 15, you are using the phrase "in courts not of record". I wonder if you could explain that to me, Miss Awes. What is the difference between courts not of record and the other courts?

AWES: "Courts not of record" is a term that is accepted in

legal language and it means any court where you don't make a record or transcript of the complete proceedings. In Alaska, now, the only courts of record that we have are the Federal District Courts, all others are courts not of record.

TAYLOR: Mr. President, I believe Mr. McNealy answered the question for Mr. Gray, but I don't believe he went far enough with it. Now.in the course of a civil proceedings or in the course of legislative hearing or an investigation, if the questions got to the point where the answers would tend to degrade or to incriminate a person of a crime, he can refuse to answer under the Fifth Amendment of the United States. This is more or less to the nature of the reiteration of the Fifth Amendment, which prevents a person, or he has the right to remain silent if an answer tends to degrade or humiliate or holds him up to ridicule or disgrace or tends to incriminate him of a crime. So he has the right to remain silent and invoke the Fifth Amendment.

GRAY: Does that say that here?

TAYLOR: That's what it means. It is in any proceeding, criminal or civil. You do not have to answer a question if it tends to degrade you or incriminate you of a crime.

GRAY: But does this article say that? That is Section 8, line 7, page 3.

TAYLOR: In Section 8 that is a reiteration of our Federal Constitution which no person can be compelled to be a witness against himself. That is also the reason that many times an officer will get a prisoner and keep him in their custody and attempt to break him down, and, when they get a story, lots of time the courts refuse to allow anything he said at that time or any statements he made or signed to be used because they forced him to testify against himself. I think it should go farther than this. I think there should be a penalty imposed against anybody that would discriminate against a man by invoking the Fifth Amendment. Like in some places, they have fired men from their place of employment because of the reason he invoked the Fifth Amendment when they were before an investigative hearing. I think there should be a penalty against a person doing something that lawfully he has the right to do. I plan to offer an amendment along that line later on.

GRAY: I have one more question. On page 6, Section 18, "There shall be no imprisonment for debt, except in cases where there is a strong presumption of fraud. I am a little ambiguous on the meaning of that. Could I have Miss Awes explain that. Where is the limiting line in that phrase?

AWES: Well, "strong presumption of fraud", there may be some

question as to whether that phrase is strictly necessary, but there seemed to be some feeling that it was. That would give the person, what we were thinking of when we put that in were these people, transients more or less, who run up big bills which they haven't too much intention of paying and decide to leave the Territory and leave the creditors holding the bag. That phrase was put in to make it possible to arrest such a person before he can leave the Territory without subjecting yourself to a false imprisonment suit in case he should not be convicted. It would not be able to imprison him on the strong presumption of fraud but it would enable you to arrest him and then he could be brought to trial if necessary.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, may I amplify a little on that? Our present statute covers what is called "summary remedies" and in there, absconding debtors, people leaving for the purpose of defrauding creditors, be put under what is known as a civil arrest, and if we leave this language in here, then our legislature will have the power to pass such statutes covering summary remedies and civil arrests. Now I don't think we can be without letting our legislature have that power. We have had people sneak their baggage out of the back door without paying their hotel bill, and when I was district attorney I have gotten out warrants that stopped them down in Ketchikan. Of course that was under criminal proceedings but I've also represented a plaintiff in a civil case where he posted a bond and made the allegations of fraud and stopped somebody on his way out and brought him back to straighten up that bill before the matter was disposed of. So we need that language in there to enable our legislature to pass that kind of legislation. I am for it the way it is.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: Mr. President, I would like to ask the Chairman of the Committee, referring to Sections 12 and also to 13, is there any place where the article specifically provides that a jury of 12 shall prevail in courts of record in both civil and criminal cases?

PRESIDENT EGAN: Miss Awes.

AWES: It is my understanding that it is the principle of constitutional law that the common law jury was a jury of 12 men, and if the constitution preserves the jury, then it preserves a jury of 12, and the legislature has no authority to lessen it, and that is the reason why we said nothing. You could have a jury of less in courts not of record, and we feel this does preserve a jury of 12 in courts of record.

ROBERTSON: In any of the articles or proposals, does it anywhere say to preserve the common law?

AWES: Not in those words that I know of.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I would like to ask the Chairman of the Committee, if I may, a question as to whether or not the Committee explored the possibility of not providing for grand juries in criminal matters. Many states do not have grand juries. There is a provision in many constitutions that a grand jury may be called by a district judge or superior judge, whichever the case may be, for the purpose of investigations. But all criminal matters are preceded by an information or complaint and it is drawn by the district attorney and then immediate trial can come up. Now I have felt that great injustices have been done in the Territory of Alaska through the failure of a grand jury to sit. I have known possibly hundreds of men who would be arrested shortly after a grand jury had convened in the fall and they would sit in jail until the following fall before their case was even considered by the next grand jury, and I know of many instances in which the accusation was very frivolous, and when the grand jury had considered that case they would bring in that it was "not a true bill", and there a year of a man's life is gone because of some accusation made against him. If we do not have grand juries to say whether or not there is probable cause, I think we would be possibly better off in the administration of justice.

PRESIDENT EGAN: Mr. Taylor, were you asking Miss Awes if they considered that?

TAYLOR: Yes, that is a question.

AWES: Yes, the Committee did consider whether the grand jury should be retained in criminal matters at all, and it was.I believe, a unanimous feeling of the Committee that the grand jury should be preserved for that purpose, but we were perfectly aware of the difficulties which you mentioned, and that is what we wanted to take care of by making the indictment and the information concurrent remedies so that these men can be brought to trial by information. But if there is some unusual circumstance that there should be consideration by the grand jury, then the right to calling it is there, but you still wouldn't have to have it.

PRESIDENT EGAN: Are there amendments to the preamble of Committee Proposal No. 7? Mr. Emberg.

EMBERG: I would like to ask a question in regard to the last sentence of Section 10, page 4, lines 3, 4, and 5. It reads, "The administration of criminal justice shall be founded on

principles of reformation, and not vindictiveness." Now, I have no quarrel with the thought expressed here, except as it relates to the establishment of a code which might provide forfeiture of life, capital punishment, in other words. Is there any relation between the two?

AWES: Is your question whether or not this would eliminate capital punishment?

EMBERG: Yes.

AWES: That was brought up in the Committee, and this provision is found in several other state constitutions, and in those states the courts have ruled that this language does not prohibit capital punishment.

PRESIDENT EGAN: Are there amendments? Mr. Rosswog?

ROSSWOG: I have an amendment to Section 3.

PRESIDENT EGAN: Mr. Rosswog, would you mind holding that until we get to it? Are there amendments to the preamble at this time? Mr. Victor Fischer.

V. FISCHER: Mr. President, I would like to address a question on the preamble to Miss Awes.

PRESIDENT EGAN: If there is no objection, address your question, Mr. Fischer.

V. FISCHER: To the effect, what exactly is the purpose of a preamble? What is its legal standing insofar as the whole constitution is concerned?

AWES: As to its legal standing, so far as I know, it does not have very much. It is one of those formalities that goes with drawing a constitution, and it expresses the sentiment of the people who are doing the work, who are both drawing the constitution and ratifying it, but beyond that I don't know of any effect that it has.

V. FISCHER: In connection with that, some of the language in Section 1 sounds similar to what is found in some states and in the Federal Constitution, the preamble. I was wondering if there was any special reason for separating those two, the preamble from Section 1 for instance, the general welfare and a couple of those clauses?

AWES: Section 1 is the provision that is found in many state constitutions, and it was the feeling of the Committee that it did set forth certain fundamental ideas that should be in the bill of rights itself rather than in the preamble because they have more force and effect.

PRESIDENT EGAN: Mr. White.

WHITE: I would like to direct a question to Miss Awes on the same general subject. Did the Committee see any conflict between the preamble and Section 5?

AWES: I don't see any conflict between the two. If you have something particular in mind, if you could be more specific I could maybe answer you a little better.

PRESIDENT EGAN: Did you have something specifically in mind, Mr. White?

WHITE: I am not prepared to assert too far, Mr. President, but the question was asked of me during the recess, why in the light of Section 5, which seems to retain the right of the establishment of any sort of religion whatsoever, and perhaps by inference means that there should be no mention of the establishment of religion in the constitution, why it was found necessary to put a preamble of these words in the preamble of the bill of rights. It is not something that I disagree with, but I have heard objection made to it, and I raise the question for that reason.

AWES: I don't see that there is any conflict there. As I said a few minutes ago, the preamble expresses more or less the sentiment of the people, and we felt that civil and religious liberty as mentioned in the preamble is something that is of concern and is one of the motivating forces and consequently should be mentioned there. Section 5, which is the same wording as the Federal Constitution, is the guarantee of the right. That is the law so to speak. The preamble is not.

PRESIDENT EGAN: Are there amendments to be offered to the preamble? Mr. Kilcher?

KILCHER: May I address a question to Miss Awes?

PRESIDENT EGAN: You may, Mr. Kilcher.

KILCHER: In my opinion there is a basic conflict between the preamble and Section 5 and that conflict has been brought to my attention by a fellow who has been in the "sticks for 20 years and I was rather abashed that I did not find it. And I think we should go into it, but I would like to stress as far as I can do it, the conflict and ask Miss Awes if I am right or wrong, if the Committee had thought of it. In my opinion, "No law shall be made with respect to establishing of religion". The preamble is tantamount to such a law, inasmuch as the wording is referring to a possible majority opinion of the deity. The wording is not all-encompassing and comprehensive enough to insure the very liberty of religion that we have in Section 5. It will deprive minorities of their expression of their

wording, of their interpretation of a preamble. A preamble is all-encompassing enough, in my opinion it is too specific.

PRESIDENT EGAN: Miss Awes.

AWES: I am not quite sure I understand Mr. Kilcher's argument. You say it is too specific. I can't see how this statement could set forth either majority or minority views. There might be a few atheists who might object to it, but it has never been my understanding that our government has ever been that completely divorced from

KILCHER: Had it occurred to you, Miss Awes, that it is not only a possible small minority of atheists but there may be pantheists, Buddhists, Jews. The wording of "God Almighty" is not one that is customary with a variety of Christian sects, religions and non-Christian religions that are accepted in this country and others that may arise at any time. This constitution is supposed to be infallible for a hundred or hundreds of years and consequently, I think the wording is too much custom bound or specifically one that will not be in conformity with other Christians and other religious sects.

PRESIDENT EGAN: The Chair does not mean to interrupt, but Miss Awes attempted to answer the question, but if the time comes when an amendment would be submitted, then would be the time to go into argument. Mr. Johnson.

JOHNSON: May I add to Miss Awes' answer by pointing out what the Supreme Court of the United States has said about the Preamble of the Federal Constitution?

PRESIDENT EGAN: If there is no objection, you may Mr. Johnson.

JOHNSON: In the case of Dorr v. the United States, which was decided by the Supreme Court in 1904, the court held that, "No" power to enact any statute is derived from the Preamble. The Constitution was the only source of power authorizing action by any branch of the Federal government. It would seem to me that under that the question is moot.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, I think we are making much ado about nothing here. Some of us don't seem to understand that the government of the United States is based upon a belief in a god, and it does not specifically state what kind of a god. It could be a Buddhist god or any other kind. Some people worship the same God, but in a different manner, and call him a different name, and our government is based upon a belief of a god, and you will find it so stated in the Constitution and many other places. If you look at a silver dollar you will find it on there also. This Section 5 only states that no special law will be enacted

regarding a specific or special kind of religion or a certain sect. It is presumed even in Section 5 here that there will be some kind of religion recognized. Now there are some people, of course, who are not very religious and others who are atheists, but there is nothing here to prevent their beliefs. They can believe any way they want to, worship or not worship, just as they wish. But our government is based upon a religious belief and since we are writing a constitution which is to be based upon our National Constitution, that is the kind it should be.

PRESIDENT EGAN: Mr. Harris.

HARRIS: I request a 15.minute recess.

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess until 15 minutes. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. If there are no amendments to the preamble we will proceed with Section 1 of the article on the declaration of rights. Mr. Taylor.

TAYLOR: Mr. President, I have submitted to the Chief Clerk an amendment. There are two on the one page, an amendment to Section 1.

PRESIDENT EGAN: We have an amendment to Section 1. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Section 1, page 1, line 10, after the word

'persons' insert the words 'are created equal and'." And "Section 1, page 2, line 1, strike words 'are equal and'.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I will move and ask unanimous consent for the adoption of the first amendment, the insertion of the words "are created equal and".

PRESIDENT EGAN: Mr. Taylor moves adoption of the amendment and asks unanimous consent. Will the Chief Clerk please read the proposed amendment.

CHIEF CLERK: "Section 1, page 1, line 10, after the word 'persons' insert the words 'are created equal and'."

PRESIDENT EGAN: Is there objection to this amendment? That portion would read, "and is dedicated to the principle that all persons are created equal and have a natural right to life, liberty," etc. Is there objection to the proposed amendment? Mr. Cooper.

COOPER: Was that a request for unanimous consent? I object.

PRESIDENT EGAN: Objection is heard. Do you so move, Mr. Taylor?

TAYLOR: I so move.

HERMANN: I second the motion.

PRESIDENT EGAN: It has been moved and seconded that the proposed amendment be adopted. The amendment is open for discussion. Mr. Taylor.

TAYLOR: I offered that, Mr. President, for the purpose of a little clarification and correcting a popular fallacy which appears later in that same section. We realize that we are all created equal. At the start we have equal chances but they don't remain equal, and so I felt that by putting in that all persons are created equal and have a natural right to the benefits of the provisions of the constitution, that would naturally call to exclude, as shown in my second amendment there, the words "are equal and" because we know that persons are not all equal. They are unequal possibly in intelligence, in ability of various sorts, in possession of worldly goods they are not equal, but they are entitled to equal rights and opportunities under the law. That is the purpose of the two amendments, and actually work in together.

PRESIDENT EGAN: Is there further discussion of the proposed amendment? Mr. Johnson.

JOHNSON: A point of information. Is Mr. Taylor offering both of these amendments?

PRESIDENT EGAN: No, just the first one at this time.

JOHNSON: Then I have no objection.

R. RIVERS: Point of information. Is there anything inconsistent though between just dropping your first one and adopting your second?

PRESIDENT EGAN: Mr. Taylor, Mr. Ralph Rivers at this time is asking that the first one be adopted.

TAYLOR: I believe it would be better to leave it in there and strike the "and are equal" out because we know people are not equal.

R. RIVERS: Why do you say they are even created equal? That does not make one equal, what some people regard as an undisputed statement. I would like to see this straightened out and get away from that thought completely. They have equal rights

and opportunities.

JOHNSON: Point of order. Is there not a motion before the house?

PRESIDENT EGAN: The motion is before the house. The Chair felt Mr. Ralph Rivers was speaking to the motion to amend this section. Mrs. Nordale.

NORDALE: Perhaps I am out of order too, but I read the second portion a little differently. It says all persons are equal under the law." Isn't that what it means?

PRESIDENT EGAN: We are not on the second part yet, Mrs. Nordale. We just have the particular amendment that relates to the wording after the word "persons". Mr. Harris.

HARRIS: Mr. President, I am going to have to vote against this amendment because I think what we mean is said just a little bit plainer the way it is actually written now. When you start bringing up the possibility that there are not people always created equal, I have serious doubts as to the legality of that statement as well as to how applicable it would be to everyone.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, the reason I objected to the request for unanimous consent is that I realize the Committee had this very thought go through their minds and have presented the best possible Section 1 that they could, and had the words "are created equal" been of any value I am sure they would have been in there. I believe they are surplus.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Taylor be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will"signify by saying "aye", all opposed by saying "no". The noes have it and the proposed amendment has failed of adoption. Are there other amendments to Section 1?

CHIEF CLERK: "Section 1, page 2, line 1, strike the words 'are equal and'."

TAYLOR: I move the adoption of the amendment.

GRAY: I second the motion.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: I think that means that all persons are equal under the law and are entitled to equal rights and opportunities under the law. Isn't that right, Miss Awes?

AWES: That is right.

NORDALE: So I would oppose the amendment.

TAYLOR: If they are going to mean it that way they should have put it that way. It says, "All persons are equal and are entitled to equal rights and opportunities under the law." Of course we know that can be a fallacious statement. There would be no truth in it to say that all men are not equal under the law.

PRESIDENT EGAN: Mr. Taylor, if the Chair may, what you have said is that if it just said, "Persons are entitled to equal rights and opportunities under the law". That is what you intend to have it say, but by using the two words "are equal" in the first part of line 1, you are saying they are not just equal under the law, they are equal in all other respects. Is that what you mean?

TAYLOR: Equal rights and opportunities.

ROBERTSON: I don't like to criticize other persons' language, but I think the obvious mistake of that sentence is that the "are" should not be in there. It should be "persons are equal and entitled to equal rights under the law." Then there would be no question under the law applied to the persons being equal, but by putting in the verb "are" in again indicates you have cut off the qualifications under the law from the first part of the clause, "are equal".

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I don't believe that that is the correct interpretation of this wording, and if this amendment is adopted it will weaken the section entirely, because there are two things that are provided for here. One is that all persons are equal under the law and the other is that they are all entitled to equal rights and opportunities under the law. They are two separate and distinct things, and you have to leave the conjunction "and" in there, otherwise you run it all together. So it seems to me that the amendment is not well taken.

TAYLOR: I withdraw my amendment.

PRESIDENT EGAN: If there is no objection, Mr. Taylor asks unanimous consent to withdraw his motion. Mr. Hinckel.

HINCKEL: I rise to a point of information. Mr. Taylor, could you accomplish what you are trying to accomplish, Mr. Taylor, by changing the thing around and state that the persons are equal under the law and they are entitled to equal rights and opportunities? Would that clarify it and satisfy you?

TAYLOR: Yes, that would be all right.

PRESIDENT EGAN: Mr. Taylor, you ask unanimous consent that it be withdrawn?

TAYLOR: I don't think it worthwhile to argue.

PRESIDENT EGAN: Is there objection? Hearing no objection it is ordered withdrawn. Are there other amendments? Mr. Robertson?

ROBERTSON: I would like to offer an amendment to delete the second word "are" in sentence 1, page 1, Section 1, which I think will read apparently the way the authors intended it to read.

PRESIDENT EGAN: Mr. Robertson moves that the second word "are" on line 1 be deleted from the sentence.

HERMANN: I second the motion.

HURLEY: I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked that the second word "are" on Section 1 be deleted. Is there objection?

V. RIVERS: How will that read?

PRESIDENT EGAN: "Persons are equal and entitled to equal rights and opportunities under the law." Is there objection? Hearing no objection, it is so ordered and the amendment has been adopted. Are there other amendments to Section 1? If not, are there amendments to Section 2? Are there amendments to Section 3? Mr. Rosswog.

ROSSWOG: Mr. Chairman, I would like to propose an amendment to Section 3 on line 11, after the word color", I would include the word "sex". I move and ask unanimous consent.

PRESIDENT EGAN: Mr. Rosswog moves and asks unanimous consent that on line 11, page 2, after the word "color", include the word "sex" and a comma and asks unanimous consent for the adoption of the amendment. Mr. Taylor.

UNIDENTIFIED DELEGATE. I object.

TAYLOR: Is the purpose of your amendment, Mr. Rosswog, to give the males equal rights with the women?

ROSSWOG: I will explain if I get a second.

COOPER: I second the motion.

PRESIDENT EGAN: The motion is open for discussion. Mrs. Wien.

WIEN: Mr. Chairman, through the Chair, I would like to explain to Mr. Rosswog that that was taken up in our Committee and we decided that the term "person" included both men and women.

ROSSWOG: I might say the reason for putting this amendment up, I was asked to do it by some people at my Committee hearing, and they were quite concerned about it, and I have talked to some members of the Committee, and it was stated that "persons" or "person" should cover that matter, but I have not seen, or it has not been included in the constitution where it states that that means both sexes.

H. FISCHER: Mr. President, I think "sex" definitely should be in this proposal because there are still states in the Union where women are not allowed to serve on juries.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Objection being just temporary I was wondering why put the word "sex" between the word "race" and the word "color"? I would ask the maker of the motion concerned to have the word "sex" put after the word "of" on line 10.

PRESIDENT EGAN: Do you agree with that?

ROSSWOG: Yes.

PRESIDENT EGAN: If there is no objection the proposed amendment will read then the word "sex" comes after the word "of" on line 10 and insert a comma after the word "sex".

RILEY: I withdraw my objection to "sex". (laughter)

PRESIDENT EGAN: The Convention will come to order. Mr. McLaughlin, are you objecting to that change?

MCLAUGHLIN: Is it open for discussion, Mr. Chairman?

PRESIDENT EGAN: By unanimous consent we changed the placing of the word "sex".

GRAY: Did he put a comma after that word "sex"?

PRESIDENT EGAN: Mr. Gray, the Chair stated that there would be a comma. Mr. McLaughlin.

MCLAUGHLIN: I believe that the female person to my left did enter an objection and the motion is now open for discussion?

PRESIDENT EGAN: The motion is now open for discussion.

MCLAUGHLIN: Merely for the information of the Convention, this afternoon at the meeting of the committee chairmen, one of the general provisions which will probably, I cannot speak for the Committee, be in the constitution under the miscellaneous article, will be some sort of a provision providing that wherever we use the word "persons" or "people" it will be meant to include male and female persons. That is merely a generic explanation and a miscellaneous portion of the constitution providing where the expression "persons" is used, it indicates persons of either sex.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, I think it is wholly unnecessary to put that word in the constitution. I agree with Mr. McLaughlin and also with Mrs. Wien that whenever the word "person occurs it does refer to persons of both sexes. Alaska was the first political subdivision under the American flag to give the women the right of suffrage. That was accomplished in 1913, six years before the national Congress got around to amending the Constitution to provide the same thing. I think Alaska as a Territory and even before it had a legislature amply provided for the political and civil rights of its women and we have nothing at all to complain about in those respects. There are some changes we may want to see changed in regard to property rights and things of that sort, but I think it is an unnecessary incorporation into the text of the constitution and raises the inference perhaps in the minds of people that we need that protection because we do not already have it. As a matter of fact, we do and we will have it further guaranteed under this miscellaneous provision of which Mr. McLaughlin has spoken, and I think we are putting undue emphasis on a contingency that does not exist. I am going to be against the amendment.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Line 10, Section 3, insert the word 'sex' after the word 'of' and add a comma."

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Rosswog be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 15 - Barr, Coghill, Cooper, Cross, Davis, H. Fischer,Harris, Kilcher, Metcalf, Nolan, R. Rivers, Robertson, Rosswog, Sundborg, Mr. President.

Nays: 37 - Awes, Boswell, Collins, Doogan, Emberg,

V. Fischer, Gray, Hermann, Hilscher, Hinckel, Hurley, Johnson, King, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, V. Rivers, Smith, Stewart, Sweeney, Taylor, VanderLeest, Walsh, White, Wien.

Absent: 3 - Armstrong, Buckalew, Hellenthal.)

CHIEF CLERK: 15 yeas, 37 nays and 3 absent.

PRESIDENT EGAN: The nays have it and so the proposed amendment has failed of adoption. Mr. Robertson.

ROBERTSON: Mr. President, I rise to a point of inquiry. Mr. Gray, I think, propounded this question to Miss Awes, but I didn't get it. At the Juneau hearing we had some of the people raise a question about the scope of the words "civil" or political right". I think they were particularly interested in whether a civil right includes a religious right. I never had occasion to look that matter up, but I would like to ask Miss Awes again if she has already answered Mr. Gray, I did not get her answer -- did the Committee vote on that question to see definitely if that covers civil and religious rights?

AWES: Whether this precludes a person from being denied the enjoyment of any religious rights?

ROBERTSON: Is it broad enough in scope to cover religious rights?

AWES: We did not cover that particular point so far as I recall. I wonder if it is necessary to consider it in view of Section 5?

PRESIDENT EGAN: Would Section 5 cover any possible objections, is that what you mean?

AWES: I would be glad to have some of the other members of the Committee speak on that.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: Mr. Chairman, I might try to answer that. I recall that there was quite a little discussion about these rights, and that in this Section 3 we specifically stated political or civil right because we felt in Section 5, which is a religious right in its entirety, would cover the religion angle of it. In Section 3 we tried to protect just the civil and political right reserving to Section 5 the religious rights. Incidentally, all that Section 5 says is that there is a religion anybody wants, but the state shall recognize no one religion above the other.

PRESIDENT EGAN: Mr. Robertson, does that answer your question?

ROBERTSON: Yes.

PRESIDENT EGAN: Are there amendments to Section 3? Mr. Victor Fischer.

V. FISCHER: Mr. President. I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Line 10, Section 3, page 2, after the word 'civil' insert a comma and add the word 'economic'."

V. FISCHER: Mr. President, since there seems to be a question of whether civil includes economic, I move and ask unanimous consent that the amendment be adopted.

PRESIDENT EGAN: Mr. Victor Fischer moves and asks unanimous consent that the amendment be adopted. Is there objection?

COGHILL: I object.

PRESIDENT EGAN: Objection is heard. Do you so move?

V. FISCHER: I so move.

WHITE: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Davis.

DAVIS: I would like to inquire of Mr. Fischer what might not be covered by the word "civil" that might be covered by the word "economic" or what is an economic right that is not covered by a civil right?

V. FISCHER: Mr. President, this question of economic right in Section 3 was raised at the hearing in Anchorage and there was a definite disagreement among attorneys present at that hearing as to whether civil does include economic. In the minds of many people civil refers primarily to the various rights that have been listed, such as religion, freedom of speech, press, assembly, petition, trial by grand jury, etc. Economic would include the right of employment, equal opportunity for employment. Now apparently there was some question, that a civil right as such or should we try to spell it out to economic? Generally, economic opportunity in every sense, I think one can cite a number of other examples, economic discrimination in insurance or anything else, and I think that this would clarify the intent because certainly the Committee had in mind to provide for economic equality as well as political

and the general concept of "civil" and I don't feel that this would be treading on anybody's toes. As long as there is a question as to whether this is adequately covered, I think it is worth an extra word and a comma in the constitution.

PRESlDENT EGAN: Mr. Johnson.

JOHNSON: Section 6 provides that, "No person shall be deprived of life, liberty or property without due process of law. It occurs to me that the word "economic" ought to be covered by the word"property"in that section and is unnecessary.

V. FISCHER: If I may try to answer that, I do not see where there is any relationship between the two. In Section 3 we would be establishing an economic right, the quality of opportunity. In Section 6 you are dealing with being deprived of property which is not the same thing as having a right to do something.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: I would like to ask Mr. Fischer a question in that regard. This word "economic" you proposed inserting here, your hearing in Anchorage, was the inference or was it said that that word "economic" then would mean the term that the right-to-work clause as we understand it?

V. FISCHER: No.

DOOGAN: That is what I am wondering if inserting in there that that word "economic" might not mean the right-to-work clause as we know it as against collective bargaining, and if that is the case we had quite a hassle in Committee and decided, with the exception of the minority report, to leave both the right-to work clause and the collective bargaining clause out of the bill of rights because we felt that they were legislative matters rather than constitutional matters.

V. FISCHER: If I may answer, this refers to denial of an economic right because of race, color, creed or national origin. I do not see how this could be interpreted as any kind of a right-to-work provision. The answer when this question was raised, whether "civil includes "economic", the answer was that the intent was to include. Therefore, if "civil" were to include "economic" and if you put that word in, I don't think that we are even getting close to a right-to-work provision because we referred to denial because of race, color, creed, or national origin only.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: May I ask Mr. Fischer a question?

PRESIDENT EGAN: You may, Mrs. Nordale.

NORDALE: I would like to know just what an economic right is.

V. FISCHER: It is an equal right of employment.

NORDALE: Is that a right?

V. FISCHER: Opportunity.

NORDALE: Opportunity is not necessarily a right.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: The reason for my objections to this is I was always under the impression that "civil" meant just what Mr. Fischer is referring to, "and in the abridged copy of the dictionary it points out that civil" is relating to the usual business of citizens and "economic" brings out the point of man's need. It says, "relating to the satisfaction of man's needs." Now, one thing you might run into here, Mr. Fischer, in your amendment would be the damaging part of it. Taking a look at the other side of it, how it could be construed.

V. FISCHER: I do not quite know what you mean by how it could be construed from the other side.

COGHILL: By clarifying that, that the points you were bringing out here would actually be interpreted under the civil rights of any human being because of race, color or creed or national origin, whereas the economic part of it might bring about a part where they figure that they should have equal opportunities in an economic portion of a community or something such as that, where it is actually a civil case.

V. FISCHER: That is exactly the intent that they should have. The reason I brought this in, as I stated before, if it is included in civil we have done no harm. However, apparently a very serious doubt exists as to whether it is included at this time in civil right, and that is the reason for the amendment to provide to make sure that economic right is included.

PRESIDENT EGAN: Mr. Cooper.

COOPER: I am going to try to stay out of soft ground again, but I am not too sure that I like the word because I believe it is hazy. As far as economic is concerned, it can be any number of levels or phases or you can set the valuation on it on an economic level, and if I understand it right, no person is to be denied the enjoyment of any economic level, which might be high or low, regardless of the person's efforts. If it could possibly be construed that way, if there were even the remotest chance that it could be construed that way, I would

definitely not be in favor of it.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: If I might state, I would hesitate to amend this particular section at least, by inserting the word "economic" or any other words. The thought of the Committee, this is a civil rights section. It was required in the Enabling Act, and we in Committee adopted practically the language of the Enabling Act where it states that there shall be no distinction in the civil or political rights on account of race or color, and we did enlarge that to put in creed or national origin. Then to satisfy, but mainly for the purpose of certain segments of the population were concerned with having a longer and a very detailed civil rights bill in here, and we then left it up to the legislature to implement and make the appropriate legislation, but this is strictly a civil rights matter here to comply with the Enabling Act of the House Bill 2535.

V. FISCHER: Could I ask Mr. McNealy a question? Would you guarantee that economic is included in civil rights?

MCNEALY: I heartily do to a certain extent that economics is equal to all persons but not to the extent that it guarantees anything in the nature of welfare.

V. FISCHER: Do you feel that because the Enabling Bill referred to civil or political, that we could not add "economic" since you did add some additional words at the end of that sentence?

MCNEALY: I am afraid of the word "economic" standing out in itself. I think to what extent it could be included in the word "civil", but to set out the word "economic" I am going to have to agree with what Mr. Doogan spoke about there, that there might be a danger then of getting the right-to-work or collective bargaining mixed up in the civil rights clause, and we want this as a civil rights clause and only for that purpose.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I believe it .would be a dangerous thing to put that word in there because I don't believe it appears in any constitution that I have read, neither does it appear in the Federal Constitution. Economic right can be construed in many different ways, and, if we would adopt that word in this particular article, we are getting ourselves into a morass of doubt in which we may, as Mr. Cooper, says getting into soft going, and it may take a considerable amount of litigation to have the courts establish what economic right was guaranteed under the constitution. I believe in other parts of the constitution as we have it here, proposed constitution, that it is more fully set out, but I think by reason of the doubt as to the meaning or the interpretations that could be put on it, I think it would be a grave error if we did include that word in it because one person's idea

of the meaning of that might be entirely different from a thousand other people, and you could see the resulting litigation that might develop from it.

PRESIDENT EGAN: Mr. Victor Fischer.

V. FISCHER: If I may have the last word, Mr. President, I would like to point out that we have a very large population in Alaska of people other than the white race, and I think it is important that they be given every possible protection within this constitution, that they be guaranteed every possible equality of rights and opportunity. What this does, even if we put "economic" in here, it would only say that they may not be denied enjoyment of an economic right because of race, color, creed or national origin. In other words, it would prohibit discrimination against these people who constitute a very large number of Alaskans. If you take race, color, creed and national origin, you get a very high percentage, and I think those people have the right.

COOPER: Point of order. I wanted to make one more statement before the closing debate, and I did not get up fast enough, but to bear out my point of order, Section 1, the final two words on page 1, that all persons are equal and are entitled to equal rights and opportunities under the law", and I believe that takes care of the entire situation and that has already been adopted.

V. FISCHER: Mr. President, in reply to Mr. Cooper's statement, I think if you accept that then you can strike all of Section 3 because all of it becomes redundant. This is a very necessary part of the constitution. I don't think we are repeating anything here. Section 1 is primarily a statement of policy. Here we are laying down law, and I think it is important that we adopt this provision.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Fischer be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Mr. Knight, Did you have an amendment?

KNIGHT: No, Mr. McLaughlin answered my question.

PRESIDENT EGAN: Does the Chief Clerk have any other amendments on her desk relative to Section 3?

CHIEF CLERK: No.

PRESIDENT EGAN: Are there other amendments to Section 3? If not, proceed to Section 4. Are there amendments to Section 4? Are there amendments to Section 5? Mr. Robertson.

ROBERTSON: May we go back to Section 4? I have another question in my mind as to whether or not the word "department" is the correct word to use there, whether it is broad enough in scope. I might ask Miss Awes if they gave that word any consideration.

AWES: We intended to use it to broaden. The federal language merely provides, as I recall, the right to petition the"government for any grievance. Well, we added the government or any department" and dropped the words, "for any grievance". Therefore, we felt we were broadening the right of the people to petition because they may petition not only the government generally but also any particular department that they might have something to say and are not limited to grievances but for any reason that they wanted to petition. That was our idea.

ROBERTSON: My point, Mr. President, a department has more or less a restricted meaning in governmental activities, at least in federal government. We have bureaus, agencies, corporations, departments, and many times they have a very distinct meaning, and bureau is not necessarily an agency or not a federal corporation, and it seems to me that possibly instead of broadening it is lessening, but if the Committee made a study of that, why that is all the further I care to pursue it.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I would think that would mean the major branches of the government. We have the War Department, the Navy Department, the Department of the Interior and the Department of Commerce. They are the major departments of the government. Then in those departments we have the innumerable bureaus which Alaskans are quite familiar with, and I believe that possibly an amendment to that to have that, "any department, bureau, or branch thereof", if that was inserted, it would make it kind of all inclusive. Otherwise, we would not have to go to the head of the department but also the bureaus or whatever you call them.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Would you think the word "subdivision" in lieu of "department" might not cover all agencies, branches, etc.?

TAYLOR: I think that subdivision would more connote the geographical declaration.

PRESIDENT EGAN: Miss Awes.

AWES: Well, I rather like Mr. Rivers' suggestion that we use "subdivision". It didn't to me, as it did to Mr. Taylor, connote geographical division, it would indicate any subdivision

of government. As I said before, we used that expression, "or any department" to broaden rather than to limit. As a matter of fact, I think perhaps the word "government" implies any subdivision thereof, and I think the words "or any department" if it causes confusion, could be stricken and leave it out all together.

PRESIDENT EGAN: We have no proposed amendment before us at this time. Mr. Robertson.

ROBERTSON: May I make a proposal? Mr. President, I move that after the word "department" in line 18, page 2, Section 4, be inserted "bureau, agency or subdivision thereof".

PRESIDENT EGAN: Mr. Robertson moves

TAYLOR: I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked that after the word "department" the words "bureau, agency or subdivision thereof" be inserted.

ROBERTSON: "Thereof" is already in.

PRESIDENT EGAN: Is there objection to the adoption of the proposed amendment?

KILCHER: I object.

PRESIDENT EGAN: Objection is heard.

TAYLOR: Second the motion.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Robertson be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 22 - Boswell, Coghill, Cooper, Cross, H. Fischer, Harris, Johnson, Knight, Laws, McNealy, Nerland, Nolan, Peratrovich, Poulsen, Reader, R. Rivers, V. Rivers, Robertson, Sweeney, Taylor, VanderLeest, Mr. President.

Nays: 30 - Awes, Barr, Collins, Davis, Doogan, Emberg, V. Fischer, Gray, Hermann, Hilscher, Hinckel, Hurley, Kilcher, King, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Nordale, Riley, Rosswog, Smith, Stewart, Sundborg, Walsh, White, Wien.

Absent: 3 - Armstrong, Buckalew, Hellenthal.)

CHIEF CLERK: 22 yeas, 30 nays and 3 absent.

PRESIDENT EGAN: The "nays" have it and so the proposed amendment has failed of adoption. Are there other amendments? Mr. White.

WHITE: Mr. President, I move Section 4, line 18, strike the first four words, "or any department thereof". I ask unanimous consent.

PRESIDENT EGAN: Mr. White moves and asks unanimous consent that on line 18 of page 2, Section 4, the first four words be stricken, the words "or any department thereof". Is there objection to the unanimous consent request?

UNIDENTIFIED DELEGATE: Objection.

PRESIDENT EGAN: Objection is heard.

WHITE: I so move.

KILCHER: I second it.

PRESIDENT EGAN: Mr. White so moves, Mr. Kilcher seconds the motion. The question is open for debate.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. White be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it, and the proposed amendment is ordered adopted. Mr. Fischer.

V. FISCHER: Mr. President, I would like to address a question to the Chairman of the Bill of Rights Committee. In Section 4 we have language as follows: Every person may freely speak, write, and publish on all subjects, etc. Now, in most other constitutions, if not all, including the Federal, we have a statement to the effect that no law shall be passed denying the right, or something to that effect. In other sections immediately above and below this particular provision we say "no person is to be denied the enjoyment of any civil or political right", etc., "shall never be abridged", etc., "shall never be deprived". I wonder if the statement in this sentence might not open this up to an infringement of freedom of speech through legislation by indirect means?

PRESIDENT EGAN: Miss Awes.

AWES: We discussed that in the Committee and the majority of the Committee preferred this language. I think that this accomplishes the same purpose as saying "no law shall be made" because this provision protects the right of the people to freely speak, write and publish, etc., and any law which denied them this right, it seems to me, would have to be unconstitutional, or I don't see any point in having the provision. So I think this accomplishes the same thing, and that was the opinion of the Committee.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: My question was based primarily upon the fact that all the other statements are a specific statement to the effect that no persons could be denied or something generally equal to that, and in this section we say, "Every person may". That was the basis that you seem to be setting this apart from all the other civil rights.

AWES: Yes, I will admit the wording is different. I still think it accomplishes the same thing. I did not object to this wording, but I was not one that pushed it, either. If there is anybody on the Committee who would like to speak on this, I am willing to have them do it.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: I am not on the Committee, but I would like to call attention to the fact that you have a Style and Drafting Committee that is supposed to take care of incongruity and lack of uniformity in language.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: The wording is taken identically from the Idaho example. It has been tested.

PRESIDENT EGAN: Would the Chief Clerk please read what the second sentence in Section 4, how it now reads?

CHIEF CLERK: "The right of the people peaceably to assemble and to petition the government shall never be abridged."

AWES: We are talking about the first sentence.

PRESIDENT EGAN: I know, Miss Awes, but no one had the floor just then and the Chair has been wondering, now we adopted another amendment there with relation to bureaus and agencies, etc.

CHIEF CLERK: No, that was killed.

PRESIDENT EGAN: Then it does read, "The right of the people

peaceably to assemble and to petition the government shall never be abridged." Mr. Taylor.

TAYLOR: I was going to call attention to the matter under controversy here regarding speech. We do have the right of free speech, but if you abuse that right by making an obscene statement you can be civilly liable, so the constitution says, "yes, you can speak on anything you want but you are responsible for the abuse of that right which is given to you," and those are the same identical words that appear in the constitution of the State of Washington, too. Possibly Idaho took Washington's words, and I think it certainly expresses the subject as concisely and intelligently, possibly more so than the Federal Constitution.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I have a question of the Chair of that particular Committee, and I notice they have carried a very brief statement in regard to freedom of speech. But some of the other constitutions, such as New Jersey, carry a much longer statement in which anything that is held to be true and which they are sued for libel under and if it were actually true and published in good faith, they would be presumed to be innocent of libel. Is there any reason why that right of contingent liability should be eliminated? What was the discussion in Committee?

AWES: I don't think it was a question of whether it should have been eliminated. I think it would be better to say, was there any question why it should be included. It was not included in the Federal Constitution and some of the other state constitutions and we felt that it was a Matter that could be left to the legislature. It is really legislative in nature and that is adequate to protect the rights of the people.

PRESIDENT EGAN: Are there amendments to Section 4? If not, are there amendments to Section 5? Are there amendments to Section 6? Section 7? Mr. Davis.

DAVIS: I have a proposed amendment to Section 7.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Section 7, page 3, lines 11 and 12, strike the words 'or information, which shall be concurrent remedies' and insert the following in lieu thereof: 'unless indictment be waived by the accused. If right to indictment be waived, proceedings may be by information'."

DAVIS: I move the adoption of the proposed amendment, Mr. President.

PRESIDENT EGAN: Mr. Davis moves the adoption of the proposed amendment. Is there a second?

NORDALE: I second the motion.

TAYLOR: I wonder if we could have a three-minute recess?

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for three or four minutes. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Davis.

DAVIS: Mr. President, with reference to my pending amendment, and also with reference to all of Section 7, I am advised that Mr. Buckalew who is not present today had a good deal to do with preparation of Section 7, also Mr. Hellenthal who is ill today, and so for that reason I would like to ask unanimous consent at this time to pass Section 7 and go on to Section 8 and consider Section 7 tomorrow when we expect the other two men will be here.

PRESIDENT EGAN: If there is no objection, we will pass Section 7 subject to the time that Mr. Buckalew and Mr. Hellenthal will be present. Are there amendments to Section 8? Are there amendments to be proposed to Section 9? Section 10? Mr. Ralph Rivers.

R. RIVERS: I submit one.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: Page 4, Section 10, line 3, delete the last sentence commencing on line 3 and substitute the following: 'The administration of criminal justice shall be founded upon the principle of reformation as well as upon the need to protect the public.'"

PRESIDENT EGAN: What is your pleasure, Mr. Rivers?

R. RIVERS: I move the adoption of this proposed amendment.

PRESIDENT EGAN: Mr. Ralph Rivers moves the adoption of the proposed amendment. Is there a second?

KNIGHT: I second the motion.

PRESIDENT EGAN: Please read the amendment again.

(The Chief Clerk read the amendment again.)

R. RIVERS: Mr. President, the reason for that is that I think the administration of criminal justice should definitely be founded upon the need for protecting the public. I think that, secondarily, it is a very good idea for us to try to reform the people who have breached the law and become antisocial, but I don't want to completely overlook the protection of the public. I also think this business about "and not on vindictiveness" sounds a little odd. You can't legislate away that kind of sin. If a district attorney is mean, he is mean. I don't care, so I merely submit that to say that the administration of criminal justice shall be founded upon the principle of reformation as well as upon the need for protecting the public. It covers the subject better than it is now.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: I would like to ask the Chairman of the Bill of Rights a question. Was it the intention of this clause to abolish capital punishment on the theory that you cannot reform a dead man?

AWES: I made the same objection as did one or two others on the Committee. However, this sentence has used almost the identical words as in other state constitutions, and in those states the supreme court upheld that it does not abolish capital punishment.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: Mr. Chairman, to clarify this article more, this clause was originally taken from Indiana I believe it is. I forget the article and section number, but the way it was written in there, although it stated that it had been tested and did not preclude capital punishment, after discussion in the Committee it was purported to intend that this clause would have nothing to do until the time a person was sentenced, but in view of penal institutions and governments in their work to rehabilitate prisoners rather than lock them up on bread and water and forget about them, that this statement was more or less advisory or instructive to the penal institutions that they would work on the basis of reformation and not go back to the bread and water stage, but it was intended that it would apply after a person had received sentence. It was not to apply up until that time, and I think that is what the criminal justice is supposed to mean.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, I also do not like the word "vindictiveness". I would like to believe that there is never any vindictiveness in the punishment of people who have violated the laws of the country, though I am compelled to admit that sometimes I have seen evidences of it, but I do think that Mr. Ralph

Rivers is correct in saying that the chief aim of criminal justice is the protection of the public and that the reformation or rehabilitation of the persons who have been found guilty of a crime is vastly important also, so if I understand Mr. Rivers' motion correctly, I am going to support it. I think that it is high time that some state constitution had in it some mention of the need of reformation of people who seem criminally inclined rather than the need of constantly stressing punishment for them. When we learn to have preventive instead of punitive measures on our statute books we are going to be a long ways further towards really administering criminal justice.

PRESIDENT EGAN: Is there further discussion? If not, the question is, "Shall the proposed amendment as offered by Mr. Ralph Rivers be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 10? Are there proposed amendments to Section 11? Mr. Taylor.

TAYLOR: I am preparing one, Mr. President.

PRESIDENT EGAN: Mr. Taylor is preparing one. The Convention will be at ease for a moment while Mr. Taylor prepares his amendment. The Convention will come to order. The Chief Clerk will read the proposed amendment as offered by Mr. Taylor.

CHIEF CLERK: "Section 11, page 4, line 12, after the word 'seized' insert the following sentence: 'That the legislature shall provide by law for penalties for officers of the state or any subdivision thereof violating the right of the citizens under this section.'"

PRESIDENT EGAN: What is your pleasure, Mr. Taylor?

TAYLOR: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Taylor moves the adoption of the proposed amendment. Mr. Davis.

DAVIS: May we have it read again slowly?

PRESIDENT EGAN: The Chief Clerk will please read the amendment again slowly.

(The Chief Clerk read .the amendment again.)

TAYLOR: You left out the word "penalties".

CHIEF CLERK: I am sorry. "That the legislature shall provide

by law for penalties for officers of the state or any subdivision thereof violating the right of the citizens under this section."

PRESIDENT EGAN: What line is that?

CHIEF CLERK: Line 12, at the end of the section.

PRESIDENT EGAN: Is there a second to it?

TAYLOR: I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked.

METCALF: I object.

KILCHER: I second the motion.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I put that in so that the first legislature of the state may also implement the article. As it is it doesn't mean a thing unless there is some penal provisions mentioned and in the present Alaska Code we have a provision which provides for punishment for any officers who do violate this section, and it would be meaningless unless there were penalties provided. We have a great many officers who are zealous and in many instances are overzealous and do violate our rights to a great extent, and in attempting to secure, or in securing evidence against people accused of crime. I feel we should have a penalty because this is an article which prohibits the officers from making unreasonable searches and seizures, so you have got to have a penalty. If you don't you might as well strike the bill of rights.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: I think the cards are stacked up against the officers. Having been in that capacity for many years, I think the officer is entitled to make a few mistakes, though we don't mean to make mistakes, and I think if you put a penalty on an officer, maybe seizing a bit of evidence, I think it is going to discourage efficient law enforcement.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: I would like to ask Mr. Taylor a question if I may. My vote will be persuaded by your interpretation of my question here. I just want to know if the seizures of property and unwarranted searching of residences, etc., and other properties, would that include abodes as well?

TAYLOR: That would include abodes as well. That means anything

within the enclosure of your yard, and the reason I put this in is that I have seen so many flagrant violations of the law by the officers themselves, and it has been on the books all the time that Mr. Metcalf has been violating the law by illegal searches and seizures. There has been some objection made to it, and I don't think Mr. Metcalf will take that very seriously. I don't think Mr. Metcalf did violate the law. And we have a penal provision in the statutes right now, and I would like to see it carried over into the constitution.

PRESIDENT EGAN: Mr. Davis.

DAVIS: I would like to point out so far as I can see in reading it in a hurry, Section 11 is identical to the Article 4 of the Bill of Rights of the United States Constitution.

PRESlDENT EGAN: Miss Awes.

AWES: As I recall, I think this is identical to Section 4 of the United States Constitution, and Mr. Taylor himself says that there is a statute on the books now, and it is my understanding that those statutes, including that one, will be continued unless altered or repealed, so consequently there will be a statute, and it seems to me that this proposed amendment is legislative in nature and unnecessary.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: I was just going to say that I thought the amendment offered by Mr. Taylor might be superfluous in view of Section 19 which says, "The enumeration of rights in this constitution shall not impair or deny others retained by the people." In other words, though we set up a Bill of Rights here, if the legislature feels it is necessary to implement any of these rights by statute that they can do so.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I would also like to point out that to implement this section of the bill of rights, the legislature would have to define "specific offenses as well as prescribe penalties. If we are going to pursue Mr. Taylor's thought we are going to have to write it out more fully. I am in favor of leaving it the way it is and letting the legislature handle it.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I believe Mr. Rivers has the wrong interpretation. I said "The Legislature shall provide penalties". That is all we have to do and leave it up to the legislature. I am not afraid of the future legislature like a lot of people here. I think they are going to have more than seventh grade intelligence.

PRESIDENT EGAN: The question is, if there is no further discussion, the question is, "Shall the proposed amendment as offered by Mr. Taylor be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 11? If not, are there proposed amendments to Section 12? Mr. Robertson.

ROBERTSON: I have one to Section 12.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 12, line 15, page 4, remove the period and insert 'of twelve, except'. Change capital 'I' to small letter 'i' in the word 'in'.

ROBERTSON: I move the adoption of the amendment and ask unanimous consent.

PRESIDENT EGAN: Mr. Robertson moves the adoption of the amendment and asks unanimous consent. Would the Chief Clerk please read the amendment.

CHIEF CLERK: "Section 12, line 15, page 4, remove period and insert 'of twelve, except'. Change capital 'I' to small letter 'i' in the word 'in .

PRESIDENT EGAN: Mr. Robertson asks unanimous consent for the adoption of the proposed amendment. Is there objection? Mr. Johnson.

JOHNSON: May we have a minute's recess? For just a minute?

PRESIDENT EGAN: If there is no objection, the Convention will stand at ease for a moment or two. The Convention will come to order. Mr. Robertson asks unanimous consent that his proposed amendment be adopted. Is there objection? If there is no objection, it is so ordered and the amendment has been adopted. Are there other amendments to Section 12? Miss Awes.

AWES: I think his amendment was to add the words "of twelve, except". I think we should also unanimously add the word "that" because otherwise it is awfully awkward.

PRESIDENT EGAN: Miss Awes asks unanimous consent that the word "that" be placed after the word "except". Is there objection? Hearing no objection it is so ordered and the amendment has been adopted. Mr. Taylor.

TAYLOR: I would like to offer a short amendment that following the word "persons" on line 17 that we strike the period and

insert the words "with the consent of the accused." Otherwise, they could provide for a jury of six without the consent of the defendant.

PRESIDENT EGAN: Mr. Taylor, do you offer that as an amendment?

TAYLOR: I offer that as an amendment.

PRESIDENT EGAN: "Striking the period after the word 'persons' and inserting the words 'with the consent of the accused.'" Mr. Johnson.

JOHNSON: May I ask Mr. Taylor a question? Mr. Taylor, the wording now says, "In courts not of record the jury may consist of not more than twelve nor less than six persons. Would that not imply that if it were less than twelve it would have to be with the consent of the accused?

TAYLOR: That is right.

PRESIDENT EGAN: Is objection heard to the unanimous consent request?

AWES: I object.

VANDERLEEST: I second the motion.

TAYLOR: I think it should be changed a little bit, I think we can change that.

PRESIDENT EGAN: If there is no objection the Convention will stand at ease for a moment. The Convention will come to order. We have the proposed amendment as proposed by Mr. Taylor before us. Is there discussion of the proposed amendment? Miss Awes.

AWES: I would like both to object to the amendment and I would also like to make a little explanation of the section. Mr. Johnson made an interpretation that I don't think is quite correct. The section provides, "In courts not of record the jury may consist of not more than twelve nor less than six persons. It is my understanding that when a constitution preserves the right to a jury it preserves the right to a jury of twelve, which was the common law jury. The provision, may consist" rather than "shall consist was intended to leave the matter up to the legislature, the right of jury is preserved and that would be twelve people unless the legislature sees fit to change it to six or eight or anything not less than six. I don't think that if you are going to add this "with the consent of the accused", you might as well knock out the whole thing from the word "except" on to the end of the sentence because the accused can always waive the right to practically any constitutional protection he has. You don't have to put it in the constitution. I think there was one case where the defendant waived

so many of his rights that he was soon facing the electric chair The court held that as long as he voluntarily waived them that he could do it. Therefore, there is no point of having a provision in there. If he wants to he can consent to no jury at all.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: For once I do not concur with the eminent Chairman of the Committee. A person under a system which allows a trial by jury of twelve, the accused may waive a jury, period, but that means he just throws himself on the mercy of the court and has no jury at all, but if he is going to be allowed a jury of six persons instead of twelve, which is generally agreeable to the parties involved in your commissioner courts or justice of the peace courts, the law has to provide for such a jury of six. Now, the procedure now in the justice of the peace courts and our commissioners' is that if a defendant in a criminal case in a J P court wishes to consent to it and wants a jury, he may have a jury of six and waive as to the requirement of having twelve people on the jury. The thought behind Mr. Taylor's amendment here is the same as prevails in Alaska at the present time. So you don't have to go whole hog or none. You waive a jury completely and you don't get any at all. You just as well might let the J P courts operate with juries of six, but as it was, it would be the legislature may positively fix a jury of six in justice of the peace courts, the way the language was. Mr. Taylor is trying to establish that you may have a jury of six if the defendant waives a jury of twelve and consents to a jury of six. I am supporting Mr. Taylor's amendment, except that I want to make it read a little better here. I am going to offer an amendment to his amendment. That is, the language on line 16 which says "not more than twelve nor less than six". If you establish a jury of twelve period, and you say that he may waive the jury of twelve and have a jury of six, you don't want to talk about a jury of not more than twelve. You just say "may consist of a jury of six", so I move to amend Mr. Taylor's proposed amendment by deleting the words on line 16 as follows: "Not more than twelve or less than", and I ask unanimous consent.

PRESIDENT EGAN: The Chair might ask a question. What was the particular amendment in that section that Mr. Robertson has proposed? How does the section in there read at this time?

CHIEF CLERK: "In all criminal prosecutions the accused has the right to a speedy and public trial, by an impartial jury of twelve, except that in courts not of record the jury may consist of not more than twelve nor less than six persons."

PRESIDENT EGAN: Does that interfere with what Mr. Ralph Rivers said?

CHIEF CLERK: Mr. Rivers is on the next line.

TAYLOR: Just for a moment, a change of an idea with Mr. Rivers. I think though that that doesn't cure the defect in it because if a man is being tried it might be the district attorney who might say, "I want only six jurors", and the defendant has nothing to say about it because the district attorney said it, but it should be in there that it must be with his consent to be tried by a jury of less than twelve people.

R. RIVERS: Does not your principal amendment say "with the consent of the accused"? May we have a two-minute recess?

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess for two minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Taylor.

TAYLOR: I ask unanimous consent to withdraw the previous amendment to Section 12.

PRESIDENT EGAN: Mr. Taylor asks unanimous consent to withdraw his original amendment.

R. RIVERS: I ask the same with regard to my proposed amendment.

PRESIDENT EGAN: Is there objection to the withdrawal?

TAYLOR: I offer an amendment that takes care of the matter.

PRESIDENT EGAN: The amendments are ordered withdrawn. The Chief Clerk will please read the proposed amendment as offered by Mr. Taylor.

CHIEF CLERK: "Line 15, page 4, after the second word 'jury' insert 'with the consent of the accused'. Line 16, strike 'not more than twelve nor less than'."

R. RIVERS: The word "jury" being the last word "jury" on line 15.

TAYLOR: I move the adoption of the amendment and ask unanimous consent.

PRESIDENT EGAN: Mr. Taylor moves the adoption of the proposed amendment and asks unanimous consent.

MCNEALY: I object.

R. RIVERS: I second the motion.

PRESIDENT EGAN: The matter is open for discussion. Mr. Fischer.

V. FISCHER: I would like to ask Mr. Taylor or one of the other attorneys here, exactly what are we talking about when we talk about "courts not of record"? Are those established by the legislature and could the legislature not provide for the size of the jury and all the other details?

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Not if we put this limitation on it, or restriction on them. That is why it is in there. A court not of record is a court in which the proceedings are not transcribed, they have no shorthand reporters present unless you ask for a court of record.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: May I amplify what Mr. Taylor says? The courts of general jurisdiction have the common law jury of twelve. That is what will be our superior court after we get to be a state. The judiciary article says that the legislature may establish such courts of limited jurisdiction as the legislature deems fit, and that would be the J P courts, and they authorize these magistrate courts in the towns and juvenile courts and that sort of thing, all of those courts which would be created by the legislature would not be courts of record.

PRESIDENT EGAN: Miss Awes, did you want the floor?

AWES: I just was going to explain what a court not of record was.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: I don't feel strongly one way or the other in regard to this amendment here. The only reason I objected to the amendment was for the same reason I voted for this in Committee. To allow for juries of six in magistrate courts or in commissioners courts or justice of peace courts, as they possibly will be, both as prosecuting and defending of cases in these inferior courts there is very often that I have called for a jury of twelve in a commissioner's court on a traffic violation or a drunken driving charge or some petty misdemeanor, and the reason I did was because it was the Federal government that was paying twelve dollars a day, I believe jury's fees, and in looking this over in the Committee I felt that if the state was going to have to pay that, that comes a little closer to home and was purely a financial matter as far as I was concerned. Actually, I believe if the party that was accused of assault and battery or drunken driving or some parking violation or any misdemeanor, that he can get ample justice before a jury of

six, and it would save the state about $72 on these one-hour trials and further, if he is still not satisfied with the decision of the jury of six he has the right of course then to appeal and have his case heard before a jury of twelve in the higher court, so it was strictly from a financial point of view that gives the legislature power, and I believe that if the legislature, if they feel that people's rights aren't covered by a jury of six, then they can cause the jury to be set at twelve or they can legislate this particular amendment.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, I am wondering that if the wording that is given to us is as clear as we want it to be. It says here "with the consent of the accused the jury shall not be more than twelve nor less than six."

TAYLOR: No.

R. RIVERS: That is what I am moving to strike, "not more than twelve or less than six".

LONDBORG: I see.

PRESIDENT EGAN: Mr. Cross.

CROSS: I would like to point out that there are several places in the Territory where it is extremely difficult to get a jury of twelve and an accused man can obstruct justice for a considerable time by demanding a jury of twelve.

HURLEY: I would like to second what Mr. Cross has said and also, although we have not provided for it in the constitution under the judiciary article, I presume it is fair to think there will be a very simple right of appeal from your lower courts to your courts of record, and I do not think we are trodding upon the rights of the accused by providing a lesser number than twelve as a jury if that appears to be the proper thing to do by the judge who is trying the case. I am against the amendment.

PRESIDENT EGAN: If there is no further discussion -- Mr. Taylor.

TAYLOR: I would like to answer Mr. Hurley. Perhaps he is not familiar with the way law is administered in Alaska. Now take the hypothetical case of a man who is tried before a commissioner or a justice of the peace or before a jury of six. He says, he spent his day in court so he can appeal. Well, this is a criminal case he is trying, and it might be he lies in jail one year before his appeal can be heard. He is denied the right of justice. Mr. McNealy here, he would crucify justice on the cross of gold because it is going to cost $72 for a couple

of jurors.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I wonder if I might direct a question to Mr. McLaughlin through the Chair?

PRESIDENT EGAN: You may, Mr. Sundborg.

SUNDBORG: Mr. McLaughlin, I am wondering if the article on the judiciary which has already passed through second reading does not permit in its Section 19 which says, "The Supreme Court shall make and promulgate rules governing the administration of all courts of the State. It shall also make and promulgate rules governing practice and procedure in all civil and criminal cases in all courts, which rules may be changed by the Legislature only upon a two-thirds vote of the members elected to each house." It does not give the supreme court the authority to do what we are attempting to write in here as a bill of rights, that is the right for a trial by jury of six persons.

MCLAUGHLIN: I would say it does not give that right. That is not a procedural matter, that is a substantive matter, the right of trial by jury and the number that you will have. I would say the supreme court had no authority to make rules on that subject. It would be either the legislature or provided in the constitution.

SUNDBORG: Do you believe it belongs in the bill of rights?

MCLAUGHLIN: If you are asking my opinion of this section, I think this section as presented by the Bill of Rights Committee is an excellent section without amendment.

SUNDBORG: Thank you.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Taylor be adopted by the Convention"? All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 12? Mr. McLaughlin.

MCLAUGHLIN: I have a question to the Chairman of the Bill of Rights Committee, line 18, that is beginning at 17, "The accused is also entitled to be informed of the nature and cause of the accusation". Does "cause" add anything to it?

AWES: I don't recall any particular question on that by the Committee. I am inclined to think that the words "and cause" are redundant.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Once again that is taken word for word from the Federal Constitution.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: The word "cause" as I understand it, the nature of the crime would be the facts. The cause would apply to the law the party was charged under.

PRESIDENT EGAN: Mr. Gray.

GRAY: Mr. Chairman, I note by my clock that the time is 5:40, and if it is in order I move to adjourn until 9 a.m. tomorrow morning.

PRESIDENT EGAN: Before this motion is acted upon, the Chair would like to remind the delegates that they are invited to an open house given by Pan American Airways at their new office quarters in the Nordale Hotel between now and 7 p.m. The Chair would also like to suggest that inasmuch as we now have a full calendar before us and inasmuch as each delegate has that calendar in his possession that it might expedite matters if each delegate would attempt to go through each proposal, and if he feels that there are any parts of it he would like to offer amendments to, have the amendments ready at the time that we convene if possible. Mrs. Hermann.

HERMANN: I would suggest that they also read the PAS book about that same material because some times you get some very good ideas from it.

PRESIDENT EGAN: Are there any committee announcements to be made at this time? Mr. Gray.

GRAY: I will ask for unanimous consent.

PRESIDENT EGAN: Mr. Gray asks unanimous consent that the Convention stand adjourned until 9 a.m. tomorrow. Hearing no objection it is so ordered.