

# SEVENTIETH DAY

## MORNING SESSION.

TUESDAY, May 7, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. Mr. Dunn, delegate from Clermont county.

The journal of yesterday was read and approved.

Consideration of Proposal No. 170 — Mr. Worthington, was resumed.

Mr. ANDERSON: I offer the following amendment. The amendment was read as follows:

In line 10 insert the word "outstanding" between the words "all" and "bonds" and strike out the words "at present outstanding."

In line 13, strike out the words "at present" and after the word "outstanding" insert the words "at the time when this section takes effect."

Mr. ANDERSON: Mr. President and Gentlemen: The amendment corrects a mistake in the original draft. You will notice the words "at present." That means the bonds outstanding at the present shall not be taxable. "At present" has been interpreted by the supreme court to mean at the time we adopt the constitution, whereas what was meant by Mr. Cassidy and myself in the original draft was at the time of the ratification or enactment. This simply corrects that mistake.

Mr. LAMPSON: Does your amendment make it clear that all municipal bonds outstanding at the time of the adoption at the election shall be exempt?

Mr. ANDERSON: At the time of the ratification. That is the purpose of it. I want to call your attention just to the fact in reference to placing the rate limit in the constitution, that constitutions are not made for majorities. A constitution is made for the protection of the minority. A majority never needs a constitution because it never needs protection. If that is correct, and I believe it is, no proposal ought to be adopted that will bring hardship to any city in Ohio. Therefore, in considering whether a limitation should be placed in the constitution, if I can demonstrate that a great hardship will come to any one in Ohio, that limitation ought not to be placed in the constitution.

Youngstown in 1890 had 33,000 people, in 1900, 44,000 and in 1910, 79,000, an increase of 35,000 in ten years. We have a large foreign population, consisting of numerous children who are attending our schools. Before the Smith one per cent law went into effect the tax rate in Youngstown was four and one-tenth per cent. That rate of four and one-tenth per cent meant that sufficient money could not be raised for school purposes to properly take care of the children, for it only permitted one-half day of school for all of our pupils, and some of them, for the lack of proper buildings, were made to receive their education in cellars and basements.

Mr. CUNNINGHAM: May I ask the gentleman a question?

Mr. ANDERSON: Just wait until I finish. I very seldom refuse to answer a question, but I want to get through with this thought. When the Smith one per cent

law went into effect, in order to get the same amount of money—same conditions prevailing that prevailed under the four and one-tenth per cent rate—the taxable property had to be put on the tax duplicate at more than four times its previously estimated value. Of course, that meant an extremely high valuation. The little property I own in the city will not sell for more than its appraised value on the tax duplicate. Not only do we have to put our property on at four times what it was before, but conditions have become more aggravated, for the population has doubled. From an economic standpoint the foreign families that come to Youngstown are a loss. They own no property, and pay a rent of only a few dollars a month. We have to provide places where their children can be educated. We have to provide buildings, teachers, and books, because we have free school books in Youngstown. Therefore, from the standpoint of the city itself we have a loss on each family, and you must remember that since 1900 the population has been doubled, for it was 79,000 in 1910 as against 44,000 in 1900. These are conditions that confront us in Youngstown. It may be different in other places, but in Youngstown our schools are not in control of politicians. The politicians are made to keep their hands off and therefore, replying to the argument of the gentleman from Defiance, since our schools are not in the hands of politicians, and politicians being interested only in those things where they or their representatives handle the money, the schools are the last thing for which provision is made. Therefore, if the constitution is made for the minority, and if no proposal ought to be passed that would bring great hardship to any city, this limitation should not be placed in the organic law of Ohio.

The gentleman from Defiance can not properly understand conditions in Youngstown, as he is speaking of a place where the population is decreasing. I do not understand why it should decrease, for I noticed when I was over there that he lives in a beautiful little village.

Mr. JOHNSON, of Williams: May I ask the gentleman a question?

Mr. ANDERSON: I do not care to be interrupted.

Mr. JOHNSON, of Williams: I have not been in the habit of asking questions for buncombe and I have a fine question I would like to ask.

Mr. ANDERSON: Go ahead.

Mr. JOHNSON, of Williams: The gentleman says constitutions are made for minorities. I agree with him. Here is a proposition to limit the taxes. Before this constitutional amendment passes, will this proposal, if it passes, place on the tax duplicate the bonds issued before they were released from taxation?

Mr. ANDERSON: No, sir; the amendment that would do that was voted down.

Mr. JOHNSON, of Williams: Do you put any bonds back?

Mr. ANDERSON: No, sir; it was decided a moment ago that they would not be put back.

Mr. JOHNSON, of Williams: Do you believe that any of the bonds ought to be placed back that were

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issued either before or after the passage of the amendment exempting bonds?

Mr. ANDERSON: It is my individual opinion that the bonds that were made nontaxable by the constitutional amendment of 1904, that are now in existence, should be placed upon the tax duplicate.

Mr. JOHNSON, of Williams: I can demonstrate that that is absolutely wrong. If bonds that were issued fifteen years ago have been released, this Constitutional Convention has no right to put those bonds back on the tax duplicate that were bought by an innocent purchaser.

Mr. ANDERSON: I am just giving my individual opinion. The Convention decided you were right and I was wrong. That is a closed incident. This Convention has decided that only bonds issued after this constitution is ratified shall be taxpaying and all of the bonds issued before that shall not be.

Mr. WINN: It will be necessary to preface this with some figures —

Mr. ANDERSON: I would like to go into another matter before I quit.

Mr. WINN: I want to ask a question. I have some official records before me. I see that the banks of Mahoning county had on deposit last year \$18,771,191 and that there was returned for taxation money on deposit subject to check \$839,000, a little more than four per cent. Now you say the real estate in Youngstown is assessed for more than one hundred per cent?

Mr. ANDERSON: It will average one hundred per cent.

Mr. WINN: These figures show that the money is assessed at about four per cent of its value. Do you not believe it would be better to make such personal property pay more nearly a just rate of taxation and relieve the real estate than to allow things to go as they are?

Mr. ANDERSON: Certainly, but if we fail, as we have failed, who will suffer? Will it be the rich man? No. Will it be the man of ordinary means? No. The man who will commence to suffer first and will suffer the longest will be the poor man.

In view of the conditions causing the suffering existing in the city, the poor man feels it first and his family suffers longest. I agree with what you say, but I do not want the poor man's children or the poor man's family to suffer until you can change human nature so that you can obtain a proper return for personal property. Thank you for asking that question. I am in favor of helping all we can to the end that the tax rate be kept down by taxing other things that have not been taxed in the past, so that the Smith one per cent provision, as a statutory law may remain; and having that end in view, I am in favor of taxing incomes and inheritances. I am in favor of the production tax and in favor of the franchise tax and in favor of taxing all bonds that may be issued in the future. There are five different things we can tax in the future by constitutional enactment and one of them is franchises. Take, for instance, the city of Youngstown; We gave a street railway franchise a number of years ago. That franchise is now worth millions and millions of dollars, and while our children were being educated in the basements that company was growing immensely rich and not a cent was it paying for that franchise toward helping Youngstown take care of these children.

Mr. EB: I notice in the last census that you have

five times as many people in your county as we have in Preble county; I notice you have a city of eighty thousand inhabitants while we have none over three thousand, and I notice the merchants in your town are paying taxes on but a few dollars worth of stock more than the merchants of our county. The same thing is true of the bank deposits. I find we are paying on more watches than you are. Is it not a fact that rather than fight taxes you should be in favor of bringing out the hidden property? Would not that make up the deficiency that you need to educate your children?

Mr. ANDERSON: How do you know? It is a guess on your part and you want to put your guess in the constitution. Will you come to Youngstown and undertake the task? Are you possessed of such superior knowledge, acquired while living in your little county, that you can know and appreciate the conditions in our county, without being there and seeing the conditions?

Mr. EB: No, sir; I am reading from a statement here. It appears to me you have an organized system of taxdodging.

Mr. ANDERSON: Well, there is some taxdodging, because we have so much property that cannot be found; it is easily hidden. If we lived in your little county, where everything that everyone has is entirely evident to everybody else, there could be no dodging and the only reason your people do not dodge is because it is a physical impossibility, not because they are any more honest or better than anybody else.

Mr. HARBARGER: Will not the tendency be toward evasion?

Mr. ANDERSON: "Tendency" is a good word. All you know about it is "tendency." Do you want to put the "tendency" in the constitution where it must remain a fixture for years to come? Do you think the "tendency" will change human nature? If we can change human nature by this provision so that we could make all people list all of their property enabling the children of Youngstown to be educated, I would say, "Amen". Ought a guess, a theory or a "tendency" to be put in the constitution? If you want to put any figures in the constitution, they should be first capable of mathematical demonstration. The very fact that different rates have been suggested demonstrates that this is a guess, but we will not put a guess in the constitution.

Mr. EB: Did we not jump all around on the liquor clause?

Mr. ANDERSON: Yes; we did the best we could to get it through and that is what you are trying to do here. In the liquor proposal I wanted to limit the saloons to one to a thousand, and I would prefer that greatly to one to five hundred. Then we attempted to get one to seven hundred and fifty. At last we got one to five hundred, and you are proceeding along the same lines in reference to the taxation that we did on the saloon question. You are trying to get enough votes to pass something. No limitation can be mathematically determined; you are trying to determine it by a majority vote.

Take Youngstown, and the bar bill is \$4,000,000 a year. Will the one per cent limitation change the drink habit in Youngstown? Those are conditions we have there. The only people I am trying to protect are the children and the poor people in Youngstown, who will be denied education and will have to suffer. I am not attempting to represent anybody else, and I am not mak-

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ing an apology for the taxdodger, but I am trying to keep the delegates from the smaller places from making a mistake, because they are not qualified to speak as to the conditions in Cleveland, Youngstown and Cincinnati, where we are trying to do our duty in educating and taking care of the poor.

Mr. BROWN, of Highland: If it is true that we have taxdodgers, and it is recognized on the floor, and if we refuse to limit the tax levy, is not it conniving at the fact that taxes are dodged?

Mr. ANDERSON: I don't know exactly what is the meaning of the word "conniving" as you use it. Do you mean because we refuse to put this absurd limitation in the constitution—not absurd as to a large majority of places, but absurd as far as Cleveland and Youngstown are concerned—that we are conniving because we will not protect the people who are otherwise protected? Is that the way you use the word "conniving"?

Mr. BROWN, of Highland: How does it come that in West Virginia they only pay seven mills?

Mr. ANDERSON: I don't know anything about West Virginia, but I do know something about Youngstown. I suppose you are speaking of the backwoods, where they only grow razor-back hogs.

Mr. ELSON: I want to say a few words on this subject. Our debate seems to have resolved itself into a contest between the rural counties and the cities. Now I come from a rural county. The largest town in our county scarcely exceeds ten thousand people. It is the most natural thing in the world that I would line up in favor of the rural county, but it seems to me if the cities in the state feel that they need more than the one per cent tax limit in order to carry on their business that the rural counties have no right to put a veto on it. I do not see how they can consistently do it. It was only a few days ago that we voted to give the cities practical home rule. We agreed that was the best possible thing that could be done for the cities. Let them have self-government in all matters that do not pertain to the state as a whole. Now shall the rural counties come in and say that the cities must confine themselves to the one per cent maximum tax limit? If Cleveland or Youngstown can not take care of their children, or if Columbus can not take care of their streets, without larger taxation than the Smith law will permit, what right have we to say you can not tax yourself more than one per cent? I do not believe we have the right to do anything of that sort. As far as politics are concerned, the cities will have to manage their own affairs in that respect too. If we intend to give them home rule, let them take care of their own affairs. If they overtax themselves in order to have a larger political fund, it does not hurt us.

Mr. BROWN, of Highland: In connection with the statement that we have no right to control or limit taxation in the cities, I ask if we are not all exercising that right under the Rose law when we compel cities and towns to regulate their saloons in accordance with the dictates of the surrounding country?

Mr. ELSON: The taxation feature in the Rose law is incidental and not the main thing at all. This is a pure matter of taxation. If the cities want to tax more than one per cent why should we of Brown or Adams county come in and say to the people of Cleveland, "You can not do it."

I believe the Smith one per cent tax law should be

tried thoroughly and well for several years, and I believe it will work. Cleveland, Columbus, Cincinnati and other large cities may not come to it in the first two years, but I believe they will be able to get to it. I do not believe we should put it into the organic law, and I do not think we should fix it so there will not be any possibility of change. If we do that it will be changed within a few years through the initiative and referendum.

Now a word on classification, although it seems we have practically settled that in our preceding debate. From a scientific standpoint I can not help favoring the classification of property, but from various evidences we have had in this Convention I am led to believe—indeed, I am convinced—that it will be impossible to get classification through this Convention, so that Ohio will have to remain one of the very few states of the civilized world where classification is forbidden in the organic law. In almost all countries and political divisions having the power of taxation, the uniform system has been abandoned long ago. We are one of the very few states in this Union that still clings to uniform taxation. It is the rural vote, and the farmers are perfectly sincere, but I believe they are in error in their judgment. I believe the farmers have paid more taxes in the past sixty years because of the fact that classification was not permitted than they would have had to pay otherwise. I believe the same thing will be true in the future and I do not believe it will be many years before we have classification by means of the initiative and referendum. I am reminded that classification is forbidden in the initiative and referendum proposal. I was thinking of the single tax only. That will make it more difficult to bring about.

Mr. KELLER: I believe you said this is one of the few states that has uniform rule?

Mr. ELSON: There are not many.

Mr. KELLER: According to the digest of the constitutions I can give you the number of states that digest claims have the uniform rule: Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Idaho, Indiana, Kansas, Kentucky, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Mr. WINN: Thirty-two.

Mr. ELSON: The great states of New York, Pennsylvania and Massachusetts have abandoned that old-time method and I had hoped that Ohio would. If we go into Canada we find they are miles in advance of us in the matter of taxation. They have not got the uniform system anywhere. Go to Europe and you will not find any uniform system. It is all classification. I believe that classification is the best possible thing and that our eyes will sooner or later open to it. I have nothing further to say except that I think it would be absolutely wrong for the rural counties of the state to force upon the cities a tax limit when the cities tell us in plain language that they can not get along with it. I believe we could give the cities home rule in that respect and I hope the counties will all stand for it.

Mr. LAMPSON: I demand the previous question on the pending amendment, simply that one amendment.

The PRESIDENT: The question will be on the amendment offered by the delegate from Mahoning.

The amendment was agreed to.

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Mr. WINN: I offer an amendment.  
The amendment was read as follows:

At the end of the amendment of Mr. Fackler add the following: Sec. 2.—“The maximum rate of taxes that may be levied for all purposes, exclusive of such rate as may be necessary to pay any bonds now outstanding and the interest on such bonds, shall not in any year exceed ten mills on each dollar of the total value of all property, as listed and assessed for taxation, in any township, city, village, school district, or other taxing district. Additional levies, not exceeding in any year a maximum of five mills, for all such purposes, on each dollar of the total value of all the property therein, listed and assessed for taxation, in any taxing district, may be levied when such additional levies are authorized by a majority vote of the electors voting thereon at an election held for such purpose; but in no case shall the combined maximum rate of taxes for all purposes, levied in any year in any township, city, village, school district, or other taxing district, exclusive of the rate necessary to pay said existing bonded indebtedness and the interest thereon, exceed fifteen mills on each dollar of the total value of all the property, as listed and assessed for taxation, in such district.”

Mr. WINN: I apprehend we have reached the point where we are ready to determine whether or not we will vote into this proposed amendment the limitations. I just want to explain this; I am not going to make a speech about it. I think I have said as much as I care to. This is the original amendment which I offered a few days ago, excepting that it provides that the maximum rate of ten mills shall be exclusive of the amount necessary to provide a sinking fund for the redemption of the bonds now outstanding and to pay the interest on such bonded indebtedness. In other words, this amendment is the Smith law with the decision of the supreme court written into it, allowing the further increase of five mills by referendum to the electors of a taxing district. I offer this as an amendment to the Fackler amendment and I do that for this reason: The Fackler amendment is better than the original Anderson amendment as it has been modified by the present amendment. It is better because it contains all that the Anderson amendment contains and in addition to that it contains a provision respecting the tax on coal and other mineral land. It contains the inheritance tax and the provision that the inheritance tax may be graduated. It contains the income provision and perhaps one or two other measures upon which we all agree. My notion is if we can have this limitation in the Fackler amendment and then adopt the Fackler amendment we have an ideal taxing proposition.

I do not care to speak on its merits at all. I can scarcely avoid the temptation, however, to reply to some of the things that have been said this morning by the member from Mahoning. When I examine the records I find that a few little banks down in the county of Preble, one of the smallest counties in the state, one of the poorest counties in the state, one of the poorest counties because it is small, poor only because it is small in population, but rich in everything else—when I see that in the little county of Preble there is more money

returned for taxation by one hundred thousand dollars than is returned in the great county of Mahoning and when I find that the merchants of the little county of Preble returned more goods for taxation than were returned by all those mammoth stores in Youngstown and all of Mahoning county, then I feel like saying something about it, but I have taken too long and I will desist.

Mr. FACKLER: I move that the amendment of the delegate from Defiance be laid on the table.

Mr. EBY: I wish to say that in twenty years, from 1890 to 1910, Preble county had a larger duplicate per capita than any county in the state except one and that was Lake.

Mr. DOTY: Where is Preble?

Mr. EBY: Nobody but a gentleman from Cuyahoga would ask that. I want to say further that Preble county produced more agricultural products per capita than any county in the state of Ohio.

Mr. WINN: I demand the yeas and nays on the motion of the gentleman from Cleveland [Mr. FACKLER].

The yeas and nays were taken, and resulted—yeas 40, nays 67, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Malin,
Bowdle,	Harris, Ashtabula	Matthews,
Cassidy,	Harter, Huron,	Mauck,
Cordes,	Henderson,	Read,
Crosser,	Hoskins,	Roehm,
Davio,	Hursh,	Shaffer,
Doty,	Johnson, Madison,	Stamm,
Elson,	Johnson, Williams,	Stevens,
Evans,	Kilpatrick,	Stilwell,
Fackler,	Knight,	Taggart,
Farrell,	Kramer,	Thomas,
Fess,	Leete,	Ulmer,
FitSimons,	Leslie,	Weybrecht.
Fox,		

Those who voted in the negative are:

Antrim,	Harter, Stark,	Peters,
Baum,	Hoffman,	Pettit,
Beatty, Morrow,	Holtz,	Pierce,
Beyer,	Jones,	Price,
Brattain,	Keller,	Redington,
Brown, Highland,	Kunkel,	Riley,
Brown, Pike,	Lambert,	Rockel,
Campbell,	Lampson,	Rorick,
Cody,	Longstreth,	Shaw,
Collett,	Ludey,	Smith, Geauga,
Colton,	Marriott,	Solether,
Crites,	Marshall,	Stalter,
Cunningham,	McClelland,	Stewart,
Dunlap,	Miller, Crawford,	Stokes,
Dunn,	Miller, Fairfield,	Tannehill,
Dwyer,	Miller, Ottawa,	Tetlow,
Earnhart,	Moore,	Wagner,
Eby,	Norris,	Walker,
Fluke,	Nye,	Watson,
Halenkamp,	Okey,	Winn,
Halfhill,	Partington,	Woods,
Harbarger,	Peck,	Mr. President.
Harris, Hamilton,		

So the motion to table was lost.

Mr. COLTON: I now move the previous question on the Winn amendment.

Mr. DOTY: I second it. Before that is taken I demand the yeas and nays.

The main question was ordered.

The delegate from Ashtabula [Mr. LAMPSON] here assumed the chair as president pro tem.

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The PRESIDENT PRO TEM: The question is on the amendment of the delegate from Defiance.

The yeas and nays were regularly demanded, taken, and resulted—yeas 66, nays 41, as follows:

Those who voted in the affirmative are:

Antrim,	Halfhill,	Okey,
Baum,	Harbarger,	Partington,
Beatty, Morrow,	Harris, Hamilton,	Peck,
Beyer,	Hoffman,	Peters,
Brattain,	Holtz,	Pettit,
Brown, Highland,	Johnson, Madison,	Pierce,
Brown, Pike,	Jones,	Price,
Campbell,	Keller,	Redington,
Cody,	Kunkel,	Riley,
Collett,	Lambert,	Rockel,
Colton,	Lampson,	Rorick,
Cordes,	Longstreth,	Shaw,
Crites,	Ludey,	Solesher,
Cunningham,	Marriott,	Stalter,
Dunlap,	Marshall,	Stewart,
Dunn,	McClelland,	Stokes,
Dwyer,	Miller, Crawford,	Tannehill,
Earnhart,	Miller, Fairfield,	Tetlow,
Eby,	Miller, Ottawa	Wagner,
Elson,	Moore,	Walker,
Fess,	Norris,	Watson,
Fluke,	Nye,	Woods.

Those who voted in the negative are:

Anderson,	Harter, Huron,	Read,
Bowdle,	Harter, Stark,	Roehm,
Cassidy,	Hoskins,	Shaffer,
Crosser,	Hursh,	Smith, Geauga,
Davio,	Johnson, Williams,	Stamm,
Doty,	Kilpatrick,	Stevens,
Evans,	King,	Stilwell,
Fackler,	Knight,	Taggart,
Farrell,	Kramer,	Thomas,
FitzSimons,	Leete,	Ulmer,
Fox,	Leslie,	Weybrecht,
Hahn,	Malin,	Winn,
Halenkamp,	Matthews,	Mr. President.
Harris, Ashtabula,	Mauck,	

So the amendment was agreed to.

Mr. HALFHILL: I desire to explain my vote. I voted in the affirmative upon this question because I believe we have no right to interfere with the experiment of the Smith one per cent law, which is an experiment. This Convention ought to have been big enough to leave experiments out of the constitution and I believe we shall regret the day that it is there. We have no means of knowing what the future has in store for us, and within ten years the purchasing power of a dollar has decreased by one-half. I want to explain my vote.

Mr. ANDERSON: I want to explain my vote. I am firmly of the belief and have been for some time that there are a number of delegates, and their names will come to mind of other delegates, that are opposed to the income tax and inheritance tax, the production tax, the franchise tax, and the taxing of bonds, and that they are trying to do that which was stated by some delegate on the other side of the house yesterday—prolong the debate and mix it up for the purpose, and the sole purpose—not because they are in favor of the one per cent tax law, because they would be voting the other way if that were so—but for the sole purpose of dividing the Convention upon the question of those taxes. Therefore, I voted against the Winn amendment, and I firmly believe if all the delegates had voted their true sentiments on this amendment it would have failed of adoption.

Mr. DOTY: I offered an amendment and I haven't had a chance to explain it or talk about it at all. Through a misunderstanding or inadvertance a motion was made to lay this amendment on the table and the amendment was not discussed. It had not at that time been printed. I have changed it somewhat and I state frankly that the amendment I offer is the same in principle but different in form and I offer it so we can have a discussion of it.

The amendment was read as follows:

At the end of the proposal add:

That, at the same time and upon the same ballot, which ballot shall be separate from all other ballots upon which amendments may be submitted, the following alternative proposed amendment be submitted to the electors of the state:

ARTICLE XII.

SECTION 1. The levying of taxes by the poll is grievous and oppressive; therefore no poll tax shall ever be levied in this state, nor service required therein, which may be commuted in money, or other thing of value.

SECTION 2. The general assembly shall have power to establish and maintain an equitable system for raising state and local revenue. It may classify the subjects of taxation so far as their differences justify the same in order to secure a just return from each. All taxes and other charges shall be imposed for public purposes only and shall be just to each subject. The power of taxation shall never be surrendered, suspended or contracted away. Bonds of the state of Ohio, bonds of any city, village, hamlet, county or township in this state, and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, burying grounds, public school houses, houses used exclusively for public worship, institutions for purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SECTION 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SECTION 7. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value.

Such tax may also be levied at a different or higher rate upon collateral inheritances than direct inheritances and a portion of each estate not exceeding twenty thousand dollars may be exempt from such tax.

SECTION 8. Laws may be enacted providing

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for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to such incomes as may be designated by law, but a part of each income, not exceeding three thousand dollars in any one year, may be exempt from such tax.

SECTION 9. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and minerals.

SECTION 10. No bonded indebtedness of the state or any political subdivisions thereof, shall be incurred or renewed, unless in the legislation, under which such indebtedness is incurred or renewed, provision is made for the payment of not less than two per centum of the principal together with the annual interest on the same, each year, until such indebtedness is paid.

*Resolved further,* When these competing amendments to the constitution are submitted to the electors, the ballot shall be printed as follows:

	For uniform rule in taxation.
	For classification in taxation.
	Against both amendments.

so that each elector may express separately by making one cross-mark (X) his preference for either of the two amendments or against both amendments. If the majority of votes are cast "Against both amendments" as compared with the total of those cast for either amendment, there shall be no amendment to the constitution; if not, the amendment which has the larger number of votes shall be adopted as the amendment to article XII, sections 1, 2 and 6 of the constitution.

Mr. DOTY: In 1891 three hundred and three thousand people in the state of Ohio, over forty per cent of the electors that year, voted to insert in the constitution section 2 of this amendment. At that time there was no Longworth act, so it was voted on under the adverse conditions of the ballot with which you are all familiar. It was not adopted because all of those who did not vote were counted as being in the negative.

Three years later three hundred and twenty-two thousand voted for the same amendment. In 1903 three hundred and twenty-six thousand voted for the same amendment. In 1908 three hundred and thirty-nine thousand—nearly three hundred and forty thousand—of the electors voted for this identical amendment, and at none of those elections was the Longworth act responsible for the vote. They were voted on under the adverse conditions of submitting an amendment under the old constitution. Now, from three hundred and three thousand to three hundred and forty thousand having voted for this particular amendment, that makes a very respectable number of the people of the state of Ohio who have already indicated their wish to change the constitution in this particular.

There may not be a majority of all the people in the state of Ohio in favor of it, but there is certainly a very much larger percentage of the total number of voters in the state than we have called for in the highest percentage of the initiative and referendum, which was twelve per cent.

Mr. DWYER: Does your proposition provide for a limitation of the tax rates?

Mr. DOTY: That has been voted in and my proposition does not disturb it.

Mr. DWYER: The Winn proposal goes in.

Mr. DOTY: Yes, and mine does not affect that. Mine is an alternative proposition to be voted for, so that if you are for the Winn proposal you would be for both of these and if you were against it you would be against both.

Mr. DWYER: If yours is out and the Winn amendment is in, it would be in good shape.

Mr. DOTY: All this amendment seeks to do is to do what evidently it is impossible for this Convention to do with any certainty. I do not care what the member from Defiance says, none of us feels sure the thing we are ready to vote for is really the solution of this tax question. Why should not the people of Ohio have a chance to vote for or against one of these options, and why should we select only these options? I think the reason why we should select only these options at this time is because for sixty years we have had one in effect and four times in the last twenty years over three hundred thousand people have voted for the other. Since 1851 the uniform rule, as so called, has never been submitted to a vote of the people of the state of Ohio. You gentlemen who are in favor of the uniform rule, as you have a perfect right to be, may be representing the opinion of your constituents and you may not; you do not know and I do not know. The nearest I know about my own county is that the last time this amendment was submitted it received thirty-seven thousand votes to sixty-seven thousand votes against it; but when you count the voters who did not vote the majority against it vanished. Cuyahoga county nor any other county has never had a chance to express itself on the uniform rule. Are you gentlemen so sure that you are absolutely capable of diagnosing the people of your county on this subject, and yet are afraid or unwilling to submit the question to the people of your county? Why do you set yourselves up as being the only ones capable to say?

Mr. WATSON: In regard to my county I can say this is one of the planks on which I ran, and it was discussed all over the county.

Mr. DOTY: You didn't ask a question, but made a statement. I suppose that is all right. You also ran on the initiative and referendum?

Mr. WATSON: Yes.

Mr. DOTY: Did not the principle of the initiative and referendum provide that we should leave these questions to the people?

Mr. WATSON: Yes.

Mr. DOTY: Why are we afraid to leave the question of uniform taxation to the people?

Mr. WATSON: I discussed the taxation question with these people and they seem to be in accord with it.

Mr. DOTY: How many votes did you receive?

Mr. WATSON: Sixteen hundred and twenty.

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Mr. DOTY: What was the combined vote of all the other candidates?

Mr. WATSON: About four times that.

Mr. DOTY: So we find in Guernsey county the vote taken upon the taxation question specifically on a campaign for uniform taxation was four to one against the uniform rule.

Mr. WATSON: That was also the plank of the other candidates.

Mr. DOTY: Were they defeated on the initiative and referendum?

Mr. WATSON: Yes.

Mr. DOTY: You were elected on the initiative and referendum?

Mr. WATSON: Yes.

Mr. DOTY: Do you suppose that if you had told your people that you were for the initiative and referendum on everything except the most important question that you would have gotten sixteen hundred votes?

Mr. WATSON: Yes.

Mr. DOTY: Then it must be your personal popularity.

Mr. HARRIS, of Ashtabula: You have quoted some figures at the outset of your remarks in which you undertook to argue that there is increased interest in the classification of property?

Mr. DOTY: I didn't say anything about that. I do not think there has been any increased interest so far as the vote goes.

Mr. HARRIS, of Ashtabula: It has been submitted three times since 1891?

Mr. DOTY: Four times, I think.

Mr. HARRIS, of Ashtabula: You have quoted those figures?

Mr. DOTY: Not for you; not for the benefit of the member from Ashtabula. The member from Ashtabula [Mr. HARRIS] is perfectly consistent in being afraid of the people. I do not care anything about trying to convert him. He is unconvertible, but I hate to see a gentleman wrong who started out right.

Mr. HARRIS, of Ashtabula: May I read a few figures now?

Mr. DOTY: I do not care, only it is pretty difficult to carry in your mind figures read from a sheet.

Mr. HARRIS, of Ashtabula: The sheet I have before me contains in several columns the vote on constitutional amendments, under the headings "for the amendment," "against the amendment," "failed by," "carried by," and finally, the percentage of all those who voted on the amendment at all.

Mr. DOTY: The main thing with everybody trying to do anything is the percentage.

Mr. HARRIS, of Ashtabula: You have used some figures yourself, and whether they are correct or not I do not know. But it appears that 303,000 and 340,000 voted for classification.

Mr. DOTY: That would make a pretty enormous petition for a change in our tax system from the uniform rule to the so-called classification rule.

Mr. HARRIS, of Ashtabula: The classification is the question under consideration. May I make another suggestion?

Mr. DOTY: You can make a suggestion. I did not know that you had made any yet.

Mr. HARRIS, of Ashtabula: That is a matter of

opinion. You and the member from Allen [Mr. HALF-HILL] seem to indicate this is not an alternative. Suppose we do not adopt the constitutional provision that we are framing; we retain the old constitutional provision. Now what you want is two alternatives—the main question and two alternatives.

Mr. DOTY: I had my mind all made up for a suggestion, and you have run it into a question.

Mr. HARRIS, of Ashtabula: I cannot take note of the limitations of your mind.

Mr. DOTY: I have this consoling fact, there are others. I have not got the question or suggestion yet, but be that as it may, as they say in the story books, all I am trying to show is that here in fairness is the method of putting up to the people the uniform rule that we have been talking so much about as against the classification rule. I am opposed to the uniform rule, but I am not afraid to put it up to the people, and if they are for it, that is an end of the matter—at least for another generation—but for sixty-one years the people of Ohio have never voted directly upon the uniform rule, and the member from Ashtabula [Mr. HARRIS] knows it.

Mr. HARRIS, of Ashtabula: We have it now.

Mr. DOTY: But you are afraid to put the uniform rule on a ballot and let the people vote on it.

Mr. BROWN, of Highland: In case we can agree on some form of provision along the line of the subjects now discussed and debated—the uniform rule and the classification proposal—would you be willing to make a reasonable restriction upon the levy upon real estate?

Mr. DOTY: Of course not; you know I would not, and you would not do it unless you were interested in some things down in the sixth district. What you ask is perfectly unscientific and unfair, and the gentleman knows it.

Now I have taken up more time than I intended. This is a simple plan to put up for the first time in words the uniform rule against the so-called classification plan, which has been voted for and, in fact, petitioned for by a larger number of the people of the state of Ohio than has ever petitioned any legislature of any constitutional convention for any one thing—two and half to three times as large as the percentage we have provided for in the highest percentage in our initiative and referendum proposal. It is presented in the alternative plan, and I call attention to the fact that the voter under this provision need only make one mark to indicate his choice. In other words, if he is in favor of the uniform rule, one mark will indicate that, and adopt the Anderson-Winn proposal if that is adopted. If he is in favor of classification of property he would vote for the amendment I am proposing, and if he is against both of them and wants the constitution to remain exactly as it has been for sixty-one years, he can vote against both of them with one mark. It is a simple proposition for the voters. It is a fair proposition for the voters and unless you are afraid to allow them to tell you whether they are for the uniform rule or not it ought to be adopted.

Mr. EBY: You told us about 303,000 and 340,000 that voted, but you forgot to say how many voted against it.

Mr. DOTY: Actually voted against it? When it got 303,000 there were 65,000 actually voted against it, and at the last election, when it got 340,000 about 96,000 voted against it. In other words, at any one of those elec-

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tions, with the provision that this Convention has voted for submission of amendments, classification would have been adopted. We do not ask you to put up classification by itself. We asked it, but the Convention said no. Now all we ask is that you put up what you are in favor of in these words, and put up classification in these words, and let the people take their choice. Who is there in this Convention who says he is larger and greater than the people?

Mr. ANTRIM: Is not your amendment a little different from what you intend? You provide for classification and the Fackler amendment provides for the uniform rule.

Mr. DOTY: Yes.

Mr. ANTRIM: You omit the Winn amendment and the Fackler amendment contains the Winn amendment.

Mr. DOTY: Yes.

Mr. ANTRIM: All the other features are the same?

Mr. DOTY: Yes; perhaps there has been an amendment or two put in that I may not have gotten in mine, but the plan was to have the amendment I offer exactly like the other one, except that theirs provides the uniform rule and mine classification.

Mr. ANTRIM: Do you want the Winn amendment in?

Mr. DOTY: Yes; the Winn or the Antrim, or whatever the members in favor of uniform rule desire to write into that amendment. I want to submit everything in my amendment except what is in section 2, and then I want to submit it in the alternative, the alternative being the two propositions, bringing a direct issue between uniform rule and classification. Section 2, as I have submitted it, is exactly, word for word, without the change of a comma or a letter, like the amendment submitted to the people of Ohio in 1908, which amendment received 340,000 votes.

Mr. HARRIS, of Hamilton: The gentlemen of the Convention ought to have arrived at the conclusion that the time is ripe for statesmanship and not for peanut politics. This Convention on the taxation question has fluctuated, swinging from side to side, dictated by personal prejudices. The extremists were in evidence on both sides, and now no matter who is successful, it will illustrate that well-known saying, "Another such victory and we are lost." What boots it what temporary victory you gain in this Convention? Do you not know that this Convention, split as we are on taxation, when we leave here and go to our counties to take an active part, as most of us will do, in explaining the constitution, will find that we are facing certain defeat? Those things which we prize most will go down in defeat with those things we abhor most. So I say to you, the time is ripe for broadness of view, to take the place of narrowness, bigotry and the partisanship which have developed in the discussion of this tax problem. In my judgment an opportunity is now offered by this alternative proposition submitted by the member from Cuyahoga [Mr. Doty], a proposition which the general assembly three times submitted to the people of Ohio, the last time in 1908. The general assembly, owing to the demand from the people of Ohio, offered them the privilege to determine whether they would accept classification or reject it. And will this Convention refuse to do once that which the representatives of the people have seen fit to do three times?

How can you defend your position if you are both inconsistent and arbitrary?

When was a fairer proposition offered than this alternative proposition, bearing in mind, as the member from Cuyahoga [Mr. Doty] stated, that it is identically the same proposition submitted in 1908, when something like 340,000 people in the state voted in favor of it, and only 80,000 or 90,000 voted against it? What does that mean to any person familiar with figures? It means that there were only 80,000 or 90,000 in the state of Ohio who felt it such a serious encroachment on their economical liberties as to cause them to go up to the polls and register their protest against it. It means that of the remaining eleven hundred thousand people in the state of Ohio three hundred and forty thousand were so enthusiastic over it that they registered their votes in favor of it, while the remaining 780,000 said, "We are perfectly willing to try the experiment; we will not vote against it." The time for statesmanship has now arrived. Let us not jeopardize those things so dear to our hearts, the question of home rule, the initiative and referendum, the liquor license and those other big problems, by permitting this Convention to be split in two on this proposition, with the feeling on the part of the people of the state that if the Convention itself was unable to reach a conclusion or arrive at common ground of agreement on the most vital question before it, then it was safe to assume that all the other work before it was also unworthy of being considered. The wise thing to do, therefore, is to submit to the people of the state the alternative propositions. If those who advocate the uniform rule believe that certain things in the present uniform rule proposal as now before us ought to have been left out, or that certain things that have been left out ought to have been put in, let them make the strongest case possible from their point of view on the uniform rule, and we shall, if they will adopt the alternative proposition, vote with them to incorporate anything they desire in their uniform rule, or to strike out anything that is offensive to them.

Mr. HARRIS, of Ashtabula: More in the nature of a suggestion than a question: I think the figures of Mr. Harris, of Hamilton, are a little misleading. This proposition has been submitted to the people three times, in 1891, 1903 and 1908. The gentleman just had the sheet, and I thought he had refreshed his memory. In 1891, forty-six per cent of all who voted voted one way or the other on the proposition, and the other fifty-four per cent did not vote on it at all.

Mr. HARRIS, of Hamilton: I said 760,000 were so well satisfied with what the rest of the state did that they were willing not to vote. Had they been opposed to it they would have registered a protest against it.

Mr. HARRIS, of Ashtabula: In 1908 only thirty-eight per cent of 1,136,000 of the people who voted at the election voted either way.

Mr. HARRIS, of Hamilton: Then there were sixty-two per cent of the people who were so well satisfied that the proposition should go through that they did not register a protest against it. There are those who have eyes that cannot see, ears that cannot hear and brains that will not brain.

Mr. HARRIS, of Ashtabula: Don't you think this constitution will need a little interpreting if such interpretations as you give here are put on it?



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Mr. HARRIS, of Hamilton: If it does, you are the last man in the Convention I shall call upon to interpret it.

Mr. HARRIS, of Ashtabula: That is a matter of opinion, like all the rest you say.

Mr. ANDERSON: Are you in favor of an income tax?

Mr. HARRIS, of Hamilton: Very much in favor of it.

Mr. ANDERSON: Inheritance tax?

Mr. HARRIS, of Hamilton: Very much so.

Mr. ANDERSON: Production tax?

Mr. HARRIS, of Hamilton: Yes, sir.

Mr. ANDERSON: Tax on franchise?

Mr. HARRIS, of Hamilton: Yes, sir.

Mr. ANDERSON: Against the tax on bonds?

Mr. HARRIS, of Hamilton: I am unalterably opposed to a tax on the bonds of the state of Ohio or of any political subdivision thereof.

Mr. ANDERSON: Would you be in favor, as an abstract proposition, of any per cent limitation?

Mr. HARRIS, of Hamilton: Only if accompanied by that which to me is abhorrent, the uniform rule. With the present tax assessment of one hundred and one hundred and twenty-five per cent on our farms and homes, with the knowledge that that assessment will never go down, we know that the rate of taxation must go up. Now I am willing to hold on to the Smith one per cent law if the people are sincere about it, with fifteen mills as the maximum, and if that doesn't produce sufficient revenue, then the people, under the eight per cent initiative, will have a chance to change it. I am willing to make that concession.

Mr. ANDERSON: Do you not believe that the retaining of the Winn amendment in the proposal will cause thousands and thousands of votes to be cast against the uniform rule, and therefore against the inheritance, income, production, franchise and bond tax?

Mr. HARRIS, of Hamilton: No, sir; I believe that the advocates of the uniform rule to be consistent must demand the limitations of the so-called Smith bill—they are bound to do it if they are logical.

Mr. ANDERSON: Did you vote in favor of the Winn amendment because you are in favor of it or because you wanted the uniform rule killed?

Mr. HARRIS, of Hamilton: I voted for the Winn amendment because it was my constitutional right to do so, but I claim to be logical before I am sentimental, and I therefore again insist that limitation of the total tax levy ought to accompany the uniform rule of taxation, unless you wish the latter to develop into a colossal failure.

The delegate from Auglaize [Mr. HOSKINS] was recognized.

Mr. PETTIT: I have been trying to get an opportunity to address the Convention for days, and I demand recognition. I was first on my feet and the chair, under the rules, is required to recognize me, and I am going to remain here, too.

Mr. HOSKINS: I have been trying to get recognition for a good while myself. Mr. President and Gentlemen—

Mr. PETTIT: I demand recognition.

The PRESIDENT: The member from Adams [Mr. PETTIT] is out of order.

Mr. PETTIT: I am not out of order. The rule says the man who addresses the chair first shall be recognized.

The PRESIDENT: The gentleman is out of order.

Mr. PETTIT: You have a list up there and you are trying to go by that regardless —

The PRESIDENT: The gentleman is out of order.

Mr. HOSKINS: I have been trying to get recognition from the chair for two days, and I finally got it.

Mr. PETTIT: You finally got it because your name was up there.

Mr. HOSKINS: My name was not up there.

Mr. PETTIT: Then I don't know how on earth you got recognized.

Mr. HOSKINS: I think I addressed the chair before you did.

Mr. PETTIT: You didn't do anything of the kind. I was up here before you were on your feet at all. I want to know, Mr. President, if you are going to sit up there as an autocrat. I want to know that right now, for I want to test your power.

The PRESIDENT: The member is out of order.

Mr. PETTIT: Why am I out of order? Tell me.

Mr. HOSKINS: May I ask you a question?

Mr. PETTIT: I am talking to the chair now. Why am I out of order?

The PRESIDENT: If I may be permitted to make a few remarks, the rules give the president a right to recognize any member who he thinks is on his feet and demanding recognition first. The president exercised that discretion under the rules, and recognized the gentleman from Auglaize [Mr. HOSKINS]. The president rules that the member from Auglaize [Mr. HOSKINS] has the floor and that the member from Adams [Mr. PETTIT] is out of order. The remedy of the member from Adams is to appeal from the decision of the chair. Does the member wish to appeal?

Mr. PETTIT: Will the gentleman tell me what rule that is?

The PRESIDENT: The member can find the rule easily.

Mr. PETTIT: I know you have been overriding Rule 19 right along.

Mr. HARRIS, of Hamilton: I call the gentleman to order. His conduct is unseemly and casts discredit on the Convention.

Mr. PETTIT: This gentleman has been hearing his own voice almost incessantly, but when I get up I am not allowed to speak.

The PRESIDENT: Does the member from Adams [Mr. PETTIT] wish to appeal from the decision of the president?

Mr. PETTIT: I wish to be recognized as a member of this Convention.

The PRESIDENT: The member from Adams is out of order and will kindly take his seat.

Mr. PETTIT: I decline to take my seat. I will stand as long as I want to.

The PRESIDENT: The president has no other recourse than to call upon the sergeant-at-arms to assist him in maintaining order. The president would be glad to have the gentleman from Adams [Mr. PETTIT], or any other gentleman, appeal from the ruling of the chair in order that the ruling can be tested.

Mr. MILLER, of Crawford: In order to test the matter I appeal from the decision of the chair.

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Mr. DOTY: And I move that the appeal be laid on the table.

The PRESIDENT: The member from Crawford [Mr. MILLER] appeals from the chair, the yeas and nays have been demanded and the secretary will call the roll. The question is, Shall the decision of the president be sustained?

Mr. HOSKINS: We are on an important question and there is unlimited debate. How much time do you want, Mr. Pettit?

DELEGATES: Vote! Vote!

Mr. HOSKINS: I have not said a word yet.

The PRESIDENT: The question is, Shall the appeal be laid on the table? Those in favor of the motion will answer aye as their names are called, and those contrary no.

Mr. FESS: I wish the gentleman would withdraw that motion. I sat here and I saw Mr. Hoskins trying to get the floor when Mr. Harris tried to get the floor, and while Mr. Pettit may have been up a little earlier than Mr. Hoskins, Mr. Hoskins had been trying to get the floor for some time, and it was easy for anyone to decide that Mr. Hoskins was up first.

Mr. PETTIT: If that is your statement, I have no reason to doubt it.

Mr. DOTY: I withdraw my motion.

Mr. HOSKINS: I think everybody will be given a fair show.

Mr. PETTIT: Well, they have not had a fair show.

Mr. MILLER, of Crawford: I withdraw the appeal. My only object in making it was that I knew there were not more than three men in this Convention who would not sustain the decision of the chair. I saw Mr. Hoskins up five seconds before Mr. Pettit was up. I just made the motion to bring the matter to a test.

Mr. PETTIT: If this is correct, I am all right.

Mr. HOSKINS: I surely think it is, for I have been trying to get recognition each time when the last three speakers got up.

Mr. FESS: That is so, Mr. Pettit.

Mr. PETTIT: Then I will take your word.

Mr. ANDERSON: I make the point of order that we are not in order.

The PRESIDENT: The point of order is well taken, the member from Auglaize [Mr. Hoskins] will proceed.

Mr. HOSKINS: I am very sorry to have this occur, because we have lost so much time in parliamentary wrangling, with which I am not very familiar. I have not said a word on the question of taxation down to the present moment, and I would like to suggest to the membership that there is a large number of delegates who would at least like to say a few words on this proposition, and who before the debate closes ought to be permitted to say those words, and if certain members occupy too much of the time in their discussion, I want to suggest in all kindness that it is a little bit unfair to the other delegates. Our votes are not always understood, and we have at least a right to explain our positions before the Convention. That is practically all I wish to do.

I came to this Convention believing that it was right and proper that authority might exist for classification of property for taxation purposes. I am not a tax expert. I do not pretend to be a tax expert. Only as I observed the rules and methods of taxation in my own every-day business and in my own every-day experience

did I come to the conclusion that to permit the legislature to classify property for the purpose of taxation would be the proper thing to do. I have not seen anything since I came here to materially change my mind on that proposition, and yet it seems that a majority of the Convention are adherents of the uniform rule. I think it is only fair to say that I have no criticism to make of those members who desire to maintain the present uniform rule, but I do have a criticism of their attempt to tax bonds under the uniform rule. I want to say here that I am and have been at all times in thorough sympathy with the so-called one per cent law. I believe it did a great deal of good in the state of Ohio; but that one per cent law is a statutory matter pure and simple, and is not a matter which ought to be written into the constitution; and I want to appeal to the membership here not to be foolish, not to do a radical thing. We all admit this much, that the one per cent law is the minimum. Nobody has made any provision to write in one-half or three-quarters of one per cent. Nobody has undertaken to write that into the constitution, but you have undertaken to put in what all of us say is the actual minimum on which the government of our cities can be maintained. We may get along out in the country, although we have one or two school districts that have been unable to maintain themselves and pay their expenses this year, but possibly that is not so much the fault of the one per cent rule as of the method of assessment, all of which will correct itself in time. But we admit this, that in writing in one per cent you have written the minimum under which the government can be maintained. How does that appeal to you as a constitutional matter, to write in the very lowest thing under which the government of municipalities can be maintained? Is it good constitution making to take the extreme and radical view of the proposition and attempt to write it in the constitution?

Now, I am opposed to including the Smith one per cent law in the constitution, and I am perfectly consistent. Being an ardent supporter of the Smith one per cent law, I do not want to be misunderstood, but I look upon it as purely a statutory matter with which the constitution should not be concerned.

From my point of view the adoption of the initiative and referendum is one of the big things we have thus far accomplished, and if we do not get foolish before we get through and discredit our work the people of the state of Ohio will approve the work we have done on the initiative and referendum. If they do that, what is the status? Have you not a perfect safeguard if the future contingencies do not call for the repeal of the one per cent law? Haven't you ample safeguards in the hands of the people themselves to prevent the so-called reckless and arbitrary and unreasonable and mercenary legislature from repealing that one per cent law? You can refer it to the people and prevent the repeal and hold the Smith one per cent law in the present statute. If conditions that may develop in five or ten or fifteen years from now do not demand its repeal, and the law works well, the people have it in their power to fix that law on the statute books.

It is almost certain that the initiative and referendum proposition will be adopted, and the people in the state of Ohio will have it within their own power to keep this one per cent tax law as long as it subserves the interests of the state and its municipalities, and as long

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as they can live under it. I fully believe that with proper administration of public affairs you will fully be able in your townships and municipalities to get along on the maximum, the one and a half per cent rate.

Now I think too that it is much more important that there be adopted in this constitution a provision that would provide for a production tax, for an income tax, for an inheritance tax and for a franchise tax. I am not sure just how many of those are already permitted. I do not think the inheritance tax is prohibited under our present constitution. I do not think the income tax is, but in providing for a working tax law in this Convention I believe we should provide for those four taxes. As I understand it they are provided for both in the direct and in the alternative proposition.

I do not care to go into any extensive argument of the proposition, but it seems to me if those who want to maintain the uniform rule in Ohio, want to be fair with the voters of the state and want to put up the principle of taxation to the people, that the people may pass on that proposition, they should put up both alternatives, and let the people pass on both. I do not know of any reason why those who support the initiative and referendum should not be willing to let the people pass on both of these propositions, and let us accept the verdict of the people at the polls.

I come from a rural county. It is one of those poor counties that were mentioned by the gentleman from Defiance [Mr. WINN], poor, because it is not as large as Hamilton or Cuyahoga, but I think we are as rich as any county in the state. I think we can get along under the one per cent rate, and I want to say this further, as a farmer: Appeals seem to have been made to farmers, as if the proposition not to write a limitation were a conspiracy against the farmer. I do not look upon it that way. I have more of my little earthly possessions in farm lands than anything else. I am more interested in the productiveness and in taxes on farms than in any other business proposition outside of my own profession, and I do not sympathize with these appeals that have been made as if the proposition to not write a limitation in the constitution were liable to result in a higher tax on farm lands.

Now I want to appeal to the fairness of men from the rural counties. While you may be with me supporters of the one per cent tax law, believing it should be kept on the books until thoroughly tried, I feel that it is unfair for us, over the protest of the men living in the large municipalities, to write this minimum limitation in the constitution; and I am tempted to question the sincerity of the gentleman from Defiance [Mr. WINN] when he made his appeal last night to the men of this Convention to write that extreme limitation in the constitution. I do not believe he means it. I believe that the many votes cast on that proposition in favor of writing that limitation in the constitution were for the purpose of loading it down and defeating it at the polls, and I do not believe we should do that. I think we should vote our sentiments. I do not think we should load anything down so as to defeat it at the polls, and if you insist on writing into the constitution this matter which is legislative and which the people and their representatives have a right to pass upon, you will load it down with something that will defeat it at the polls. If you believe in the intelligence of the people, give the alternative propositions

to the people, so that the people can pass upon their system of taxation in an intelligent way, and if they retain the uniform rule all well and good. If a majority of them vote for classification you ought not to complain, because it will be an intelligent verdict of the people of the state of Ohio.

Now I want to say again, and then I shall have no more to say on the taxation question from beginning to end, I favor writing a production tax in the constitution; I favor writing an income tax in the constitution; I favor writing an inheritance tax and a franchise tax in the constitution, and I want the provision so drawn that when the voters pass upon it this fall they will approve those propositions and not defeat the constitution because it is loaded down with statutory matters that ought not to be in it.

What will we do if you furnish all the arguments against the proposition that are furnished in the Winn amendment? It means defeat of all of the constitutional amendments. It will mean the defeat of the franchise, the income, the inheritance and the production taxes, and all the other things we are seeking to arrive at, and I want to warn you if you attempt to put through this arbitrary method of taxation, and give the people no choice between the two methods, you are loading it down, and you who are pretending to want these other methods of taxation, the franchise, the inheritance, the production and the income taxes, are simply going to defeat the proposition yourselves, and the blame will be upon your heads when the polls close at the time this matter is submitted. I appeal to you in common honesty and fairness, give us these alternative propositions, and if you want the uniform rule, you had better cut out the Winn amendment.

Mr. HOLTZ: If we incorporate this limitation in the constitution, can we not under the initiative and referendum by a vote of the people increase the limitation if we find the limitation is too low?

Mr. HOSKINS: Increase the limitation?

Mr. HOLTZ: Yes?

Mr. HOSKINS: Yes, you could; but you would have to change the constitution to do it.

Mr. HOLTZ: But under the initiative and referendum we have a provision for that, as I understand it.

Mr. HOSKINS: Yes. I would ask you, are you satisfied with the present Smith law?

Mr. HOLTZ: Yes.

Mr. HOSKINS: If we adopt the constitution without any limit whatever, under the initiative and referendum can you not prevent the legislature from repealing the Smith law by the referendum?

Mr. HOLTZ: Yes.

Mr. HOSKINS: Then it is all right.

Mr. BIGELOW: Mr. President: Next to the initiative and referendum, which seek to get government back as close as possible to the people, the measure before the Convention now is the one to which I have given most thought, and in which I have the most concern. In view of this, I trust it will not be thought out of place for me to have a few words on the floor, and to give my reasons for urging the adoption of the amendment now pending.

The issue before the Convention is this: The Convention has gone on record so that there is no question that a majority of the members believe in the position taken

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by the member from Defiance [Mr. WINN]. They believe in the uniform rule. There is no dispute about that. Now there is one other question before us. There is some reasonable doubt as to whether the people of the state of Ohio agree with the position taken by the member from Defiance [Mr. WINN]. I think every man here will admit that there is some reasonable doubt as to that. Now, in opposition to the member from Defiance and his friends, there are those in this Convention who feel very strongly upon this subject. They take issue with him. They know the Convention is with him, but they honestly believe that the people are with them. They come here with this single request, that this Convention will not prejudge the question as to where the people stand, but that this Convention will permit a clear, clean issue to be drawn before the people themselves, as between one side and the other of this dispute. Wendell Phillips once made a beautiful use of that story in the Bible about the healing of the cripple at the pool of Bethesda. The cripples sat about hopeless until the angel came and stirred the waters. It was only when the waters were agitated that there was healing in their flow. We feel thus about this question of taxation and public opinion. Who can oppose the agitation of this question before the people? Who can deny our right to go out before the people at the polls the latter part of August or the first of September, when this question is to be submitted, and try to educate them, and talk to them as we are talking to each other about this question?

Now this is the issue, members of the Convention. Our fellow members—and I say this to the member from Defiance [Mr. WINN] and to the member from Mahoning [Mr. ANDERSON], and I say it to every one of you, though you may differ with us. Will you give us that chance? Will you give us the right to carry this question directly to the people? I remember the saying of the great abolitionist orator of Boston that "He does not really believe his own opinions who dares not give free scope to his opponent." Are you going to take that position today that you are so sure you are right and so sure the people are with you that you will not allow a referendum on this question, or give us a chance to take the matter to the people and let them say what their opinion about it is?

We have heard a great deal about the farmers and bonds and property. I want to say a word about something about which not much has been said. I want to say a word about humanity, and the relation of this question of taxation to it. The two greatest problems that affect the material welfare of mankind are the problems of wages and prices.

Now I look upon the power of taxation as the most effective instrument that the state has to reduce prices and to increase wages, to swell the volume of business and create prosperity. It is because I think I see the social result of a righteous system of taxation, and the social evils of a wrong system of taxation, that I am anxious that at no time in the future shall the power of the state be thwarted or the hands of the people be tied, but that we may be forever free to use this power as at any given time our judgment dictates, in order that we may work with this power to reduce prices and increase wages and bring prosperity and justice to man. Now a word about that.

First about prices: There can be no dispute among

thoughtful men that every time you put a tax upon the product of labor you increase the cost of that thing to the consumer. Take an old cow in a farmer's barnyard. The assessor comes around and taxes the cow. He taxes the cow as a going concern. He taxes the hide on the back of the cow. The cow is killed, and it is skinned and the hide is sent to a tannery. The assessor comes around and puts another tax on that hide. The hide is made up into a piece of leather and it goes to the warehouse of a leather manufacturer and while there the assessor comes around. He is supposed to put everything the man has on the duplicate. If he does, he puts another tax on that hide. The leather is made into a harness and sold to a jobber, a friend of mine. He has it in his store, and the assessor comes and is supposed to put everything the man has on the duplicate. If he does, he puts another tax on that hide. The jobber sells the harness to a retail merchant down in Kentucky or Tennessee some place, and the merchant hangs the harness up in his front window. He is sitting in the rear of his store and a man comes in not to buy harnesses but to tax them. The assessor is supposed to put on the duplicate everything the man has. If he does, he puts another tax on that hide. At last the merchant sells that harness to a farmer and the farmer takes it home. Then the farmer receives a visit from the tax assessor. The theory is that if the farmer has made any improvement he has to be penalized. If he has built a fence, or dug a ditch or built a barn, or bought a piano for his daughter, or purchased any machinery, if he has done anything useful that in any way contributes to the employment of labor and the general prosperity, his taxes are increased that much. The assessor looks for some evidence of prosperity and is about discouraged when his eyes light on that new harness. If he carries out the theory under which he is working, he puts that down; so the old hide gets another tax. It is a harness in the hands of the farmer, and perhaps the same farmer who owned the cow with which we started.

You will say the hide will go through quickly enough to escape some of those taxes, and I grant it, but it certainly will get some of them, and every tax adds to the price of the harness to the consumer.

Talk about high prices. There is your greatest cost. For every time you lay a tax on the product of labor you increase the price to the consumer, and when you increase the price to the consumer you to that extent reduce his purchasing power, and when you reduce his purchasing power he cannot buy as much as he needs of the retail merchant, who cannot order as much from the wholesaler, who cannot buy of the factory. Then the men in the factory are not employed steadily at good wages, and the result of that system of loading all the burdens of taxation on the products of labor is to start an endless chain of depression, a lowering of wages, and an increase of prices to make poverty in the cities, and hard times for many. You ask me if there is any way to raise taxes without that? Most assuredly. In Cincinnati we have a street car company that is operating under a grant that I regard as nothing short of legalized robbery. Under that franchise that street car company takes five cents every time a man or a woman rides. You can get the same ride for three cents in Columbus, and you can get the same ride for three cents in Cleveland. If we were able to have some latitude in this matter of

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taxation, so that Cincinnati could do a little as she pleases in a matter of this kind, if this Constitutional Convention and the people and then the legislature would say that the people of Cincinnati might have some latitude in this matter, what could we do? Why, we could put a tax on that franchise, and by every criterion of justice we should put a tax on that franchise, and take part of that two cents that that company steals every time it collects a fare. Every penny of that would be a clear gain to the public and would not increase by a mill the expense to the people riding on the street cars.

There are other ways in which the power of taxation, if properly used, could be used for the benefit of the people, and without any discouragement to industry or any reduction of price or employment of wages.

Take the tenement house problem in Cincinnati. There is not an expert who ever studied the problem who has not seen the relation between that problem and the problem of taxation. What did the tenement house commission in New York say after investigating this question? What is the view of all the students who have studied the subject? Why, I can hardly find words fitly to describe the murder pens where the little children of my city pant for breath in the summer time, where they are denied playgrounds and spend their lives between brick walls, with hardly a blade of grass or a ray of God's sunshine. Give a bonus in the way of exemption upon model tenement houses, and let us in Cincinnati, if we please, use the power of taxation to fight this evil of the tenement house, where conditions are such that people perish in body and perish in mind and perish in soul. Do you mean to say that the members of this Convention will not even allow us to go to the people with this question in order to try to get the problem of taxation so fixed that in the cities, when we desire and when we understand that there is a way by which we can use this power to oppose social evils that we have confronting us, we cannot use it to increase the opportunity of men to help them make a better living for themselves? Do you mean to say that when we see how this power may be so used that you in the Constitutional Convention will not grant us the right to use it that way? You are fixing it now so that we may not even receive it from the legislature. You bind our hands for all time in our efforts to solve this problem in the cities.

But our motives have been impugned. It is so easy to accuse somebody of working for some special interest, just because he differs with you. I remember the gentleman from Hamilton county [Mr. PECK] the other day standing on this floor, and I saw his gray hairs. I remember the magnificent service he has rendered in this Convention and what an honor his record here will be, and how much it will be appreciated back in Hamilton county where the people love him; and, knowing him as I do—I saw him standing there with his gray hairs, giving his opinion on this matter of taxation, and then I saw the member from Guernsey [Mr. WATSON] stand up and dare to put to that man the question, "Do you own any bonds, or do you represent any bond brokers in Cincinnati?" Nothing like it has happened on the floor of this Convention. Nothing like it should ever happen again. Oh, my friends, it is easy to accuse some people of sinister motives, though I should think it would be hard to suspect unworthy motives of my noble colleague from Hamilton county, Judge Peck.

But our motives are impugned. I was accused last night of tearing up a piece of paper containing a list of names of members in the order they had asked for recognition, presumably to give some one an advantage in this debate. That paper was torn up last week because I took it for granted that we were going to start anew when we gathered here this week. Now, my friends, you may impugn my motives. Some people may say that I am a singletaxer, and I frankly admit, I proudly acknowledge, that I am a singletaxer, but when a man says I want this because I think it will bring single tax, he accuses me of dishonesty and deceit. I leave it to him whether he can in good conscience impugn my motives in this matter. I want the power because I know that it is a tremendous power that may be used to the detriment of the poor people of my city or to their great blessing. My people probably do not know enough about this question of taxation. They may not have given enough thought to use it in the way that I would think the most intelligent, but we are not sure, are we, that we have all the wisdom upon this subject? We are not sure that we have already said the last word upon it, that we are not only not willing to learn more about it, but that we are actually willing to tie the hands of this great state and say by constitutional amendment, "You shall not learn anything more." Everybody knows that there is only one possible condition of progress, and that is the right of men to experiment with their problems. Untie the hands of the people of this state, allow the legislature some latitude in the matter of taxation, so that at some time in the future, if it wishes to, it may say to the city of Cleveland or Cincinnati or to this, that or the other county, "You may have some latitude on this question, you may experiment within certain restrictions laid down by the state law in this matter of taxation." Then each community as it desires may by experimenting learn a little something. Possibly they will make mistakes, but they will learn from those mistakes. The only possible condition of progress is that men shall be free to experiment. I have not enough wisdom to settle this question. I do not believe that any other member of the Convention has enough wisdom to settle the question for a generation, and I think the wisest statesmanship and the highest wisdom now is for us to leave this great state with as much freedom as possible, in the confidence that the people in their freedom will learn more than we in our wisdom know now.

I know the members from the country do not appreciate these problems. Members of the Convention, have not the cities of the state suffered enough by this disposition of the farmers to attempt not only to run their own affairs, which they have a right to without let or hindrance from the city, but also to run our affairs too? Why, some of the members discussed this question as though they were endowed with that wisdom which enables them with a single pair of eyes to encompass the globe. I remember that the fifty-year franchise, by which they are robbing the people of my city, was put through this legislature by the votes of farmers who came from counties where they didn't have a street car in the county.

I spoke on this question once in Shelby county and a man came up after the meeting. It was a Chautauqua up there. He had been a senator from that district when the fifty-year franchise was granted, and that afternoon

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he defended his vote. He said, "Why, you have so much political corruption in Cincinnati I thought it best to give that fifty-year franchise away. You could never have any more boodle about it then." He wanted to save us from ourselves. Gentlemen of the Convention, cities of Ohio are well able to take care of themselves. They only want the privilege of looking out for their own salvation. They do not want to be run by men who do not know their problems.

I have been for fifteen years and more a minister of a church in the midst of the tenement house district of my city. I have seen two kinds of poverty. I have seen the kind of poverty that is the result of shiftlessness or dissipation or laziness. That kind of poverty should never be interfered with by law. When a man brings that kind of poverty upon himself it is his natural punishment, and it ought to be the aim of all legislatures to let the man bear that kind of poverty as long as he chooses to bring it upon himself.

But I think I have seen a different kind of poverty in my city, a poverty that has been due to what I conceive to be bad laws, which increase prices and restrict the volume of trade, curtail the chance of employment, reduce wages and crowd many out on the very verge of starvation. I remember one case of that kind. It was on the last night of the old year that I received a letter from a man in our city infirm. This man was about to die. He had dictated a letter to me. He wanted me to come out to see him once more before he died. I had known the man. He was a switchman in the C., H. & D. yards in Cincinnati when I first knew him. He and his wife were consumptives. They struggled along until he injured himself at his work. He was not able to continue that work. They opened a candy store and he went out on the street to sell papers while his wife stood in the store. His arm was injured so that he could not hold his crutch, and they strapped his crutch to him, and he went out on the street to sell papers, and his little wife took care of the store and their one child. She washed and she cooked, and she worked and she wasted away day by day. Oh, the heroism of that struggle against poverty! But the battle went against them. At last the mother broke down under the load and died. I went out into Indiana to the old grandmother's to bury her, and they gave the child to that grandmother, who was wretchedly poor and very old. The father was anxious to do something to help her care for the child. So he moved into a tenement house within a stone's throw of my church. There he continued selling papers. The inmates of that tenement may have begged or stolen down on the street. But they were good to this cripple. They helped him on and off with his clothes. They went on errands for him and steadied his palsied feet up and down the rickety stairs. I remember one night near Christmas time groping my way through the dark halls to see this man. I knocked at the wrong door. A voice called to me to come in. I opened the door. In the middle of the room stood a woman bending over a wash-tub. Washing all day long somewhere else, she was washing her own clothes there. I asked her where my man lived, giving his name. "You mean the cripple," she asked, "the one who sells papers?" Taking the lamp she went out with her steaming arms into the cold hall to show me where the man lived.

Now I am pleading with you to allow the cities by

taxation to destroy these tenement houses, and I would like to show you the picture I saw there. An old dry goods box for a table. On it a few dirty dishes. A stove, but no fuel. The walls reeking with filth. The floor bare, and in one corner of the room a bed, and on it lay this shadow of a man who recognized me and put his arm up to me. I took his hand. With tears in his eyes he said, "Friend Bigelow, there is only one place for me now. I have seen it coming for a long time, and I have been fighting against it, but I have to go to the poor house." I saw how he hated to say the name of the place. No man begins life with the expectation of ending it in the poor house. A few days afterward he went to the poor house. I was there the last night that he was on earth. I received a letter from him calling me there, and the last line of the letter showed where the man's heart was, "I shall never see my boy again." I went out that night. He was still able to talk in a whisper, and he told me the name of the doctor to whom he wanted me to send his dead body. The doctor had served him and his family, and as many an heroic doctor does in the slums of my city, he had served without pay, and now on his deathbed, this man was grateful, and if the doctor wanted his old body, he desired that he should have it. After giving me this strange direction, there came a sinking spell and I thought the man was going down into the Valley of the Shadow, but at last his lips moved, and leaning I caught these words, "Death, that is not hard; that is only a change of cars, but, my boy, my boy!" Do they tell you the poor do not mind their poverty, that they get used to it?

The toad beneath the harrow knows  
Exactly where the tooth point goes;  
The butterfly upon the road,  
Preaches contentment to that toad.

Ah, my friends, in the name of those broken hearts, in the name of those blighted hopes, in the name of those ruined lives, we plead for justice of laws, laws that shall give men greater freedom to labor while it is day, and more of sweetness to remember in the night that cometh when the day is done. I am not here to erect any sign posts warning men not to venture into untried ways of government. I think it is my highest function in this Constitutional Convention to leave to the people of the state of Ohio the largest possible freedom in dealing with this greatest of all problems, and I appeal to you, my friends, if you do not agree with us, at any rate, let us go to the people themselves, and let them decide as between you and us. I thank you.

Mr. COLTON: At the beginning of the discussion when it seemed that a majority of this Convention were in favor of the minority report, it was thought that discussion would be throttled and we would not be fair with our opponents and allow a free expression of opinion; but there was no such disposition on part of the majority. We wanted to allow a free and full discussion and I believe that has been thoroughly accomplished.

Mr. DOTY: Agreed.

Mr. COLTON: Now, with the understanding that we would not take an unfair advantage of those evidently in the minority, we kept faith with them and we have listened to every phase of the matter and have had an eloquent appeal for the submission of an alternative proposition to the people. The very eloquent picture of the

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condition of the tenements of Cincinnati appeals to us and touches our sympathy, but we should not forget the tenement problem is an ever-present problem in the city of New York under classification and we do not see how classification of property for taxation is going to be a solution of that problem. The evils of taxation have been very eloquently pictured to us. We are living under a civilized government in a civilized world and such government can not be continued and maintained without taxation. I wish it could. Our system of taxation is based upon the uniform rule. We believe so long as we have a property tax the uniform rule is a just method of applying taxation. Believing that, gentlemen, I appeal to you to stand together, shoulder to shoulder, in the votes that are to come and express your convictions squarely and guard yourselves against being swept away from the position which you have come here to defend by eloquence which I confess is very enticing. Stand together upon the votes that are to come and vote your conviction. There is no reason why we should submit this alternative proposition to the people. We believe uniform taxation is right, that the main proposition of the minority report is right, and let us vote our convictions and submit this to the people in practically the form that it is before the Convention. Mr. President, I move the previous question.

Mr. DOTY: Before that is put I demand the yeas and nays vote on the amendment.

The main question was ordered.

The PRESIDENT: The question now is, Shall the amendment offered by the delegate from Cuyahoga [Mr. Doty] be agreed to?

The yeas and nays were taken, and resulted — yeas 57, nays 53, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Mauck,
Antrim,	Hahn,	Nye,
Beyer,	Halenkamp,	Peck,
Bowdle,	Halfhill,	Read,
Brown, Lucas	Harris, Hamilton,	Redington,
Campbell,	Harter, Huron,	Rockel,
Cassidy,	Harter, Stark,	Roehm,
Cordes,	Henderson,	Rorick,
Crosser,	Hoffman,	Shaffer,
Davio,	Johnson, Williams,	Smith, Geauga,
Doty,	Kilpatrick,	Stamm,
Dunlap,	King,	Stevens,
Dwyer,	Knight,	Stilwell,
Elson,	Leete,	Stokes,
Evans,	Leslie,	Taggart,
Fackler,	Malin,	Thomas,
Farrell,	Marriott,	Ulmer,
Fess,	Marshall,	Weybrecht,
FitzSimons,	Matthews,	Mr. President.

Those who voted in the negative are:

Baum,	Harbarger,	McClelland,
Beatty, Morrow	Harris, Ashtabula,	Miller, Crawford,
Brattain,	Holtz,	Miller, Fairfield,
Brown, Highland,	Hoskins,	Miller, Ottawa,
Brown, Pike,	Hursh,	Moore,
Cody,	Johnson, Madison	Norris,
Collett,	Jones,	Okey,
Colton,	Keller,	Partington,
Crites,	Kramer,	Peters,
Cunningham,	Kunkel,	Pettit,
Dunn,	Lambert,	Pierce,
Earnhart,	Lampson,	Price,
Eby,	Longstreth,	Riley,
Fluke,	Ludey,	Shaw,

Solether,  
Stalter,  
Stewart,  
Tannehill,

Tetlow,  
Wagner,  
Walker,  
Watson,

Winn,  
Wise,  
Woods.

So the amendment was agreed to.

Mr. MARSHALL [during roll call] Gentlemen of the Convention: I hardly know what to do, but I am going to rest this with the people. I want the matter settled right and we will let the people settle it. I vote aye.

Mr. LAMPSON: A point of order. There is nothing in order except the finishing of the roll call.

The roll call was then finished.

Mr. ANDERSON: I want to explain my vote too.

Mr. LAMPSON: The previous question has been ordered on all of these amendments.

Mr. DOTY: I withdraw my demand for the yeas and nays and I am willing to have a division.

The PRESIDENT: The next amendment in order is the amendment offered by the delegate from Guernsey [Mr. WATSON.]

The amendment was agreed to.

The PRESIDENT: The question is on the amendment of the delegate from Cuyahoga [Mr. FACKLER].

Mr. PIERCE: I desire to offer an amendment to that.

Mr. DOTY: A point of order. The main question has been ordered and no amendments are in order.

Mr. WOODS: Is a motion to lay on the table in order? If so, I move to lay the Fackler amendment on the table.

Mr. DOTY: A point of order.

The PRESIDENT: The motion is not in order.

Mr. WOODS: I want it on the table. I want everything on the table. I want to kill everything.

Mr. DOTY: Everything?

Mr. WOODS: Yes; everything.

The PRESIDENT: The question before the Convention is the adoption of the amendment of the delegate from Cuyahoga [Mr. FACKLER]. The motion to lay on the table is not in order.

Mr. WOODS: I demand the yeas and nays on that.

Mr. WINN: If the motion to table the Fackler amendment prevails there will be nothing before the Convention.

The PRESIDENT: There is no motion to table before the Convention. The question is on the adoption of the Fackler amendment. When that is disposed of the Anderson amendment will be left.

Mr. WOODS: Do I understand this Doty amendment has been adopted as an amendment to the proposal and to be submitted separately?

The PRESIDENT: Yes.

Mr. WOODS: Then how can that be submitted by less than sixty-one votes.

Mr. DOTY: It is an amendment to the proposal itself. It comes at the end of whatever proposal is adopted.

Mr. WOODS: If that is the way, we had better adopt the Fackler amendment and then kill the whole thing.

The PRESIDENT: The member is out of order.

Mr. CUNNINGHAM: I would like some information about the proposal. Is the Doty amendment to the Fackler amendment?

The PRESIDENT: The amendment offered by the

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member from Cuyahoga [Mr. Doty], which was adopted, becomes attached to whatever proposal is finally adopted by the Convention.

Mr. CUNNINGHAM: Does it become a tax—

The PRESIDENT: I said attached — “a-t-t-a-c-h-e-d”.

Mr. HARRIS, of Ashtabula: In an alternative sense.

Mr. BROWN, of Highland: Is it not understood that the Doty amendment will be submitted not as a part of the one now attempted to be adopted, but as an alternative?

The PRESIDENT: That is right, detached.

Mr. LAMPSON: It is an independent proposition, and has not received a proper number of votes.

Mr. DOTY: It is not an independent proposition.

Mr. KING: Do I understand that the amendment of the gentleman from Mahoning changing the phraseology in line 10 and line 13, was adopted or made a part of the amendment?

The PRESIDENT: That was an amendment to the original proposition and not an amendment to the substitute offered by the member from Cuyahoga [Mr. Fackler]. The question is on the adoption of the substitute offered by Mr. Fackler, and on that the yeas and nays are demanded.

The yeas and nays were regularly demanded; taken, and resulted — yeas 93, nays 15, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Okey,
Antrim,	Harbarger,	Peters,
Baum,	Harris, Ashtabula,	Pettit,
Beatty Morrow	Harris, Hamilton,	Pierce,
Beyer,	Harter, Huron,	Price,
Bowdle,	Harter, Stark,	Read,
Brattain,	Hoffman,	Redington,
Brown, Highland	Holtz,	Rockel,
Brown, Lucas,	Hursh,	Roehm,
Brown, Pike,	Jones,	Rorick,
Campbell,	Kilpatrick,	Shaffer,
Collett,	King,	Shaw,
Colton,	Knight,	Smith, Geauga,
Cordes,	Kramer,	Selechter,
Crites,	Lambert,	Stamm,
Crosser,	Lampson,	Stevens,
Davio,	Leete,	Stewart,
Doty,	Leslie,	Stilwell,
Dunn,	Longstreth,	Stokes,
Dwyer,	Ludey,	Taggart,
Earnhart,	Marriott,	Tannehill,
Eby,	Marshall,	Thomas,
Elson,	Matthews,	Ulmer,
Fackler,	Mauck,	Wagner,
Farrell,	McClelland,	Walker,
Fess,	Miller, Crawford,	Watson,
FitzSimons,	Miller, Fairfield,	Weybrecht,
Fluke,	Miller, Ottawa,	Winn,
Fox,	Moore,	Wise,
Hahn,	Norris,	Woods,
Halenkamp,	Nye,	Mr. President.

Those who voted in the negative are:

Cassidy,	Henderson,	Malin,
Cody,	Johnson, Madison,	Partington,
Cunningham,	Johnson, Williams,	Peck,
Dunlap,	Keller,	Riley,
Evans,	Kunkel,	Stalter.

The amendment of Mr. Fackler was agreed to.

Mr. LAMPSON: I rise to a question of order, and to know just exactly where we are, I would like to have the first part of the amendment adopted read to see what it means.

The PRESIDENT: The secretary will read what the member desires.

The SECRETARY [reading]: “Substitute Proposal No. 170 — Mr. Worthington. To submit an amendment to article XII, sections 1, 2 and 6 of the constitution, and by adding thereto sections 7 and 8, relative to taxation.”

Mr. LAMPSON: That was all stricken out and the Anderson amendment adopted several days ago.

The SECRETARY: This is the Anderson amendment I am reading.

Mr. LAMPSON: Which was adopted several days ago. Now I want to hear the first part of the Fackler amendment.

The SECRETARY [reading]: “Strike out all after the resolving clause —

Mr. LAMPSON: We have stricken out every thing after the resolving clause of the substitute Anderson amendment.

The SECRETARY: Yes.

Mr. LAMPSON: I would like to know where the Doty amendment comes in then.

The PRESIDENT: The amendment comes in as an addition to the proposal as amended.

Mr. LAMPSON: Now I would like to have the first part of that read.

The PRESIDENT: The secretary will read it.

The SECRETARY [reading]: “Mr. Doty moves to amend Proposal No. 170 as follows: At the end of the proposal add” —

Mr. LAMPSON: I make the point that by the adoption of the Fackler amendment we have stricken out the Doty amendment, and I call for a vote upon the original as amended by the adoption of the Fackler amendment.

Mr. DOTY: The time for making that point of order has long since passed. We are under the previous question, and that point of order will not lie at this time.

Mr. LAMPSON: It does not need to be a point of order. I have taken pains to show you what we have done and I only want the members of the Convention to understand what they are voting upon, as shown by the record, which is to adopt the original Worthington proposal as amended, and the Doty amendment has been stricken out by the adoption of the Fackler amendment.

Mr. DWYER: I rise to a question of information. Before the vote was taken I inquired of Mr. Doty whether there was any contradiction between his amendment and the Fackler amendment and he assured me there was not. If there was then my vote was given through a mistake. Mr. Doty can explain whether that is a fact. I asked him the question because I wanted to support his amendment.

Mr. DOTY: The member is right. He did ask me that and I said it did not conflict with the Fackler amendment and it does not. The member did get that information from me in good faith.

Mr. LAMPSON: I simply want the Convention to understand that by the adoption of the Fackler amendment they struck out everything that had been adopted prior to that except what was included in the Fackler amendment; they struck out all after the resolving clause.

Mr. MARRIOTT: On the contrary, have we not adopted the Fackler substitute with all the amendments that have been added to it, one of which was the Doty amendment?



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Mr. LAMPSON: The Doty amendment was not added to the Fackler amendment. It does not pretend to have been added to the Fackler amendment, and I again call for the reading of the first part of the Doty amendment so that every member may understand it. That Doty amendment preceded the Fackler amendment.

Mr. MARRIOTT: No, sir; it followed it.

Mr. DWYER: I move to recess until two o'clock to enable the president and secretary to get things straight. I want to know where we stand.

Mr. LAMPSON: I want to have the first part of the Doty amendment read again.

The SECRETARY [reading]: "Mr. Doty moved to amend Proposal No. 170 as follows: At the end of the proposal add:"

Mr. LAMPSON: It was at the end of Proposal No. 170 that it was added. Subsequently thereto the Fackler amendment was adopted which struck out everything after the resolving clause.

Mr. HARRIS, of Ashtabula: It has been accepted without controversy that a number of amendments have been directed to the original proposition and they had no force as applicable to the Fackler amendment. Is not the same thing true about the Doty amendment?

Mr. ANDERSON: So that we may not have mental confusion concerning this, I move that we recess until two o'clock.

Mr. LAMPSON: I make the point of order that the previous question has been ordered and the motion to recess now can not be entertained.

The PRESIDENT: The point is well taken.

Mr. DWYER: We ought to know where we are and a recess will let us find out.

The PRESIDENT: The president would say to the member from Mahoning [Mr. ANDERSON] and the member from Montgomery [Mr. DWYER] that that motion is not in order until the previous question has been exhausted.

Mr. KING: The Fackler amendment offered when it was offered was to do nothing more than to strike out the Anderson amendment. Long after that the Doty amendment was offered and carried and made a part of Proposal No. 170. Now by adopting the substitute offered by the gentleman from Cuyahoga [Mr. FACKLER] it only amends that part of Proposal No. 170 that it described in the condition in which it was when it was offered, and the amendment by Mr. Doty is an addition to whatever may be adopted as a substitute for the proposal as it read at the time of the offering of the amendment by Mr. Fackler.

Mr. LAMPSON: Whatever was added by the Doty amendment is stricken out by the Fackler amendment.

The PRESIDENT: The president will have to rule otherwise.

Mr. WOODS: We ought to understand each other. Before we voted on the Fackler amendment I made a motion. I supposed at that time the Doty amendment was to the Fackler amendment, because I could not see how it could be otherwise. The Fackler amendment struck out everything. That is the reason I made the motion to lay the Fackler amendment on the table, and would have voted against the Fackler amendment if I had not been informed by the chair that the Doty amendment was no part of the Fackler amendment. Certainly, under no circumstances would I have voted for the Doty amend-

ment. I would not do it in its original place and I would not have voted for the Fackler amendment if that had been a part of it.

Mr. DOTY: Did you not vote for the Fackler amendment with the distinct understanding that my amendment was not a part of it?

Mr. WOODS: I voted for it because I was informed that your amendment was not part of it at all.

Mr. ANDERSON: Is not this the situation: First the Anderson substitute, by being adopted yesterday, became the basis for all other amendments. Then next in order was the Fackler substitute. So that was the substitute in the so-called Anderson proposal. Then, after that, there was a correction of phraseology offered in the way of amendments and it was ruled that that attached not only to the Fackler amendment but to the Anderson proposal. Now by this last vote upon the Fackler amendment has not that entirely taken the place of the Anderson amendment or proposal? Now to what was the Doty amendment directed, toward the Anderson proposal or toward the Fackler amendment? To which is it attached?

The PRESIDENT: The amendment is attached to either one automatically.

Mr. ANDERSON: Then it was out of order?

Mr. LAMPSON: And it required sixty votes to pass.

Mr. HALFHILL: The amendment of the member from Cuyahoga [Mr. Doty] was to the proposal, was it not? I do not see anything else to it, and the proposal is the proposal of Mr. Worthington; it was the minority report bearing that name. This is all a mere matter of parliamentary hairsplitting. Do you suppose I would have voted for the Fackler amendment without a full understanding, as the other members generally understood it, that we were going to have that alternative submitted?

Mr. ANDERSON: What was your understanding with reference to the Doty amendment? It had to attach to something or it was out of order.

Mr. HALFHILL: It attached to the proposal that was before the Convention.

Mr. ANDERSON: To what did it attach? Did it attach to the Anderson proposal that took place of the minority report?

Mr. HALFHILL: To the proposal before the Convention. It was offered to and made a part of the proposal under consideration.

Mr. ANDERSON: It had to attach to something. To what did the Doty amendment attach? Did it attach to the Fackler amendment or to the Anderson substitute?

Mr. HALFHILL: You are splitting hairs.

Mr. DWYER: Mr. President: You very beautifully appealed to the Convention for fair play in your speech and I trust we shall have perfectly fair play and a full understanding of the different amendments before we dispose of this question. I want to know where we are. I would rather suspend business for ten or fifteen minutes and enable you to present the matter fully before us.

The PRESIDENT: The president thinks he can rule on the matter. The question is on the adoption of Proposal No. 170 as amended, and when adopted it stands amended with the amendment of the delegate from Cuyahoga [Mr. Doty].

Mr. LAMPSON: Did not the amendment of Mr.

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Fackler strike everything out after the resolving clause and so did it not take with it the Doty amendment?

The PRESIDENT: The president does not so understand.

Mr. FESS: I would just like one word. Our confusion is due perhaps to a little carelessness in the wording of the amendment. I don't think there is any doubt that it was understood that the Doty amendment when carried would apply to whatever we finally adopted, but it does not seem to be so worded. It specifically says "amend the Worthington proposal" and we are in confusion that will not be settled in any other way than by a vote to interpret its meaning. That is the only possible way. Here is one set of men saying it means one thing and here is another set saying it means another, and the president will rule upon the matter. Then I will appeal from his decision and the vote of the Convention will decide what is the interpretation. Let the Convention decide it. That is the only way it can be done.

Mr. HARRIS, of Ashtabula: That is not altogether fair. Suppose it goes to an appeal, it takes two-thirds to overrule the president.

Mr. FESS: It takes only a majority. That is the only way to get out of it, to let the Convention interpret.

Mr. BROWN, of Highland: That I think will get at it, but I think it might be well to take time to settle the matter, and I move that we suspend the rules and take a recess until 2:30.

DELEGATES: No.

Mr. ULMER: It seems kind of funny to me that this body of learned men do not understand what we have voted on. I am a simple citizen and not a lawyer, but I know what we voted on and it was not the proposal. It was the Doty amendment, which, as it was stated fairly and frankly, would be submitted as a separate proposal to the people. It was not to the amendment of Mr. Fackler. It was a separate proposition. Was it not so stated? It was stated that it should be an alternative.

The PRESIDENT: Of course, debate on this is out of order, but limited discussion seems to be perfectly proper.

Mr. HARRIS, of Hamilton: It seems to me that the member from Greene [Mr. Fess], with his usual good sense, has offered a solution. The Convention clearly expressed a wish that the alternative proposition should be submitted to the people. Now by some parliamentary tangle it seems that that may or may not be done in the regular order of procedure at this moment. Doctor Fess has offered a solution. Let the president make his decision, which will be appealed from, and the common sense and justice of this Convention will decide that question in a minute, and we can dispose of it without a whole lot of parliamentary maneuvering.

Mr. BROWN, of Pike: Mr. President: If I understood you correctly in your remarks, you pleaded with us to give the people an opportunity to have the alternative proposition. Was I correct in so understanding you?

The PRESIDENT: The president does not feel that he has a right to engage in the discussion from the chair, but is willing to rule.

Mr. LAMPSON: Just a word. I do not want to be captious about the matter. I am simply calling attention to the record. I am not appealing. I want it understood that the record is as it has been read, and will have to

be made up that way unless the Convention changes it, and an appeal would not settle it. I will not sit here and vote against my judgment on a question of order for the purpose of correcting the record. The way to correct the record is to do it properly and not go on record on a point of order, exactly the opposite of what is parliamentary.

Mr. FESS: I would ask the member from Ashtabula [Mr. LAMPSON] if there is any possible way of stopping this confusion other than the way I suggest?

Mr. LAMPSON: There is a way when it is all about correcting the record.

Mr. FESS: What is there in the record that needs correcting?

Mr. LAMPSON: If this is adopted the record will not show that the Doty amendment is adopted.

Mr. FESS: It does show.

Mr. LAMPSON: It will not, and if you will take the record and read it after it is all over you will see the point.

Mr. FESS: Oh, I understand your position.

Mr. LAMPSON: Everything after the resolving clause is stricken out in the proposal as amended in the adoption of the Fackler amendment. With that statement I am perfectly willing to vote.

Mr. FESS: I would like to know from Mr. Lampson whether if this appeal goes before the Convention he means he would not abide by it?

Mr. LAMPSON: I mean if I vote to sustain the chair, as I should like to do, to be accommodating, and correct the record, I would vote exactly opposite to what my inclination and knowledge of parliamentary law tells me is right, and I do not like to be put in that position.

Mr. PECK: Suppose the president decides, as he probably will, that you are all wrong in your implication and that the record does not lead to the conclusion that you say it does. Will not an appeal settle that?

Mr. LAMPSON: An appeal will not change the record.

Mr. PECK: There is nothing in the record to change, except by implication.

Mr. LAMPSON: I am not objecting to a vote.

Mr. PECK: You people are trying to make all the trouble you can.

Mr. KNIGHT: I doubt if there is any member of the Convention who has a particle of doubt in his own mind as to what he thought we were doing when we voted for or against the so-called Doty alternative proposition. Those of us who are not sharks on the subject of parliamentary law knew perfectly well what we were voting for, and when it was adopted it was adopted to be attached to whatever should be finally the form of Proposal No. 170. It seems to me that the Convention having voted that way should adopt the best way possible of making our record conform with the facts. We know what the facts were, and every one of us knows what we really did, although it may or may not have been in strict parliamentary order. The only question before us is how to get the record in shape to show exactly what we thought we were doing and what we did do.

The PRESIDENT: The president would like to rule on this matter. There may have been some irregularity, to which the member from Ashtabula [Mr. LAMPSON] has called attention, yet the question that presents itself is what is the will of the Convention as expressed by the

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vote taken. The president understands that the situation was this: The question now before the Convention is the adoption of Proposal No. 170 with the amendments that have been agreed to, including the amendment offered by the member from Cuyahoga [Mr. Dory]. I would so rule, and if an appeal is taken the president would be glad to entertain it with the understanding that if the president is sustained—and this is the ruling—that the secretary is instructed and understands it is his duty to make the record correspond to this ruling.

Mr. WOODS: Do I understand from what the chair has said that the secretary will deliberately change this written amendment to correspond with the ruling of the chair, or will he make the record just as it should be made in accordance with what we have done?

The PRESIDENT: This Convention understands the matter. The case has been plainly stated. If there is an irregularity such as the member from Ashtabula [Mr. LAMPSON] has called attention to, the secretary is instructed to make the necessary correction in the record in order that the record may show what, according to the ruling of the president, the real situation is. If the Convention does not choose to authorize that, the remedy is to appeal from the decision of the president.

Mr. WOODS: I want to object to any change being made in the Doty amendment or Fackler amendment and I want my objection to show on the record.

The PRESIDENT: The record will so show.

Mr. WINN: Are we to understand now that the president will give the secretary of this Convention instructions to alter the record as it now appears?

The PRESIDENT: The president thinks that is not quite the situation, but that the Convention by its acquiescence in this ruling does so instruct the secretary.

Mr. WINN: I should like to know very much whether the secretary of the Convention will make up a false record by direction from anybody.

Mr. JOHNSON, of Williams: I would like to say how I understand the situation.

Mr. TAGGART: I rise to a point of order.

Mr. JOHNSON, of Williams: I understand that when we voted on this, it would be an amendment to the proposal when carried.

Mr. TAGGART: There is no question what any member of the Convention understood. When the record is completed and when it is read it will have to be approved by this Convention and then is the time to correct it. The time for correction and for this discussion is when the secretary reads the record of this day's proceedings.

Mr. JOHNSON, of Williams: I reserve the right to talk.

The PRESIDENT: Just a moment. The president wishes to say to the member from Wayne [Mr. TAGGART], as others have been exercising the privilege of talking he does not think the rule should now be enforced.

Mr. JOHNSON, of Williams: I thank the president for his fairness. He is fair now as he always is. As I understand it, if the president is sustained, he does not change the record, but we authorize the record to be made up according to what a majority of the Convention thought they were doing, and no sort of juggling will make anything else. Now I appeal from the decision of the chair, and if he is not sustained then you make up

the record; if he is sustained it has been clearly stated how the majority desire to have the record made up. The question is, Shall the majority of the Convention rule the Convention?

Mr. CROSSER: I take the same view, that this was intended to be a part of whatever was adopted. I do not believe that the gentleman from Greene with his parliamentary procedure will correct it, for the reason that the record is made of the original proposal and also of the amendment. We may have intended one thing, but the mere fact that the chair may rule that that was intended to be other than what the language of the amendment says it is, can not change the fact that the amendment was in the very language it was. If it should go before the people and become a part of the constitution, the court would have to construe it on the language that it contains and not on the rulings of the chair. Now I ask unanimous consent to change the language of the Doty amendment to read that it was to the Fackler amendment rather than to the proposal.

Mr. ANDERSON: You can not change the record by a collateral attack or by inference. The only way you can change a record is to designate just what you want to strike out and just what you want to insert. It has to be definitely inserted. It can not be inserted by inference.

Mr. CROSSER: That is exactly my point.

The PRESIDENT: The president holds to the ruling. The question before the Convention is the adoption of Proposal No. 170 as amended, and this includes the amendment offered by the gentleman from Cuyahoga [Mr. Dory].

Mr. BROWN, of Highland: Provided that the ruling of the president is sustained, what are the changes in the record as now made up? Are there to be any changes?

The PRESIDENT: The situation will be that the secretary will be instructed to so engross the proposal that it will show that the proposal as adopted included the Doty amendment. It is impossible for the president to say what the intention of the Convention is except in the presence of the Convention.

Mr. BROWN, of Highland: If the ruling of the president is sustained it does not change any subject matter of the proposal?

The PRESIDENT: The president understands merely that the secretary will be instructed to so engross the proposal and then it will be before the Convention on third reading, and then any change can be made by the Convention that a majority of the Convention may desire should be made.

The question being "Shall the proposal as amended pass?"

The yeas and nays were taken, and resulted—yeas 53, nays 54, as follows:

Those who voted in the affirmative are:

- |                 |                   |                           |
|-----------------|-------------------|---------------------------|
| Antrim,         | Elson,            | Harter, Star <sup>1</sup> |
| Beyer,          | Evans,            | Hoffman,                  |
| Bowdle,         | Fackler,          | Kilpatrick,               |
| Brown, Highland | Farrell,          | King,                     |
| Brown, Lucas,   | FitzSimons,       | Leete,                    |
| Campbell,       | Fox,              | Leslie,                   |
| Cordes,         | Fahn,             | Malin,                    |
| Crosser,        | Halenkamp,        | Marriott,                 |
| Davio,          | Halfhill,         | Marshall,                 |
| Doty,           | Harris, Hamilton, | Matthews,                 |
| Dunlap,         | Harter, Huron,    | Mauck,                    |

## Relative to Session at Chillicothe—Taxation.

McClelland,	Roehm,	Taggart,
Moore,	Rorick,	Thomas,
Nye,	Shaffer,	Ulmer,
Peck,	Smith, Geauga,	Weybrecht,
Read,	Stamm,	Winn,
Redington,	Stevens,	Mr. President.
Rockel,	Stilwell,	

Those who voted in the negative are :

Baum,	Henderson,	Okey,
Beatty, Morrow,	Holtz,	Partington,
Brattain,	Hursh,	Peters,
Brown, Pike,	Johnson, Madison,	Pettit,
Cassidy,	Johnson, Williams,	Pierce,
Cody,	Jones,	Price,
Collett,	Keller,	Riley,
Colton,	Knight,	Shaw,
Crites,	Kramer,	Solether,
Cunningham,	Kunkel,	Stalter,
Dunn,	Lambert,	Stewart,
Dwyer,	Lampson,	Tannehill,
Earnhart,	Longstreth,	Tetlow,
Eby,	Ludey,	Wagner,
Fess,	Miller, Crawford,	Walker,
Fluke,	Miller, Fairfield,	Watson,
Harbarger,	Miller, Ottawa,	Wise,
Harris, Ashtabula,	Norris,	Woods.

So the proposal, not having received the required majority, was lost.

On motion the Convention recessed until 3 o'clock p. m.

## AFTERNOON SESSION.

The Convention met pursuant to recess and was called to order by the president.

Mr. DOTY: I desire unanimous consent to introduce a resolution in relation to the trip to Chillicothe, which ought to be adopted so that we can properly conduct our business there.

The resolution was read as follows:

Resolution No. 120:

*Resolved*, That when the Convention adjourns on Wednesday, May 8, 1912, it be to meet in the court house at Chillicothe, Ohio, at 1:30 o'clock p. m., Thursday, May 9, 1912.

The rules were suspended and the resolution considered at once.

Mr. DWYER: What is the meaning of this?

Mr. DOTY: This is a formal matter to make our meeting there legal.

Mr. MARSHALL: I would like to ask whether the one hundred and nineteen members and all the servants and attaches of the Convention are to go along? I mean the stenographers, the doorkeepers and everybody are all to go along?

Mr. DOTY: So far as we are informed, anybody can go who has the price to pay his own fare.

Mr. MARSHALL: I thought we were to go free.

Mr. DOTY: I didn't know anything about that, but if anybody knows a way to bring it about I am with him.

Mr. MARSHALL: I understood we were to have free transportation over and back, and I want to know whether the one hundred and nineteen members and stenographers and doorkeepers and pages are going.

Mr. DOTY: We are all going that want to.

The resolution was adopted.

Mr. FESS: I ask unanimous consent to offer an

invitation that comes from the chairman of the meeting which will be addressed tomorrow evening by President Taft. The chairman states if the invitation is accepted by the president and members of the Convention there will be a reservation in the hall and that all courtesies will be extended, so I move that the Convention accept the invitation to attend the meeting at Memorial Hall on Wednesday evening, May 8, 1912.

Mr. DOTY: Is this to interfere with the meeting of the Convention tomorrow night?

Mr. FESS: Not necessarily.

The motion of the delegate from Greene [Mr. FESS] was carried.

Mr. TAGGART: I desire unanimous consent to submit a report from a standing committee.

Consent was given and Mr. Taggart submitted the following report:

The standing committee on Schedule, to which was referred Proposal No. 229—Mr. Rockel, having had the same under consideration, reports it back with the following recommendation:

That the same be referred to the standing committee on Legislative and Executive Departments.

The report was agreed to.

Mr. FESS: I move a reconsideration of the vote that was taken on the matter of taxation this morning.

The motion was seconded.

Mr. DOTY: I move that further consideration of this motion be placed on the calendar for tomorrow.

The motion to postpone further consideration was lost.

The PRESIDENT: The question is on the reconsideration.

Mr. DOTY: This starts the taxation fight over again?

Mr. FESS: Yes.

Mr. DOTY: I think the member from Greene ought to state his reason for making the motion.

Mr. FESS: The reason I make the motion is that I do not believe the Convention desires to adjourn without doing something on the taxation question. We got into confusion this morning and much was done that we didn't know the result of and I do not believe it is the wish of this body to let this matter go over so near to the point of adjournment that we may adjourn without anything being done. There are so many things that we can agree upon that it seems strange to me we can not eliminate the things we differ upon and pass the others. I think we should bring this matter up again and I think we can settle it this afternoon very easily and very satisfactorily.

Mr. WOODS: Do you think we can settle it?

Mr. FESS: I think so.

Mr. WOODS: Is it your object to pass the proposal as it came to a vote?

Mr. FESS: With some modification.

Mr. WOODS: With a classification modification?

Mr. FESS: I think not. It is a concession from both sides trying to unite on things that we can agree on.

Mr. WOODS: I am willing to vote to reconsider this matter if it is understood that a classification modification is not to be included in the proposal and that there is to be no alternative. If that is the understanding I am willing to vote to reconsider, but I am not willing to do

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that if it is proposed to offer any classification or alternative proposition.

Mr. ELSON: Does not the gentleman from Medina [Mr. Woods] believe the people of Ohio have enough intelligence to vote on this subject of classification themselves?

Mr. WOODS: Yes; I think they have, but I don't think the matter ought to be submitted to them. There are only thirty-five votes in this Convention in favor of classification, and if this Convention submits to that idea there are thirty-five members of the Convention who are controlling the one hundred and nineteen.

Mr. ELSON: If the people line up as the Convention did, we could have an alternative proposition carried.

Mr. WOODS: If some one man can line up the people of Ohio as they lined up this Convention this afternoon it can be done.

Mr. ANDERSON: Do you not think this Convention is not ready to adopt the uniform rule with all the frills that those who believe in the uniform rule want to go into it? Do you think you can make them take just what the uniform people want without dotting an i or crossing a t?

Mr. WOODS: I happen to know what this Convention was called for. I know who called this Convention. I know that it was the Ohio State Board of Commerce. I helped to get the resolution before the general assembly. I was for the Constitutional Convention, but I was not for it for the same purpose that those fellows were for it. Now we have had this Convention called for the purpose of getting amendments through classifying property for taxation. I know what that is done for. Now this Convention is supposed to be controlled by people here in the interest of the people and not in the interest solely of the members of the State Board of Commerce. Here on this taxation proposition we have the State Board of Commerce and those supposed to be friends of the people working hand in hand and undertaking to do the bidding of the State Board of Commerce. I do not think our taxation laws should be fixed solely for the State Board of Commerce. The State Board of Commerce wants property classified. Why? Because they expect to get rid of taxes that now they have to pay. Nobody who expects if property is classified they will have to pay more money is asking for classification of property. Now, are they? This whole question of taxation is simply the question of making the other fellow pay the tax. I believe in making everybody pay his share of the taxes. I think the only way to do that is by the uniform rule and I am not willing, just because the State Board of Commerce asks for classification of property to have property classified. I do not know much about classification, but I do not need to know much about classification in order to know which way to vote. The people who are asking for classification are enough to tell me how to vote on it, because it is the people who have the most money and property and who can best afford to bear their just share of the burdens of government.

Mr. HARRIS, of Hamilton: Do you suppose for one minute that the fifty-seven members of this Convention who went on record this morning in favor of the alternative proposition of classification are going to stultify themselves this afternoon by not voting in the alternative of the proposition? If you think that I suggest that you defeat reconsideration.

Mr. DWYER: I would like to suggest to the gentleman that this morning we intended to have it presented in both forms to the people. We were all willing for that. I am willing for it still. I am willing that the Doty amendment and the Winn amendment be submitted to the people and let the people settle it. Let the classification question go to the people as intended this morning.

Mr. PIERCE: Do you not know it is the intention of this Convention to call a special election to pass upon the work of this Constitutional Convention?

Mr. DWYER: Yes.

Mr. PIERCE: Are you in favor of submitting this question at a special election when there will not be one-half of the voters of the state who will cast their votes?

Mr. DWYER: I think we will have a full vote. The people are better qualified to settle it than we are.

Mr. PIERCE: Do you not know the vote probably will be taken within ninety days?

Mr. DWYER: That may be.

Mr. PIERCE: Are you still willing to risk this important question?

Mr. DWYER: Yes.

Mr. WOODS: Gentlemen of the Convention and Judge Dwyer: I can not see any reason why the alternative proposition should be submitted upon this matter of classification any more than upon all the other forty matters that this Convention is going to submit to the people. I can not see any reason for it at all. A minority, about one-fourth of the Convention, is in favor of classification. The other three-fourths of the Convention are against classification. Certainly at least two-thirds are against it. Now, suppose the classification members submit a proposal of this kind without the uniform rule proposition. You could not expect to pass it, could you? You would not have any show of passing it. You could not muster the sixty votes that are necessary to pass it. So why should the thirty-five men here who are in favor of classification be able to submit that proposition to the people when no other thirty-five members can submit any other proposition?

Now take this taxation matter with reference to what Judge Dwyer says. You take this Convention and take the people in the state of Ohio. At least they know as little about the question of taxation as they do upon any other subject. They are not posted. It is a deep, intricate question, and it takes a whole lot of study. I do not know much about it.

Mr. PECK: Agreed.

Mr. WOODS: And I do not think the people in the state of Ohio, if you submit to them the question of classification or uniform rule, are going to understand it. I do not believe you can vote intelligently on it. Some of you may, but the large majority can not. Now there are some things that I am willing to do and if the vote by which the measure was defeated is reconsidered and there is not to be submitted an alternative proposition I think I would vote for the reconsideration. I will stand for almost anything except that alternative proposition. If I understand that is going to be offered I am against any reconsideration.

Mr. HARRIS, of Hamilton: It will be.

Mr. WOODS: Will that be included?

Mr. FESS: I will answer to this effect, that a few of the members who would like to have the Convention do something definitely thought there were some points

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that could be agreed upon and that the question of classification could be entirely eliminated. I think the question of limitation will be entirely eliminated, but I could not promise anything here because when it comes back here it is open for anybody to offer any amendment of any sort and it would be unfair for me to say it is going to be thus or so, because the Convention will decide what is to be done. So far as I know the matter you are concerned in will not be offered at the outset. Later on it may be put in the amendment.

Mr. WOODS: Is not there the understanding if this vote is reconsidered the vote on the Fackler amendment will be reconsidered and the vote on the Doty amendment be reconsidered and clear on back to the votes of the previous question?

Mr. FESS: I understand the whole matter is to be opened up in this Convention?

Mr. WOODS: Then there is an understanding that it is to go back to and include the previous question?

Mr. FESS: Certainly.

Mr. HARRIS, of Hamilton: Will Doctor Fess name the advocates of classification by whose authority he makes that statement?

Mr. FESS: The authority is mine. The source of information is that the people who voted ninety-three votes, I think this morning, adopted the Fackler amendment. It is something like what was introduced by the member from Cuyahoga [Mr. FACKLER] that is to be introduced with a little modification.

Mr. DOTY: As far as the agreement is concerned we haven't yet had any tangible evidence of any kind of an agreement. Doctor Fess states that he hopes there will be an agreement and gives himself as authority. He could not give any better authority so far as authority goes, and after all, with all due deference to the member from Greene [Mr. FESS], it does not reach very far. This morning I had as clear an agreement as you could have with those in opposition to me on this taxation question that the amendment I had proposed should be adopted with all of the so-called classification ideas and the uniform rulers should put up anything that their members desired. Now there was nothing official about that agreement, and I am holding nobody particularly responsible for the breaking of that agreement, but I had a right to have that kind of an understanding; and what happened? After the amendment I proposed was adopted we turned around and by a vote of ninety-three, which must necessarily take in both sides, a large number of whom were not in favor of the Fackler amendment on account of the uniform rule, voted for that Fackler amendment, carrying out our understanding. Then what happened? The whole thing was voted down. The uniform rulers in this Convention voted it down. So much for the agreement. If we are going to vote for this reconsideration upon the understanding that there is an agreement, let us have the agreement first, and if we are going to have a gentleman's agreement, let it be carried out, but let us not try to carry it out until we know what it is. There seems to be a tremendous amount of mystery about this so-called compromise.

Mr. ANDERSON: I understood you to say there was an agreement among the classification delegates and the uniform rule delegates by which the uniform rulers were to put up their proposition in any form they pleased, with the understanding that an alternative proposition was to

be submitted with that. Is that the reason a lot of men who last night were against putting in the one per cent limitation in the constitution as a limitation, now vote as they do?

Mr. DOTY: I am not one of those and can not answer. I am not saying there is an agreement such as now hinted of here. I did not say to the member from Defiance that the amendment I offered was to be voted in. I said to the member from Defiance that the Fackler amendment was to be voted in and I said to the member from Defiance, "Does the Fackler amendment include what you want?" and he said it did. I am not holding him responsible now. We are not having any trouble, and so far as I know there is no agreement. I know that I have none and I never heard of one until the member from Greene [Mr. FESS] mentioned it. I presume in some casual conversation there may have been some hint, but it made no impression upon my mind, because, as I understood the member then, he hadn't made up his mind whether to move a reconsideration or not.

Mr. ELSON: Would you be willing to make any private arrangement —

Mr. DOTY: No private arrangement. If there is any arrangement it has got to be open and public.

Mr. ELSON: Just secretly between you and me, to leave in the old constitution the provision for nonclassification and leave out all further thought of classification on one side and of maximum limitations on the other side, and put in the provision authorizing the tax on franchises, production, incomes, and inheritances?

Mr. DOTY: When I get into such a frame of mind that I think I know more about taxation than all the other people of the state, then I may be willing to put it up to the people and say, "Take this or nothing." I do not believe in that on so controverted a question as this. Now the subject of taxation has been somewhat exhaustively argued and considered. There has been no disposition so far on either side to prevent discussion. We have threshed this over and you could take the vote upon the various phases of this question and prove that this Convention is in favor of anything you want, and you can take the same votes and prove it is against anything you want. Does not that indicate to you that this Convention, so far as this body of men are concerned, are thoroughly divided on the question of what we ought to do on the subject of taxation, and that it might be a pretty good thing to leave the matter to the people and let them have a fair square vote, and then if there is any mistake let them make it? Now if we are going to have an agreement, I for one, before I vote upon the question for reconsideration, claim that I have a right to know what the agreement is and what the proposed compromise is. There seems to be an effort to compromise on principles, from start to finish, and I for one am tired. If we are going to vote up or down some compromise let us know something about the compromise before we start to voting.

Mr. DWYER: Suppose we fix five o'clock to vote on the reconsideration, and in the meantime let the gentlemen get together and try to get something in shape.

Mr. DOTY: I made one motion to postpone. I have no objection to the motion of postponement, and I yield the floor to the gentleman to make the motion if he so desires.

Mr. DWYER: I move that we postpone the con-

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sideration of this until five o'clock, and in the meantime let the gentlemen get together and see if they can not frame something that we can agree on. I think it would be a shame to adjourn this Convention without something on the tax question. We came very close to agreeing this morning, but some confusion occurred. I believe we can agree now and I move that we take a reconsideration at five o'clock and give these gentlemen a chance to do something.

Mr. FESS: There has been so much said about agreement that it embarrasses me just a little bit and I do not want to be misunderstood. I have taken absolutely no part in the discussion of this question, simply because it is so complicated. While I have been a student of it, I see such a variety of opinion that I am in the situation Mr. Doty referred to. You can find objections to almost every proposition offered and yet you will find support for it. I have avoided participating in this discussion from that standpoint, but there are things we can agree upon and I think it would be absolutely fatal for us to adjourn this Convention without doing anything upon the biggest question that has come before us. I wrote to the president of this Convention and said to him before we came into session that I thought the taxation question was the biggest thing to come before the Convention. I still believe it, but we are so hopelessly divided and so near the point of adjournment that we are just in the attitude of being ready to adjourn without doing anything, and I am getting somewhat anxious about it. It is really serious. We can agree upon the income tax and upon the inheritance tax and upon one or two other things, and I simply made this motion for reconsideration without consultation with a single person as to what would be the final compromise, but thinking we could certainly agree upon a few things. There was no other agreement. I am willing, if you wish to have more time, to support a motion to postpone this matter until five o'clock, if it is understood that we are to act upon it at that time.

Mr. HARTER, of Stark: Some of the members of this Convention are not old enough to remember the very serious time we had after the Civil War with the national debts. Nobody thought we could pay off \$2,600,000,000. There were all kinds of people and all kinds of views. Some were for scaling, some were for paying it in greenbacks, others were readjusters and some were repudiators. Finally the opinion of a very famous man in the state of Ohio was asked. It was J. N. Free, sometimes called "the Immortal J. N." He said, "Let the Indians assume the debt." This is the way with taxation. One side believes in one thing and the other side believes in the other, but the trouble is there are no Indians to turn to. They are civilized and they are not assuming our taxes right now. I think right here there should be a conference and we should agree on something and return that agreement to the Convention.

Mr. ANDERSON: Gentleman of the Convention: I do not believe we can have any so-called agreement on this much mooted question. If you take Mr. Harris, of Hamilton, and Mr. Doty, of Cuyahoga, Judge Winn, of Defiance, and Mr. Jones, of Fayette, and send them out what chance of an agreement would there be? The only way we could arrive at anything is to fight it out in the Convention right here and now.

Mr. DWYER: My idea is to formulate what we did

this morning in presentable shape. We had the Anderson amendment and the Doty amendment and the Fackler amendment, and we could put them in shape so we could understand them, and we can submit that and see if we can not agree to it.

Mr. ANDERSON: I do not think you would want the task of choosing the committee to draft something to suit both sides. It would be impossible. We can agree on a taxation measure that will be a great improvement over anything we have now. I do not believe that classification as such should be submitted to the voters, but let us have a fair, square and honest vote upon the things that a large number of us here favor, to wit, the Fackler amendment, before the Doty amendment was passed.

Mr. LAMPSON: I simply want to call attention to this situation: This taxation proposition, with the Doty amendment, will divide the state of Ohio into the most bitter factions that have been in existence for many years.

Now what is the proposition? To go to the people with that sort of a question in the months of June, July and August, when all the farmers from one end of the state to another are busy in their fields and when the weather is hot. It is no time for public meetings, when the people in the country have no time to attend. To undertake to fight out this kind of a proposition during those months, in my mind, is very unwise in view of the differences which have developed here. I think we had better just drop the whole subject.

Mr. FACKLER: Now, gentlemen of the Convention, let us not do a foolish thing by dropping this taxation proposition because the Convention is unalterably divided on classification and uniform rule. I hope you will vote to reconsider the vote of this morning, and if we can not do anything else on the subject of taxation, let us adopt sections 7, 8, 9 and 10, which provide for the income tax, the inheritance tax, the franchise tax, the excise tax, the production tax and the provision whereby the municipalities shall make arrangements for the liquidation of their debts. We can do that much.

Mr. DOTY: Is the member now attempting to get an agreement to do that and nothing else?

Mr. FACKLER: No, sir; I am not attempting to get an agreement, but I am simply appealing to the sober, good sense of the Convention not to throw down an opportunity to make progressive legislation on the taxation question because we are divided on the features of it. Let us do something that will be regarded by everybody as a step forward in the matter, and let us not throw away an opportunity because of rancor that may have been injected in this debate because of the uniform rule and classification.

Mr. HOSKINS: You included section 9?

Mr. FACKLER: Sections 7, 8, 9 and 10.

Mr. HOSKINS: Section 9 is the limitation.

Mr. FACKLER: No, sir; it is the excise tax, the production tax on coal, gas, oil and minerals. Let us do something in favor of progressive taxation.

Mr. HOSKINS: What about the limitation?

Mr. FACKLER: Let us leave that where it is. Let us get these things we are in favor of adopted.

Mr. ANDERSON: Do you not believe a large number of delegates are in favor of putting bonds on the duplicate?

Mr. FACKLER: They have so voted, but let us get these things that I firmly believe a majority of the

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people of the state are in favor of. Let us at least do that. I appeal to you not to throw away this opportunity.

Mr. FESS: If we consider —

Mr. FACKLER: I have an amendment prepared to accomplish what I have been suggesting.

Mr. FESS: Would there be any legal or parliamentary objection for any member to introduce an amendment on the bond proposition?

Mr. FACKLER: Let the Convention be a rule unto itself. This is a question of reconsidering and not a question of what we are going to do.

Mr. JONES: Gentlemen of the Convention: I do not suppose there is a man in this Convention who does not understand thoroughly what the reason and cause of the defeat of all these propositions with reference to the reform of our tax laws was. It is perfectly apparent to everyone that that measure which came to a vote just before we took our recess was defeated solely by reason of the division of this Convention with reference to the submission of this alternative proposition, which in fact is not an alternative proposition. But I do not want to discuss that matter. That is the rock upon which this Convention splits, and it is the only one upon which it splits. The vote taken heretofore indicated as clearly as it is possible to have anything indicated that a great majority of the Convention upon the question of classification, for instance, was opposed to it; that the majority of this Convention was in favor of the removal of the exemption from taxation of the bonds; that a majority of the Convention was in favor of taxing inheritances and providing for a graduated tax upon inheritances; that a majority was also in favor of the income tax and in favor of taxing coal, oil and other natural resources. It also developed that there was at least a small majority in favor of writing into the constitution some limitations. Now, if this one rock upon which this Convention split, this alternative proposition, were eliminated, and this question of tax rate could be eliminated, it does occur to me, as a sober, sensible man, that we ought to have no trouble, by at least a substantial majority in putting this thing in shape to submit it to the people. With the overwhelming judgment of the Convention in favor of certain features it occurs to me that, if this motion is reconsidered, we could offer something that will be acceptable to a majority of the Convention. Put in the proposition to remove the bonds from taxation and to have our inheritance provision and income provision and the other provisions upon which there has been no substantial division. I do hope that we shall not act on this motion to reconsider under the same unfortunate circumstances—to say the least of it—under which we voted just before recess, and that we shall reconsider this matter, and then, as has been suggested by the gentleman from Cuyahoga [Mr. Dory], that we will do at least what we all agree should be done along the line of progress in the reform of our tax laws.

Mr. WINN: Mr President and Gentlemen: Having sat here for several days—at least for three or four days—and urging with all the power I could a constitutional limitation on the amount of taxes that might be levied, I feel that I might say something along the line of compromise. It was on May 2 that Mr. Anderson offered an amendment, the purpose of which was to strike out all after the word “proposal” in Proposal No. 170, and insert the language employed in his proposed amend-

ment that embodies the proposition that there shall be no poll tax levied, that laws shall be passed taxing by uniform rate all money, securities, etc., that outstanding bonds shall continue to be exempt from taxation, but that bonds shall be taxed hereafter, that no debts shall be contracted except as provided in the constitution, and section 7 provides that laws may be enacted providing for taxes on the right to succeed to estates. Section 8 provides for taxes on income. Afterwards another amendment was offered by the gentleman from Cleveland [Mr. FACKLER] which you will find on page 6. That contains all that was embodied in the Anderson amendment. I speak of that for this purpose. We know Mr. Anderson is in favor of everything he embodied in his amendment, otherwise he would not have offered it. Also the member from Cuyahoga [Mr. FACKLER] was in favor of everything in his amendment. The amendment by the member from Cuyahoga [Mr. FACKLER] was practically the same as the one offered by the member from Mahoning, except that it goes a little farther. It embraces a proposition for a tax on inheritances, also a tax on incomes of a certain amount, and then in section 9 it provides, and this is a very important provision, “Laws may be passed providing for excise and franchise taxes and the imposition of taxes upon the production of coal, oil, gas and minerals.” Section 10 provides that no bonded indebtedness of the state or any political subdivision of the state shall be incurred or renewed unless under the legislation in which the indebtedness is incurred or renewed provision is made for the payment of not less than 2 per cent annually until the indebtedness is paid. Now I think we were all agreed upon that—practically all agreed. I think all of those who were wedded to the classification notion were opposed to it, but all of the others were agreed that that was a splendid proposition. But there were some others of us who believed that a limitation should be incorporated in it, and that is the reason I offered my amendment. I believe now that it would be an ideal provision in the constitution if we could have that limitation incorporated. But we cannot do it. I feel that we would be derelict if we were to go home without doing something on these lines. It seems to me it would be so easy for us to simply put it upon its passage without any limitation at all. For me to vote upon a proposition of that sort will be as distasteful as it can be to any other member of the Convention, but when I know the limitation is impossible, I stand for the best I can get, and I believe we may all agree and agree at once on the Fackler amendment practically as it was offered.

The PRESIDENT: The question is on postponing the further consideration of this matter.

The motion was lost.

The PRESIDENT: The question now is, Shall the motion by which Proposal No. 170 failed of passage be reconsidered?

Mr. LAMPSON: I move to lay that motion on the table.

Mr. WINN: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 45, nays 60, as follows:

Those who voted in the affirmative are:

Antrim,	Brown, Pike,	Cody,
Bowdle,	Campbell,	Collett,
Brattain,	Cassidy,	Colton,



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Crites,	Holtz,	Peck,
Doty,	Hoskins,	Price,
Evans,	Johnson, Williams,	Redington,
Farrell,	Lampson,	Riley,
FitzSimons,	Leete,	Rorick,
Fluke,	Leslie,	Shaffer,
Halenkamp,	Malin,	Smith, Geauga,
Halfhill,	Matthews,	Taggart,
Harris, Ashtabula,	McClelland,	Tannehill,
Harris, Hamilton,	Miller, Crawford,	Walker,
Henderson,	Miller, Fairfield,	Woods,
Hoffman,	Norris,	Mr. President.

Those who voted in the negative are:

Anderson,	Harter, Huron,	Partington,
Baum,	Harter, Stark,	Peters,
Beatty, Morrow,	Hursh,	Pettit,
Beyer,	Johnson, Madison,	Pierce,
Brown, Highland,	Jones,	Read,
Cordes,	Keller,	Rockel,
Crosser,	Kilpatrick,	Roehm,
Cunningham,	King,	Shaw,
Davio,	Knight,	Solether,
Donahey,	Kramer,	Stamm,
Dunlap,	Kunkel,	Stevens,
Dunn,	Lambert,	Stewart,
Dwyer,	Longstreth,	Stilwell,
Earnhart,	Ludey,	Stokes,
Elson,	Marshall,	Tetlow,
Fackler,	Mauck,	Thomas,
Fess,	Miller, Ottawa,	Ulmer,
Fox,	Moore,	Watson,
Hahn,	Nye,	Winn,
Harbarger,	Okey,	Wise.

So the motion to lay on the table was lost.

Mr. HARTER, of Stark [during roll call]: I cannot go home and say that I voted to dodge this question.

The PRESIDENT: The question is now on the motion to reconsider.

The motion was carried.

The PRESIDENT: The question is now on the adoption of the proposal.

Mr. FACKLER: Are amendments in order?

The PRESIDENT: The president will rule that amendments are in order.

Mr. FACKLER: I offer an amendment.

The amendment was read as follows:

Strike out all after the word "Proposal" and insert the following:

"To submit an amendment to article XII, by adding sections 7, 8, 9 and 10 relating to taxation.

*Resolved, by the Constitutional Convention of the state of Ohio,* That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 7. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value.

Such tax may also be levied at a different or higher rate upon collateral inheritances than direct inheritances and a portion of each estate not exceeding twenty thousand dollars may be exempt from such tax.

SECTION 8. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to such incomes as may be designated

by law, but a part of each income not exceeding three thousand dollars in any one year may be exempt from such tax.

SECTION 9. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and minerals.

SECTION 10. No bonded indebtedness of the state or any political subdivisions thereof, shall be incurred or renewed, unless in the legislation, under which such indebtedness is incurred or renewed, provision is made for the payment of not less than two per centum of the principal together with the annual interest on the same, each year, until such indebtedness is paid.

Mr. FACKLER: This amendment as proposed will leave the constitution just as it is in the first six sections of article XII, but it adds sections 7, 8, 9, and 10, providing for the inheritance taxes, income taxes, production taxes on coal, oil, gas and minerals, and a provision relative to the liquidation of bonded indebtedness.

There are some here who are in favor of tacking on a provision that will make municipal bonds hereafter subject to taxation. Let those offer an amendment to this amendment, and let it be adopted if they have sufficient votes, although I am frank to say I shall vote against it. I hope this amendment will not be voted down, and thus precipitate the whole fight on uniform rule and classification and limitation of bonds, etc. Let us adopt this at any rate, if we cannot do anything else.

Mr. HOSKINS: I would like to know something about that section 10.

Mr. FACKLER: That is simply to prevent the piling up of bonded indebtedness without making any provision for the payment of it. I believe it is unjust to the people that come after us for us to issue bonds and take the benefit of them and then say that the burden shall be put on the coming generation.

Mr. ANDERSON: I offer an amendment.

The amendment was read as follows:

Strike out the amendment of Mr. Fackler and substitute therefor the following:

To submit an amendment to article XII, sections 1, 2 and 6, of the constitution, and to add thereto sections to be known as sections 7, 8, 9 and 10.—Relative to taxation.

*Resolved, by the Constitutional Convention of the state of Ohio,* That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 1. The levying of taxes by the poll is grievous and oppressive; therefore no poll tax shall ever be levied in this state, nor service required therein, which may be commuted in money or other thing of value.

SECTION 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of in-

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struction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars for each individual, may by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SECTION 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvements.

SECTION 7. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value.

Such tax may also be levied at a different or higher rate upon collateral inheritances than direct inheritances and a portion of each estate not exceeding twenty thousand dollars may be exempt from such tax.

SECTION 8. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to such incomes as may be designated by law, but a part of each income not exceeding three thousand dollars in any one year may be exempt from such tax.

SECTION 9. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and minerals.

SECTION 10. No bonded indebtedness of the state or any political subdivisions thereof, shall be incurred or renewed, unless in the legislation, under which such indebtedness is incurred or renewed, provision is made for the payment of not less than two per centum of the principal together with the annual interest on the same, each year, until such indebtedness is paid.

Mr. LAMPSON: A lot of the members have voted to reconsider this matter on the theory that all that was to be attempted was the Fackler amendment, and I now move to lay the Anderson amendment on the table.

Mr. ANDERSON: I have the floor. You can't make that motion. You will find this proposed amendment on page 9 of your journal. It is the Fackler amendment in its purity and completeness. It is the amendment that Mr. Fackler was in favor of, and the only difference between the Fackler amendment, as I carry it in my mind, and this other, is that bonds are taxed or put back upon the tax duplicate. Something has been said to the effect that it was not the agreement that we should introduce the question of bonds before the Convention. Where was any agreement made and by whom? Let us analyze that just a moment.

Mr. PIERCE: You probably unintentionally mis-

lead. You say the bonds are put back. You mean bonds issued from this time on.

Mr. ANDERSON: Yes; bonds issued after the constitution is adopted by us and ratified by the people. All bonds issued after that will have to pay taxes, if this amendment carries, but none other, and I find that the men who are opposed all the time to taxing bonds are the men now claiming and insisting that it was an agreement that we should not inject the question of bonds into the Convention now.

Mr. FACKLER: Who raised that question?

Mr. ANDERSON: Mr. Lampson.

Mr. FACKLER: Is he one of the class you describe?

Mr. ANDERSON: I would think so.

Mr. LAMPSON: I would like to have it understood just what my position is. Mr. Fackler came around here with the prepared amendment. At first I did not know what it included. I was opposed to reconsideration, but I found out what it included, that it was supposed to include the subjects not seriously controverted, and I said if that were all of it, all right, that I would be willing to have it adopted, if there were to be no controversies on it.

Mr. ANDERSON: And after that you moved to table it?

Mr. LAMPSON: No; I did not move to table the Fackler amendment.

Mr. ANDERSON: Well, you tried to avoid reconsideration?

Mr. LAMPSON: That was before the agreement. That was before I found out what the Fackler amendment included, and when I did find out I said I would support it.

Mr. ANDERSON: We find that the men who are opposed to placing bonds back upon the tax duplicate are men who do not want any changes made in the present constitution. In other words, they are willing to forego the benefit that will come to the community by reason of the inheritance tax, the income tax, the production tax and the franchise tax to escape putting bonds back on the duplicate. That is the situation exactly. They are willing to leave the constitution just as it is, and are willing to adjourn without our work being completed, and go before the people and acknowledge that we could not do anything upon the question of taxation, just simply to escape putting bonds back on the tax duplicate.

Mr. PECK: All of those powers exist under the constitution now, and the legislature has had this power since 1851.

Mr. ANDERSON: No; since 1905.

Mr. PECK: I do not know anything about that. I am talking of the constitution of 1851. You have simply gone insane on that subject. You simply go back to that one subject always.

Mr. ANDERSON: I go back to it because that is the one thing I am trying to do away with.

Mr. PECK: We may ask you about anything else, but you slip back to that.

Mr. ANDERSON: You object to placing bonds on the tax duplicate, and you are with the rest opposing it. I insist that you are wrong there and that we should retain the Smith one per cent law if you are in favor of bringing property out of hiding, as you say you are, and in favor of taking taxation off of land and placing

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it somewhere else. Let us have the income, inheritance, production and franchise taxes, and the tax upon bonds, but let us adhere to that law.

Mr. LAMPSON: I move that that amendment be laid upon the table.

Mr. WINN: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted — yeas 48, nays 58, as follows:

Those who voted in the affirmative are:

Antrim	Hahn,	Nye,
Bowdye,	Halenkamp,	Peck,
Brattain,	Halfhill,	Price,
Brown, Pike,	Harris, Hamilton,	Read,
Campbell,	Harter, Huron,	Redington,
Cassidy,	Harter, Stark,	Roehm,
Cordes,	Hoffman,	Rorick,
Crosser,	Johnson, Williams,	Shaffer,
Davio,	King,	Smith, Geauga,
Doty,	Knight,	Stamm,
Evans,	Lampson,	Stilwell,
Fackler,	Leete,	Taggart,
Farrell,	Leslie,	Ulmer,
Fess,	Malin,	Walker,
FitzSimons,	Matthews,	Weybrecht,
Fox,	Norris,	Mr. President.

Those who voted in the negative are:

Anderson,	Hoskins,	Partington,
Baum,	Hursh,	Peters,
Beatty, Morrow,	Johnson, Madison,	Pettit,
Beyer,	Jones,	Pierce,
Brown, Highland,	Keller,	Riley,
Cody,	Kilpatrick,	Rockel,
Collett,	Kramer,	Shaw,
Colton,	Kunkel,	Solether,
Crites,	Lambert,	Stevens,
Cunningham,	Lungstreth,	Stewart,
Donahey,	Ludey,	Stokes,
Dunlap,	Marshall,	Tannehill,
Dunn,	Mauck,	Tetlow,
Dwyer,	McClelland,	Thomas,
Earnhart,	Miller, Crawford,	Wagner,
Elson,	Miller, Fairfield,	Watson,
Fluke,	Miller, Ottawa,	Winn,
Harbarger,	Moore,	Wise,
Harris, Ashtabula,	Okey,	Woods.
Holtz,		

So the motion was lost.

Mr. RILEY: I offer an amendment.

The amendment was read as follows:

"To amend the Anderson substitute to Proposal No. 170 as follows: After the words "for each individual" in section 2, insert the words "and also an amount equal to the bona fide indebtedness of such individual,".

Mr. RILEY: A number of delegates on this floor have expressed a great deal of sympathy with the poor man and regret at the high rate of taxation. A proposition was offered sometime ago seeking to prevent double taxation. From time almost immemorial the rule has been that in listing property debts could be deducted from credits. There was a time—the delegate from Scioto [Mr. EVANS] referred to it—when they, in 1846, passed a law that provided that debts might be deducted from moneys or credits. Just how long that law existed I am not advised, but for a long time it has been a rule that debts could be deducted from credits. Why not deduct this from other property than credits? If a man happens to have notes or mortgages outstanding why should he pay taxes on property that in effect he does not own? I think this is a fair proposition and

should meet with general approval. There should not be any double taxation.

Mr. TAGGART: What section does that amendment connect with?

Mr. RILEY: Section 2. It is on page 9, line 12, down after the word "individual". It will then read, "An amount not exceeding in value two hundred dollars for each individual, and an amount equal to the bona fide debts of such individual, whether notes, mortgages or bonds."

Mr. CRITES: I offer an amendment.

Mr. DOTY: A point of order.

The PRESIDENT: The point is well taken. We have already three amendments pending.

Mr. COLTON: The amendment that has been suggested by Mr. Fackler embodies the essential features of the report of the minority of the Taxation committee. I believe they meet the approval of nearly all the members of this Convention. They certainly are worthy the consideration of the Convention. We ought to have an income tax, and we ought to have it fixed so that the legislature can impose it. We ought to have an inheritance tax, and a production tax, and a franchise tax, and we ought also to have the provision about the bonds, and we should have a separation of state and local taxation, but that may come later. I believe too we ought to have bonds on the tax list. I go further than the amendment of Mr. Fackler. I can see no reason for exempting bonds from taxation that will not apply to the note of an individual, and let us have it clearly in mind that the bond of a municipality is nothing more than another name for a note. It is a note of a village or city, and why should we say that the one particular kind of intangible property shall be exempt from taxation, while on every other kind of the same intangible property we put a tax? I say that is class legislation of the worst possible sort, and there is no excuse for it. I admit that it is of advantage to the municipality to have its bonds free from taxation, but you will admit equally freely that it will be an advantage to the individual to have his notes exempt from taxation. Now, if all the municipalities were issuing bonds of the same relative proportion, and all individuals in this state owned bonds in the same relative proportion, there would be no injustice. It would be a giving on one thing and a taking on the other, but it is a well-known fact that the great borrowers in this state, and the great issuers of bonds are the large cities, and there are hundreds and hundreds of townships in this state that have no bonds whatever and are not in debt. These people have to bear the burden of the cities issuing the bonds. The bonds are bought more or less by our own people, and the people holding the bonds are exempt from paying their share of the state and local taxation. They do contribute something in the cities by submitting or accepting a lower rate of interest, but they are exempt from local taxation, and they are exempt from bearing their share of the burden of local government. It is unjust, and I shall cast my vote and give my influence toward restoring bonds issued hereafter to the tax duplicate, and I move the previous question.

Mr. FESS: On what?

Mr. COLTON: On the whole thing.

Mr. FESS: Before the previous question is put I move to table the last amendment.

## Taxation.

The PRESIDENT: The question is, Shall the amendment lie on the table?

The motion to table was carried.

The PRESIDENT: Now the question is, Shall debate close?

The yeas and nays were regularly demanded, taken, and resulted—yeas 76, nays 28, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Peters,
Baum,	Harter, Huron,	Pettit,
Beatty Morrow,	Henderson,	Price,
Bowdle,	Holtz,	Rockel,
Brattain,	Hursh,	Roehm,
Brown, Highland,	Johnson, Madison,	Rorick,
Cassidy,	Jones,	Shaw,
Cody,	Kilpatrick,	Stalter,
Collett,	King,	Stamm,
Colton,	Knight,	Stevens,
Cordes,	Kramer,	Stewart,
Crites,	Kunkel,	Stilwell,
Crosser,	Lambert,	Stokes,
Davio,	Lampson,	Taggart,
Donahey,	Longstreth,	Tannehill,
Dunlap,	Ludey,	Tetlow,
Dwyer,	Mauck,	Thomas,
Earnhart,	McClelland,	Ulmer,
Elson,	Miller, Crawford,	Wagner,
Fackler,	Miller, Fairfield,	Walker,
Farrell,	Miller, Ottawa,	Watson,
Fess,	Moore,	Weybrecht,
Fluke,	Nye,	Winn,
Fox,	Okey,	Wise,
Hahn,	Partington,	Woods.
Harbarger,		

Those who voted in the negative are:

Antrim,	Harris, Hamilton,	Marshall,
Brown, Pike,	Harter, Stark,	Matthews,
Campbell,	Hoffman,	Pierce,
Cunningham,	Hoskins,	Read,
Doty,	Johnson, Williams,	Redington,
Dunn,	Keller,	Riley,
Evans,	Leete,	Shaffer,
FitzSimons,	Leslie,	Solether,
Halenkamp,	Malin,	Mr. President.
Halfhill,		

The motion was carried and the main question ordered.

The PRESIDENT: The question is now on the amendment of the delegate from Mahoning [Mr. ANDERSON].

Mr. DOTY: An inquiry, so that we can understand exactly what we are voting for. If a member votes aye on the pending question it strikes out all of the Worthington proposal and substitutes this in place of it?

The SECRETARY: Yes.

Mr. DOTY: And if we vote the Anderson amendment down the proposal is in exactly the same shape as when we voted at noon?

The SECRETARY: No; there is the Fackler amendment and the Anderson amendment.

Mr. DOTY: Then all we are voting on is the Anderson amendment to the Fackler amendment?

Mr. WINN: Yes.

The question being "Shall the amendment of Mr. Anderson be agreed to?"

The yeas and nays were regularly demanded, taken, and resulted—yeas 67, nays 41, as follows:

Those who voted in the affirmative are:

Anderson,	Beyer,	Cassidy,
Baum,	Brown, Highland,	Cody,
Beatty, Morrow,	Brown, Pike,	Collett,

Colton,	Kilpatrick,	Riley,
Cordes,	Kramer,	Rockel,
Crites,	Kunkel,	Shaw,
Cunningham,	Lambert,	Smith, Geauga,
Donahey,	Lampson,	Solether,
Dunn,	Longstreth,	Stalter,
Dwyer,	Ludey,	Stevens,
Earnhart,	Marshall,	Stewart,
Elson,	Mauck,	Stokes,
Fess,	McClelland,	Taggart,
Fluke,	Miller, Crawford,	Tannehill,
Harbarger,	Miller, Fairfield,	Tetlow,
Harris, Ashtabula,	Miller, Ottawa,	Thomas,
Henderson,	Moore,	Wagner,
Holtz,	Okey,	Walker,
Hoskins,	Partington,	Watson,
Hursh,	Peters,	Winn,
Johnson, Madison,	Pettit,	Wise,
Jones,	Pierce,	Woods.
Keller,		

Those who voted in the negative are:

Antrim,	Halenkamp,	Nye,
Bowdle,	Halfhill,	Peck,
Brattain,	Harris, Hamilton,	Price,
Campbell,	Harter, Huron,	Read,
Crosser,	Harter, Stark,	Redington,
Davio,	Hoffman,	Roehm,
Doty,	Johnson, Williams,	Rorick,
Dunlap,	King,	Shaffer,
Evans,	Knight,	Stamm,
Fackler,	Leete,	Stilwell,
Farrell,	Leslie,	Ulmer,
FitzSimons,	Malin,	Weybrecht,
Fox,	Matthews,	Mr. President.
Hahn,	Norris,	

So the amendment was agreed to.

The PRESIDENT: The question is now upon the amendment of the delegate from Cuyahoga [Mr. FACKLER] as amended.

Mr. DOTY: An inquiry, before we vote so that we may understand what we are voting upon. Do I understand if we vote aye upon the pending question we now substitute for the whole proposal the Anderson-Fackler amendment, and if the Fackler amendment is voted down, then the proposal is exactly the same as when we voted this noon, which is the Winn amendment, and the amendment I proposed as an alternative proposition?

The SECRETARY: Yes.

The PRESIDENT: The question now is, "Shall the proposal as amended pass?"

The yeas and nays were taken, and resulted—yeas 77, nays 31, as follows:

Those who voted in the affirmative are:

Anderson,	Farrell,	Longstreth,
Baum,	Fess,	Ludey,
Beatty, Morrow,	FitzSimons,	Marshall,
Beyer,	Fluke,	Mauck,
Brown, Highland,	Fox,	McClelland,
Brown, Pike,	Hahn,	Miller, Crawford,
Cassidy,	Harbarger,	Miller, Fairfield,
Cody,	Harris, Ashtabula,	Miller, Ottawa,
Collett,	Harter, Huron,	Moore,
Colton,	Henderson,	Okey,
Cordes,	Holtz,	Partington,
Crites,	Hoskins,	Peters,
Crosser,	Hursh,	Pettit,
Cunningham,	Johnson, Madison,	Pierce,
Donahey,	Jones,	Rockel,
Dunlap,	Keller,	Roehm,
Dunn,	Kilpatrick,	Shaw,
Dwyer,	Kramer,	Smith, Geauga,
Earnhart,	Kunkel,	Solether,
Elson,	Lambert,	Stalter,
Fackler,	Lampson,	Stamm,

Taxation.

Stevens,  
Stewart,  
Stilwell,  
Stokes,  
Tannehill,

Tetlow,  
Thomas,  
Ulmer,  
Wagner,  
Walker,

Watson,  
Winn,  
Wise,  
Woods.

Those who voted in the negative are:

Antrim,  
Bowdle,  
Brattain,  
Campbell,  
Davio,  
Doty,  
Evans,  
Halenkamp,  
Halfhill,  
Harris, Hamilton,  
Harter, Stark,

Hoffman,  
Johnson, Williams,  
King,  
Knight,  
Leete,  
Leslie,  
Malin,  
Matthews,  
Norris,  
Nye,

Peck,  
Price,  
Read,  
Redington,  
Riley,  
Rorick,  
Shaffer,  
Taggart,  
Weybrecht,  
Mr. President.

So the proposal passed as follows:

Proposal No. 170 — Mr. Worthington. To submit an amendment to article XII, sections 1, 2 and 6, of the constitution, and to add thereto sections to be known as sections 7, 8, 9 and 10. — Relative to taxation.

*Resolved, by the Constitutional Convention of the state of Ohio,* That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 1. The levying of taxes by the poll is grievous and oppressive; therefore no poll tax shall ever be levied in this state, nor service required therein, which may be commuted in money or other thing of value.

SECTION 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars for each individual, may by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

SECTION 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

SECTION 7. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value.

Such tax may also be levied at a different or higher rate upon collateral inheritances than direct inheritances and a portion of each estate not ex-

ceeding twenty thousand dollars may be exempt from such tax.

SECTION 8. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to such incomes as may be designated by law, but a part of each income not exceeding three thousand dollars in any one year may be exempt from such tax.

SECTION 9. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and minerals.

SECTION 10. No bonded indebtedness of the state or any political subdivisions thereof, shall be incurred or renewed, unless in the legislation, under which such indebtedness is incurred or renewed, provision is made for the payment of not less than two per centum of the principal together with the annual interest on the same, each year, until such indebtedness is paid.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. LAMPSON: I move to reconsider the vote by which the proposal was adopted, and I move to lay that motion upon the table.

The motion was carried.

Mr. BROWN, of Highland: I rise to ask for leave of absence for Judge Kerr, and also to demand that Proposal No. 308 be taken from the Taxation committee for immediate action by this Convention, and I demand the yeas and nays on that.

Mr. DOTY: It does not take the yeas and nays. The proposal is before the Convention and I move that the proposal be laid on the table.

Mr. BROWN, of Highland: I demand the yeas and nays on that.

Mr. KNIGHT: I think we should have the proposal read.

The PRESIDENT: The secretary will read Proposal No. 308.

The proposal was read.

The PRESIDENT: The question is, Shall the proposal be laid on the table?

The yeas and nays were regularly demanded, taken, and resulted — yeas 68, nays 33, as follows:

Those who voted in the affirmative are:

Anderson,  
Baum,  
Beatty, Morrow,  
Beyer,  
Bowdle,  
Cassidy,  
Cordes,  
CROSSER,  
Davio,  
Doty,  
Dunlap,  
Elson,  
Evans,  
Fackler,  
Farrell,  
Fess,  
FitzSimons,  
Fluke,  
Fox,

Hahn,  
Halenkamp,  
Halfhill,  
Harbarger,  
Harris, Ashtabula,  
Harter, Huron,  
Harter, Stark,  
Henderson,  
Hoffman,  
Hoskins,  
Hursh,  
Johnson, Madison,  
Johnson, Williams,  
Kilpatrick,  
King,  
Knight,  
Kramer,  
Leete,  
Leslie,

Ludey,  
Malin,  
Marshall,  
Matthews,  
Mauck,  
McClelland,  
Miller, Crawford,  
Miller, Fairfield,  
Miller, Ottawa,  
Moore,  
Nye,  
Okey,  
Peters,  
Read,  
Roehm,  
Shaffer,  
Shaw,  
Smith, Geauga,  
Stamm,

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Stevens,	Thomas,	Weybrecht,
Stilwell,	Ulmer,	Wise,
Taggart,	Wagner,	Mr. President.
Tetlow,	Walker,	

Those who voted in the negative are:

Antrim,	Dunn,	Pettit,
Brattain,	Dwyer,	Pierce,
Brown, Highland,	Earnhart,	Price,
Brown, Pike,	Keller,	Rockel,
Campbell,	Kunkel,	Rorick,
Cody,	Lambert,	Solether,
Collett,	Lampson,	Stalter,
Colton,	Longstreth,	Stokes,
Crites,	Marriott,	Tannehill,
Cunningham,	Norris,	Watson,
Donahey,	Partington,	Woods.

So the motion to table was carried.

Mr. DOTY: I now demand the regular order.

Mr. ANDERSON: I move that 2,000 copies of the Worthington proposal, No. 170, be printed.

The motion was carried.

The PRESIDENT: The next business in order is Proposal No. 134.

Mr. FACKLER: I move that the Convention recess until seven o'clock p. m.

The motion to recess was lost.

The president recognized the delegate from Hamilton [Mr. HALENKAMP].

Mr. HALENKAMP: Gentlemen: Since Thursday afternoon, April 25, when this proposal was voted upon, there have been several changes suggested, and while I am reluctant personally to depart from the original draft, I nevertheless have agreed to the amendments which have been suggested, and which I will submit before I take my seat. Some of the pages have copies and are passing them around. The amendment simply guarantees a jury trial for contempt committed elsewhere than before the court.

The end sought by this proposed amendment to the constitution is to guarantee a jury trial in cases of contempt committed elsewhere than in the presence of the court and to restore the writ of injunction to its proper function.

The Hon. Henry Clay Caldwell, presiding judge of the United States court of appeals for the eighth district, has said:

Reduced to its last analysis the intelligent and impartial administration of justice is all there is to free government. It is to the courts that all must look for the protection of their liberty, person, property and reputation. It is public justice that holds the community together.

So, therefore, when the courts fail to protect the liberty, person, property and reputation of an individual or a class of individuals, it is no more than natural that they should protest and avail themselves of every opportunity to secure redress. Men in the usual walks of life outside of the ranks of labor can little realize the depth of the feeling and resentment felt by the working people of our state and nation in regard to the interpretation given to laws which discriminate against the working people as such. The working class are suffering from gross injustice by the judicial interpretation of the laws and the assumption of the jurisdiction in the issuance of injunctions and conduct of contempt

proceedings. Hence, we come to this Convention, pleading that, in so far as this state is concerned, we be given equality before the law; the right to exercise our natural, normal constitutional activities, the activities and rights accorded to the people of nearly every civilized country on the face of the globe, but which are denied to us through the use of the writ of injunction.

Right of association, the right to demand a normal work day, the right to demand sanitary surroundings, the safeguarding of machinery, the proper safeguarding of mines, factories and workshops, a decent living wage, and associate efforts to accomplish these things may be denied and have been by injunctions which carry with them the threat of contempt proceedings and imprisonment without a trial by jury.

We do not contend that judges are corrupt in our criticism of the courts; we are reluctant to believe that their motives in the issuance of injunctions are otherwise than honest motives. We realize that the conception of the courts as a rule is that there is on the part of the employer some sort of property or property right in either the workingman himself or in the workingman's power to produce. But since the adoption of the thirteenth amendment to the federal constitution it can not be said that one man has a property right in another man, and when a court assumes to issue an injunction saying to me that I must not induce you to leave the employment of another man, it assumes, if it does not go beyond the rights to exercise its power where property rights alone are involved, that the other man has a property right in me, and only upon that basis can an injunction of that character be issued and contempt proceedings grow out of it.

As a matter of fact, in the perversion of the injunction, its genesis, and running through it, all the years, there is but one purpose, and that is that the industrial tories of America aim to chain and bind the American men and women of labor to their tasks and deny them the right of ownership in themselves and in their labor power. This is sought to be done through one process or another by the injunction, always over the head of the workers, threatening to decapitate them, and by denying to them fundamental rights which are essential to their well-being and protection. The policy of those industrial tories is to starve men into submission, and when the men undertake by united effort to secure relief from the tyranny and obnoxious conditions imposed, the injunction is invoked, thus placing the men and women in jeopardy of their liberty should they continue to exercise their right of refusing to hold themselves in unwilling bondage.

For a long time the black list was used as a means of defeating labor's right to organize, and the spirit which adopted the black list is now using the power of injunction to accomplish the same end, the defeat of united action by the laborers. C. C. Allen, in his article on injunctions and organized labor, has this to say:

Injunction writs have covered the sides of cars; deputy marshals and the militia have patrolled the yards of railway terminals, and chancery process has been executed by bullets and bayonets. Equity jurisdiction has passed from the theory of public rights to the domain of political prerogative. In 1888 the basis of jurisdiction

## Contempt Proceedings and Injunctions.

was the protection of the private right of civil property; in 1893 it was the preservation of public rights; in 1894 it became the enforcement of political powers.

I submit it is hard to deny the proposition as to the original purpose of the beneficent writ of injunction, that purpose being to protect property rights for which there was no other adequate remedy at law; that where there is an adequate remedy at law it was never intended that the injunction process should lie; that it was never to apply, and never should apply to personal relations or even to enforce the provisions of criminal law; that anyone who is guilty of a violation of law of our state or nation may be apprehended and charged with the crime, the violator of the law placed upon his defense and if found guilty punished according to law.

The modern writ of injunction bears no more resemblance to the ancient writ of that name than the day does to night. In recent years it has been arbitrarily used and grossly abused. The restrictions formerly regarded as established have been abandoned, and our courts of equity have traveled over the whole field of human action and subjected the liberty of the citizens to restraint whenever it has seemed to the individual judge that restraint should be imposed.

It has taken the place of the police powers of the state and nation. With it the court not only restrains and punishes the commission of crimes defined by statute, but proceeds to frame a criminal code of its own as extended as it sees proper, by which various acts innocent in law and morals are made criminal, such as standing, walking or marching on the public highways, or talking, speaking or preaching, and other like acts. Men are deprived of their liberty, who do not do anything illegal, or anything for which by trial under the law they could be punished in the least. The court issues an injunction against the workers, forbidding their doing almost everything that is necessary to gain their legitimate object, and unless they obey they are sentenced to a fine or imprisonment at the discretion of the court. For what? Not for having violated any law, but for contempt. Thus the court converts a perfectly lawful act into a crime in order that it may inflict a penalty. This is what we have called "government by injunction."

It is sometimes urged in defense of government by injunction that it ought to prevail where the ordinary government has shown itself inefficient, but clearly, if our courts are to take the place of our governors, mayors, and sheriffs, why, not say so outright in the constitution? If these officials are inefficient, there are ways of removing them or forcing them to do their duty. But this new injunction remedy puts the judge into the civil officer's shoes and supersedes him. The judge becomes legislator and executor of the law, and he is himself the sole judge of the validity of his actions. He makes lawful acts unlawful, tries the alleged breaker of his new-made law without jury and then fixes the punishment.

It is obvious that an injunction must enjoin acts which are either lawful or unlawful. If they are unlawful, they are already forbidden by law, and the penal code is a standing injunction against them. Why then issue another injunction? If, on the other hand, the acts are lawful why should they be forbidden? It is a dan-

gerous legislative power to put in the hands of the single judge. Let me read to you from the pen of the late Justice Harlan:

The illustrious men who laid the foundations of our institutions deemed no part of the national constitution of more consequence or more essential to the permanency of our form of government than the provision under which were distributed the powers of government, three separate, equal and co-ordinate departments: legislative, executive and judicial. This was at the time a new feature of governmental regulation among the nations of the earth \* \* \* No department of the government can constitutionally exercise the powers committed strictly to another and separate department.

If Justice Harlan is right, and I believe he is, what right have our courts to invade the legislative field and armed with this powerful writ which has no definite boundaries or limitations, and which may be used at discretion, assume power which may be fairly characterized as imperial?

I think it was Goethe who said that the greatest element of terror is the unknown. One of the reasons why these injunctions have been so great an injury to the wageworkers, is because the injunction is a law unto itself, and it is seldom the case that the court issuing the injunction knows at the time it is issued what interpretation he will place upon it in the event contempt proceedings follow it. The workers can not determine from the injunction itself what are their rights, hence the terror that follows.

The extent of this powerful writ finds its only limitation in that unknown quantity called judicial discretion, touching which Lord Camden, one of England's greatest constitutional lawyers, said:

The discretion of the judge is the law of tyrants; it is always unknown; it is different in different men; it is casual and depends upon constitution, temper, and passion to which human nature is liable.

Mr. Burke pointed out the danger of investing any sort of men with jurisdiction limited only by their discretion. He said:

The spirit of any sort of men is not a fit rule for deciding on the bounds of their jurisdiction; first because it is different in different men and even different in the same men at different times, and can never become the proper directing line of law; and next because it is not reason but feeling, and when once it is irritated it is not apt to confine itself within its proper limits.

It is, I submit, a jurisdiction that is not required to stop anywhere and will stop nowhere. I submit that the government of this state and nation is a government of law by law. The issuance of injunction interferes and invades the sphere of personal relations and personal rights; it is going back to personal government, government by discretion, government by whim, government by fancy, government by favoritism.

Some say and think (and among them not a few

## Contempt Proceedings and Injunctions.

judges) that an injunction interferes in some subtle way before the act anticipated is performed. This is nonsense. An injunction does nothing before the act but to forbid it, just as a law forbids a crime. It does not and can not touch the prospective offender until he has offended. It has no miraculous antecedent power of prevention.

Injunctions of this character have violated fundamental rights. I shall assume for the sake of argument, that in every instance the workmen were engaged in acts of violation of the criminal law. What is the necessity for an injunction? I submit again that it is unnecessary and unjustifiable. If the acts are not criminal, then the theory upon which the injunctions are issued is incorrect and admittedly without justification. If the acts were criminal, the criminal law provides the punishment to be imposed and the procedure to be followed. The fact of the matter is that the only reason for issuing injunctions of this character is to dispense with the trial by jury.

When the framers of the Declaration of Independence met to draft a formal statement of the grievances of the colonists against the rule of England, one of the chief counts of the indictment was "for depriving them in many cases of the benefit of a trial by jury". Looking over our federal constitution we find that they did not stop with protesting, but meant to put the principle into practice. The fullness and completeness of the constitution in this respect is amazing. No more resolute purpose to accomplish a particular end ever found expression on paper:

The trial of all crimes, except in case of impeachment, shall be by jury.

No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service or in time of war or public danger.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.

In suits of common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

But notwithstanding, these inherent rights and constitutional guaranties have been swept aside by what may be fairly termed an equitable invention which turns crime into contempt and confers on the courts the power to frame an extended criminal code of their own, making innocent acts punishable by fine or imprisonment without limit, at their discretion. Consider the protection with which the law, as a result of centuries of struggle and experience, safeguards the liberty of the lowliest citizen. If he is charged with crime, there must be a hearing before a grand jury that must be satisfied a crime has been committed and that reasonable grounds for believing the accused guilty exist. Upon indictment by the grand jury he is tried by a petit jury, and even their verdict, if improperly arrived at or contrary to law, may be set aside upon appeal. This protection applies even to one accused of murder.

But by the mere issuance of an injunction all these rights are cast aside. A court, upon the application of

an individual or corporation, issues an order commanding the defendants (and for fear that he may miss some one they have added at times the word "whomsoever," thus embracing the whole world) to refrain from doing certain things which are specified in the order. Those violating this injunction are summarily arrested and brought before the same judge who issued the injunction. He inflicts punishment upon them. He himself and alone acts as the judge, jury and executioner. The grand jury, the petit jury, the right of appeal, are all dispensed with. Under such circumstances, what is more natural than the conclusion that the most brutish murderer is far better than the poor toiler whose only offense is that he violated the order of a single individual. Someone has said: "After all, the human skull is but the temple of human errors; and judicial clay, if you analyze it well, will be found to be like all other human clay." Our general assembly, the representative of the people, and the people themselves, through the initiative and referendum, may make law; the governor of our state is authorized to issue certain orders, to all of which there is attached a penalty as for a crime. But the people, the general assembly or the governor may not summarily sentence anyone for a violation of their orders or decrees. No, they must refer the offense to the regular judicial criminal branch.

We contend that there has been abuse of judicial discretion in cases of this kind. Contempt is a disobedience of something impalpable and indefinite, something we may not put our hands upon. In point of fact it is the violation of the commands of a human being, although clothed in the form of law; and it is very, very difficult for that human being to try a case of contempt without personal feeling entering into it, and the difficulty is not removed when the question is sent to one of his associates, who is very likely, in a greater or less degree, to share either the individual feeling of the judge whose orders have been violated, or the general feeling of the bench that whatever proceeds from the bench is itself sanctified. So the work of a jury in breaking the force of those feelings is one of the very greatest possible importance, and of the greatest possible public advantage. The utility of a jury trial is unquestionable. Its immense superiority to any other mode of trial in criminal cases is indispensable. A jury trial is impersonal. It gives expression to the sense of justice of the people, which is the nearest approach to absolute justice attainable in earthly tribunals.

I know there are some who maintain that courts have certain inherent rights, necessary to their dignity and enforcement of their decrees, and that a jury trial in contempt proceedings is the converse of these rights; it impairs the court's efficiency and abridges its dignity. Others argue that it is transferring authority to another tribunal. But we do not propose to take any power from them, nor does this amendment propose to do it. We have no designs upon the dignity of the courts.

There are two classes of contempt in the nature of things, and so recognized by all the courts. One is contempt committed in the face of the court, and the other is contempt committed outside of the scope of the senses of the judge. Our way of dealing with the matter would be to allow courts to deal summarily with what are termed direct contempts, which are committed in their presence. In so doing they would act, to all intents



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and purposes, as the conservators of the peace. When they come to indirect contempts, however, which are committed far away from the presence of the court, we think those ought to be proceeded with as in criminal cases, with the assistance of a jury, the judge to be the exclusive judge of the law and the jury to be the exclusive judge of the facts.

As a general proposition, let the question of indirect contempt be tried by a jury, thus eliminating forever and a day the question of bias, prejudice and personal feeling, for the juries of our state as a rule can be relied upon to carry out the principles of justice and fair dealing between man and man.

With these remarks, gentlemen, I hope I have made our position plain on these questions. I have not attempted and do not pretend to be original in all that I have said, for the literature contributed to this subject is already overwhelming; the points I have raised have been covered by men in almost every walk of life. From the pulpit, the lecture platform, the political stump, the editor's desk, in our legislative halls and bar associations these principles and doctrines have been defended and enunciated time and time again. We are not alone in our position, and before yielding the floor I must call your attention to the expressions of men of high renown in the legal profession, men who stand for justice and who apprehend the danger if personal, discretionary, and arbitrary government is permitted to take the place of government by law.

Hon. W. H. Moody, justice of the United States supreme court has said:

I believe in recent years the courts of the United States, as well as the courts of our commonwealth [Massachusetts], have gone to the very verge of danger in applying the process of the writ of injunction in disputes between labor and capital.

Hon. Thomas M. Cooley, president of the American bar association, said:

Courts, with their injunctions, if they heed the fundamental law of the land, can no more hold men to involuntary servitude for even a single hour than can overseers with the whip.

Governor Pingree, of Michigan, said:

I consider government by injunction, unless stopped, the beginning of the end of liberty. Tyranny on the bench is as objectionable as is tyranny on the throne. It is even more dangerous, because judges claim immunity from criticism, and foolish people acquiesce in their claims.

Judge H. F. Tuley, of the appellate court of Illinois, used these words:

Such use of injunction by the courts is judicial tyranny, which endangers not only the right of trial by jury, but all the rights and liberties of the citizen.

Governor Sadler, of Nevada, said:

The tendency at present is to have the courts to enforce law by injunction methods, which are subversive of good government and the liberties of the people.

Hon. J. H. Benton, Jr., of Massachusetts, said:

The courts have gone too far. It is impossible for them to go on in the course they have taken and retain the confidence of the people or preserve their own power. It is idle to say that the popular complaint on this subject means nothing, or that, as one judge has said, "Nobody objects to government by injunction except those who object to any government at all." It does mean much. It means that the courts have, in the judgment of many of the most intelligent and thoughtful citizens, exceeded their just powers; that they have, by the so-called exercise of the equity power, practically assumed to create and to punish offenses upon trial by themselves without a jury, and with penalties imposed at their discretion. The people will not and they ought not to submit to decisions like those in the Northern Pacific and Ann Arbor cases.

Professor F. J. Stimson, of Harvard, one of the greatest legal authorities, in his new work on "Federal and State Constitutions," after citing many authorities, says:

These are sufficient to establish the general principle that the injunction process and contempt in chancery procedure, as well as chancery jurisdiction itself, is looked on with a logical jealousy in Anglo-Saxon countries as being in derogation of the common law; taking away the jurisdiction of the common law courts and depriving the accused of his trial by jury.

Judge John Gibbons, of the circuit court of Illinois, declared that:

In their efforts to regulate or restrain strikes by injunction they [the courts] are sowing dragon's teeth and blazing the path of revolution.

In the last edition of his great book, *High*, the leading authority on injunction, says:

Equity has no jurisdiction to restrain the commission of crimes or to enforce moral obligations in the performance of moral duties; nor will it interfere for the prevention of an illegal act merely because it is illegal, and in the absence of an injury to property rights, it will not lend its aid by injunction to restrain the violation of public or penal statutes or the commission of immoral or illegal acts.

I submit in conclusion that injunctions of this character are never issued against any other citizens of our state and never issue against workmen except when they have had some rupture with their employers. Not alone in the name of labor, but in the name of justice and liberty, in the name of humanity and for the sake of the great principles upon which our state is founded, I earnestly hope that this proposal will become part of the organic law of this state.

I offer the following amendment.

The amendment was read as follows:

Laws may be passed, prescribing rules and regulations for the conduct of cases and business in the supreme court and other courts of the

## Contempt Proceedings and Injunctions.

state, and for the regulation of proceedings in contempt and limiting the power to punish persons adjudged guilty of contempt.

No order of injunction shall issue in any industrial controversy involving the employment of labor, except to preserve physical property from injury or destruction, and all persons charged in contempt proceedings with the violation of an injunction issued in such industrial controversies involving the employment of labor shall, upon demand, be granted a trial by jury as in criminal cases.

Mr. PECK: I want to call attention to the fact at first that this proposal as amended involves two or three distinct propositions. There are reasons and necessity for these. The first five lines contain a separate provision from the one we have heard so ably discussed, and it reads:

Laws may be passed, prescribing rules and regulations for the conduct of cases and business in the supreme court and other courts of the state, and for the regulation of proceedings in contempt and limiting the power to punish persons adjudged guilty of contempt.

That may strike one as a little late, as the legislature has always been passing codes of civil and criminal procedure, and other rules and regulations governing the courts, but there are certain matters in which the supreme court has denied the general assembly the right to direct them, and have said that they are above the legislative department of the government and are exempt from operation of its laws. I am informed they have recently disregarded an act of the general assembly requiring them to report their decisions on the ground that they were not subject to regulations in that way, that it was within their discretion and could not be regulated by the general assembly; that as they were a court they had inherent power to regulate their own business. That seemed to be the theory on which they proceeded; and there is another case, a case in which Mr. Thatcher was restored to his position as a member of the bar by the vote of the general assembly; and I understand they have denied the right of the general assembly to pass such an act, and have refused to recognize his right to practice law, claiming that the question of admission in substance was their prerogative as a court. Again insisting that they were not subject to limitation by the general assembly, in the case of Hale, which is reported in 55 O. S., they clearly and emphatically asserted that they could not be limited by the general assembly in their power to punish for contempt, that that power was inherent in the court, to punish for contempt, and that the general assembly had no constitutional authority to interfere with them in those matters, and they sustained a very extreme punishment. The case is fully reported, and that is the ground upon which they placed it.

Now I myself do not believe that anybody or any institution or any official in the state of Ohio ought to be above the law. I do not believe that any set of men should have the right to say that everybody else in the state of Ohio must bow to the will of the general assembly, but we will not. We make laws for our own gov-

ernment in these matters. That matter of contempt is one that is particularly in need of regulation, and they drew the line. They admitted they were trying that case, proceeding in accordance with the regulations of the general assembly, but they said it was all right as long as the general assembly merely passed regulations, but the moment they put a limit on their power, the general assembly had no right. Now that is a power I want to confer on the general assembly under this proposal. When it comes on to its passage, I notified the chairman of the committee last week that I would demand a separation of the question embraced in the first five lines and the next part, relating to the matter of injunctions, which is a distinct and separate matter. I do not propose to have the first matter imperilled by the injunction matter.

Mr. HOSKINS: In the second clause it reads: "No order of injunction shall issue in any industrial controversy involving the employment of labor, except to preserve physical property," etc. Is the expression "industrial controversy" a definite, certain statement that would have certain boundaries?

Mr. PECK: It seems to me it is. I am not the author of this proposal as it stands. I had something to do with the first five lines, but not with this last part. You will find it is very difficult to frame that in words which will include what you want, but it seems to me, taking the two together, that it makes it definite.

Mr. HALFHILL: Admitting the force of your argument on the first five lines, could there be any reason in the world to say that the last part of it is not directly statutory and that abundant power exists now for the legislature to provide as to the latter portion?

Mr. PECK: I am not so sure of that.

Mr. HALFHILL: In other words, does not the constitution confer simply on the common pleas court such jurisdiction as provided by law—that is, the court that issues the injunction?

Mr. PECK: Yes; I think likely that the general assembly might pass something that would do a good deal of good in this line, but I am not sure the courts would not claim inherent jurisdiction in those cases and that they have a constitutional right to issue those injunctions.

At any rate, this is a matter of such great importance, and since we haven't heretofore stuck strictly to the line, we might do a little legislating here. We did something on the abolition of capital punishment, and that was purely statutory. But that was deemed of such importance that it should be passed upon in the constitution. So here are things in the bill of rights prohibiting cruel and inhuman punishment and exorbitant bail—those matters might be handled through statutory provisions, and yet they are in the bill of rights, and they are even in the constitution of the United States. It is important at times to protect fundamental rights by constitutional provision, though they might be protected by statutory provision also. It is unquestionably true that certain jurisdiction is created in the constitution for the supreme court and the circuit court, but does not the constitution itself provide that the common pleas court has no jurisdiction except as provided by law? It has jurisdiction, civil and criminal.

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Mr. HALFHILL: It is "as created by law," and is not that plainly statutory?

Mr. PECK: I am not sure it is not, but I think it is important enough to be passed upon by this body.

Mr. KING: If there is any doubt as to whether under the constitution as it now is the provision of this second paragraph might be adopted, would not that doubt be done away with if the provisions of the first part were written in the constitution, and would not the legislature have all the power?

Mr. PECK: I think the first clause would give the general assembly the power.

Mr. HALFHILL: I agree with that too.

Mr. PECK: I want to prevent those injunctions. I have not gotten through with this discussion on my part yet. I remember distinctly how these injunctions came to be used. It is a modern discovery entirely. The use of the writ of injunction to apply to a whole body of workmen in strikes was discovered by some bright lawyer in the early nineties and the scheme spread. I have never known much good to come of a writ of injunction. I have seen many issued and they invariably bring about strife, especially on the part of the men against whom they are directed. It calls out the militia and the police, and it does very little good, except sometimes it has intimidated the poor workmen. But it has really accomplished very little good and has done a great deal more harm by disturbing the peace of the community. Very often strikes have been presided over by the courts in their endeavors to enforce what they regard as the rights of the plaintiffs, which is shocking to one's sense of justice. There is no doubt that the workmen have just cause of complaint in many instances of the length to which the courts have gone in endeavoring to enforce alleged rights of employers.

Now the writ of injunction never was intended for any such purpose. That was an inheritance from the civil or ecclesiastical law of the middle ages. It is not a common law writ at all. It has crept into English jurisdiction from the continental courts, probably from the ecclesiastical courts, and it was always intended to apply to property rights, and it was never intended to apply to controversies, nor was it ever used in such controversies.

As I say, the application of it to controversies of this kind was never even discovered until the last ten or fifteen years and it has not been a beneficial or a useful discovery. It has not been one for the peace of a community. I think we had better go back to the old-time, common law practice in these matters and stop issuing injunctions, and that is the reason I am in favor of this and hope it will carry.

Mr. DWYER: Only a few years ago a United States judge in Minnesota issued an injunction restraining the men from quitting work.

Mr. PECK: Of course that would be simply allowing a judge to control everything to allow him to say that.

Now, Mr. Tetlow has a case that I would like to have him tell about, of abuse of a writ of injunction which seems to me to be dreadful, a case in West Virginia in which he was personally concerned, and it shows how far judges will go with this writ of injunction. You

all remember those disgraceful proceedings where, by virtue of writs of injunction, men were in jail and behind high fences and kept in for months and not permitted to leave the premises. No such thing should be permitted in a free government. They are disgraceful and injurious. This is intended to stop it in the state of Ohio if we can.

Mr. MAUCK: Just a word about the propriety of embodying this provision in the constitution of the state. It is far from clear to me that the supreme court of this state would hold that the general assembly has the power suggested by the member from Allen. The provision of the Ohio constitution in regard to common pleas courts is substantially the same as that of the federal constitution in relation to the United States district and circuit courts.

Mr. HALFHILL: Do you understand that I made the present constitution supplemented by the first five lines of this, say that the power exists?

Mr. MAUCK: But the first sentence of this proposal relates rather to the method of doing business than to the jurisdiction of the court itself. When the railroad rate bill was before the federal senate it was contended with great ability that the lower federal court having once received equity powers not conferred by the constitution, but conferred by statute, could not have that power limited by such statute because conferring equity powers carried with it certain inherent powers that must be exercised to carry into effect any of the equity powers so conferred. I have not followed that in the decisions of the federal court and do not know what has been held in that regard, but I do know that the supreme court of the state of Ohio has gone a great length in upholding what is claimed to have been and to be its inherent rights. For instance, the general assembly of Ohio has provided rules under which men may be admitted to the bar of the state. A few years ago the general assembly provided an educational qualification. It provided that any man might be eligible to an examination as provided by law if he held a teacher's certificate issued by the examiners of any county in the state. The supreme court, without any case pending before it, declared that statute unconstitutional because, it said, the general assembly had no power to infringe upon the inherent rights of the supreme court. If it would go that far to sustain what it claims to be the inherent powers of the court I think that we could not be satisfied that the ends sought to be accomplished by this proposal could be secured by any action of the general assembly. Therefore, those of us who believe that this ought to be part of the law of the state of Ohio feel that we must support it as a constitutional measure, otherwise we can have no assurance that it will ever become a part of the law of the state.

Mr. EBY: I move to amend Proposal No. 134 as follows:

Insert after the word "destruction" the following: "and to prevent the disturbance of the orderly operation of industrial pursuits."

Mr. DOTY: An inquiry please: Is this amendment as read an amendment to the original proposal? I do not think that is the way the member means it.

Mr. EBY: No.

Mr. DOTY: There is an amendment by substitute

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which strikes out all of the proposal and proposes to substitute this. If the amendment is adopted this is adopted.

Mr. EBY: I was under a misapprehension. I withdraw the amendment and will offer a different one if the president will recognize me later.

The PRESIDENT: The question is now on the proposal.

Mr. PECK: I ask a separation.

The PRESIDENT: The gentleman from Cincinnati [Mr. PECK] demands a separation and we will vote first on the first five lines.

A vote being taken that part was carried.

The PRESIDENT: Now we will vote on the remainder of it.

Mr. EBY: Now, I offer that amendment.

The amendment just offered by Mr. Eby was again read.

Mr. EBY: I notice that there has been added to this amended proposal "except to preserve physical property from injury or destruction". That contemplates those cases where laborers form themselves into menacing mobs. Now this perhaps is not what Mr. Halenkamp included, but it occurs to me if a man who is a scab wants to go to work he should be protected as well as any other person. Of course I have not introduced this at the behest of the laboring men.

Mr. ANDERSON: Aren't you getting mixed up the difference between a writ of injunction and a crime under a statute? Do you know what the difference is?

Mr. EBY: No. As I have observed it—

Mr. ANDERSON: Answer the question.

Mr. EBY: I think not. If you can enjoin men from destroying physical property you should be able to enjoin them from preventing orderly working men from working.

Mr. PECK: What are the police for?

Mr. ANDERSON: If they have a remedy below they cannot resort to the writ of injunction. Is not that where you make a mistake?

Mr. EBY: Is there any occasion where the writ of injunction has been issued against men who have prevented other men from pursuing their occupation?

Mr. ANDERSON: I have had considerable experience, but I could not answer the question, because from that experience I am not informed.

Mr. DOTY: I move that the amendment be laid on the table.

The motion was carried.

The PRESIDENT: The question is on the adoption of the second part.

A vote being taken the second part was agreed to.

The PRESIDENT: The question now is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 80, nays 13, as follows:

Those who voted in the affirmative are:

- |                  |           |             |
|------------------|-----------|-------------|
| Anderson,        | Crosser,  | Elson,      |
| Beatty, Morrow,  | Davio,    | Fackler,    |
| Beyer,           | Donahay,  | Farrell,    |
| Bowdle,          | Doty,     | FitzSimons, |
| Brown, Highland, | Dunlap,   | Fluke,      |
| Cassidy,         | Dunn,     | Fox,        |
| Cody,            | Dwyer,    | Hahn,       |
| Colton,          | Earnhart, | Halenkamp,  |
| Cordes,          | Eby,      | Harbarger,  |

- |                    |                 |                |
|--------------------|-----------------|----------------|
| Harris, Hamilton,  | Marshall,       | Stamm,         |
| Harter, Huron,     | Mauck,          | Stevens,       |
| Henderson,         | McClelland,     | Stewart,       |
| Hoffman,           | Miller, Ottawa, | Stilwell,      |
| Hoskins,           | Moore,          | Stokes,        |
| Hursh,             | Okey,           | Tannehill,     |
| Johnson, Williams, | Partington,     | Tetlow,        |
| Keller,            | Peck,           | Thomas,        |
| Kilpatrick,        | Pettit,         | Ulmer,         |
| King,              | Pierce,         | Wagner,        |
| Kunkel,            | Read,           | Walker,        |
| Lambert,           | Redington,      | Watson,        |
| Lampson,           | Riley,          | Weybrecht,     |
| Leete,             | Rockel,         | Winn,          |
| Leslie,            | Roehm,          | Wise,          |
| Longstreth,        | Rorick,         | Woods,         |
| Malin,             | Shaffer,        | Mr. President. |
| Marriott,          | Smith, Geauga,  |                |

Those who voted in the negative are:

- |              |         |           |
|--------------|---------|-----------|
| Brattain,    | Holtz,  | Nye,      |
| Brown, Pike, | Kramer, | Peters,   |
| Collett,     | Ludey,  | Shaw,     |
| Crites,      | Norris, | Solether. |
| Cunningham,  |         |           |

So the proposal passed as follows:

Proposal No. 134 — Mr. Halenkamp. To submit an amendment to article I, of the constitution. —Relative to injunctions.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Laws may be passed, prescribing rules and regulations for the conduct of cases and business in the supreme court and other courts of the state, and for the regulation of proceedings in contempt and limiting the power to punish persons adjudged guilty of contempt.

No order of injunction shall issue in any industrial controversy involving the employment of labor, except to preserve physical property from injury or destruction, and all persons charged in contempt proceedings with the violation of an injunction issued in such industrial controversies involving the employment of labor, shall, upon demand, be granted a trial by jury as in criminal cases.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

On motion of Mr. Doty Proposal No. 134, as passed on second reading, was ordered printed.

On motion of Mr. Doty one thousand additional copies of Proposal No. 151, as passed on second reading, were ordered printed.

Mr. Doty moved that the Convention recess until 7:45 p. m.

Mr. Hoskins moved to amend the motion of recessing until 9 o'clock a. m. tomorrow.

The motion to amend was lost.

The original motion was carried.

EVENING SESSION.

The Convention met pursuant to recess and was called to order by the president.

The PRESIDENT: The next thing in order is Proposal No. 227.

## Legislative Apportionment.

The proposal was read the second time.

Mr. HARRIS, of Ashtabula: The purpose of this proposal is clear to anyone who has given it any attention. I suppose some of you think this is one of the unimportant proposals, yet I have a sort of idea that it has been considered in some places from some information that has come to us. With your permission I would like to go over it a little by way of explanation and a little by way of comparison with the present constitution in regard to apportionment before the matter is opened for consideration.

The one point to which attention is given, and which is the only point in the proposal, is separate or distinct legislative districts, both as to members of the lower house or house of representatives and also as to the senate. As we now know, the constitution by amendment adopted in 1903, I believe, wipes out all of the provisions which previously applied in smaller counties by providing that each county in the state should have at least one representative. The previous ratio was wiped out. Then the ratio which is reached by dividing the whole number of people in the state as shown by the last preceding census by the number one hundred, provided the ratio for members in a county having more than one member. In other words, that determines the number to which each county should be entitled during the decennial period following that census. Ever since the adoption of the constitution of 1851 we have had a provision in the constitution for what might be called the cumulative practice in counties having a population greater than the ratio which existed during that decennial period with the provision that if that ratio multiplied by the number of terms of the general assembly, which was five—if that cumulative fraction multiplied by five would produce another full ratio, then at some time during the decennial period the county should be entitled to an additional representative, and the time was fixed in the constitution; and the constitution also provided that the governor, secretary of state and auditor of state should constitute a board of apportionment which should make the calculation following each decennial census and should assign to each county for the coming decennial period for each term the number of representatives it was entitled to and provide in which term the excess representative should be given to it. So it has come about that we have had a very indeterminate number of members, in the lower house particularly, and also a varying number in the senate. For instance, under the present constitution the apportionment for this decade has already been made up, and along the line of variations in number I call your attention to these figures very briefly. In the legislature the house will consist in the first period of a hundred and twenty-three members, in the second period of a hundred and twenty-three, in the third period of a hundred and twenty-eight, in the fourth period of a hundred and twenty-four and in the fifth period of a hundred and twenty-five.

The cumulative fraction multiplied by five produces such results as to justify an apportionment like that, and the various counties have this excess representative granted to them. This proposal proceeds upon the theory that that is not of itself very desirable; in other words, that the apportionment should be fixed by the decennial period, also that the representation in the senate should be fixed as well. Now, the purpose of this proposal is

to divide the counties entitled under the census of 1910 into representative districts. That is, that each county shall be divided by a board, which is provided for in the proposal, into as many districts as it has representatives and providing the time when that apportionment is to be made. If this proposal should meet with your approval and the approval of the people of Ohio, and become a part of the constitution, a reapportionment would be necessary in accordance with this provision. That apportionment should be made in ample time so that notice could be given of it and preparations for election under the new provision could be made in each county and each senatorial district. It provides for the first apportionment during the month of March, 1913, and for another apportionment during the month of March, 1921. These distinct periods must be fixed in order to make it clear. The first apportionment begins after the apportionment for the decade has begun.

This proposal was amended to meet a certain situation. It first provided that during the month of February, 1921, this apportionment should be made. I was told that there was some uncertainty as to whether the census for 1920 could be given so as to make the apportionment before March, but there was no doubt that during March, 1921, such apportionment could be made in accordance with the provisions of this section.

Now as to the personnel of the board which is to make this bipartisan or nonpartisan apportionment of territory in the counties entitled to more than one. It provides that the members of the senate and the members of the house of representatives, who of course will be in session next winter, representing the two leading political parties respectively, shall meet separately and each of said bodies shall designate two electors, not members of the general assembly, who shall forthwith be appointed by the governor, and said four electors so designated and appointed shall constitute a commission who shall ascertain and determine the ratio of representation for members of the house of representatives and senators, the number of representatives to which each county is entitled, and the boundaries of each senatorial district. Then there is a provision for vacancies, in case one should occur, by choice of the senators, they being the smaller body and most easily convened in the event of there being a vacancy in the board.

The original proposal provided that the population of the state should be ascertained by the preceding federal census or by such other means as the legislature shall determine, but the proposal now requires that the population must be ascertained from the federal census, a correct and regular means of ascertaining and determining the population of a state, and which can safely be taken as a base of proceedings. There is no change of divisor from the provisions of the present constitution. Of course, under the present census, a greater ratio will follow than that of any previous decade owing to the growth of the population of the state. Each county shall be entitled to at least one representative as the people have provided by constitutional amendment regularly—and I want to call attention to the fact that no changes have been made in the constitution except such as were necessary to maintain and carry out the provisions of this proposal for separate legislative districts. Each county having a ratio of one and a half or over shall be entitled to two representatives. It is

## Legislative Apportionment.

perfectly plain to anyone that the large counties will be the ones that will be benefited by this. The present constitution requires three-fourths; it is changed to one-half for a reason that is apparent to everyone. Then each county having two and a half times the ratio shall be entitled to three representatives and the same order continues, whatever number of ratios a county may have. Each county shall be divided by this commission, where they have more than one representative, into as many districts as there are representatives in said county, and one representative shall be chosen to each district.

The provision in the sixth section is that the territory fixed by this board shall be compact territory, that it shall be bounded by election precinct lines. I am not adopting this without some consultation with those who are familiar with the election laws and with election procedure. Necessarily the board which shall make this division, if it is provided that such division shall be made, will get in contact with the election officers regularly appointed. They must be guided by their advice in the matter of fixing these lines to conform to district boundaries.

Now, I want to make briefly a few comparisons between this and what we have already in the apportionment made for this decade, and it will be apparent at once that some counties will lose by having cut off a fraction of a representative, which when multiplied would give them an extra representative more during the decennial period. It is noticeably true of the county which I have the honor to represent in this Convention, Ashtabula. We have a population of 59,547. The ratio for representatives during this decade will be 47,671, with a fraction over, so that the fraction representing the difference between 47,000 and 59,000 for ten years will not be provided for.

Allen county, somewhat less in population, of course will lose in the same way, and these concessions must necessarily be made if this scheme is carried out. There is no getting away from it. There ought to be a rule, and that rule must hold throughout the state. On the other hand, some counties in the list entitled to more than one representative will have a continuous representation for ten years equal to the highest representation which they will have at any time during the decade under the cumulative fraction that I have spoken of. The county of Cuyahoga has thirteen representatives during the whole period. The county of Franklin has varying representatives, but is entitled to five for the whole period.

I do not want to make this tiresome by going into the details, but I will endeavor to answer any questions later that are asked me, and I will pass on to the consideration of the central part of the proposal. You are all aware that as the districts are fixed in the constitution of 1851, the cumulative fractions to which I have referred hold for senators just as with the members of the house of representatives. Consequently the number of senators will be variable. When the constitution of 1851 was adopted, the bulk of the population was differently located from the bulk of the population of today. That is readily observable, so that there will necessarily be a provision that those fixed districts as they are in the constitution would have to be changed, so that the joint senatorial district would not sometimes have one senator and sometimes have two and sometimes one senator for

three or four terms of the decade. That is not a happy way of fixing senatorial representation in the constitution. Consequently, in this proposal we authorize and provide that this commission shall divide the population of the state by the number thirty-five, the same number in the constitution now, and then as nearly as possible they shall make the senatorial districts which shall form from the ratio 136,203.

There may be some question arising out of this as to the practicability of any board, however well disposed, making an apportionment in accordance with this provision. I have never believed that it was a wise policy in this Constitutional Convention or anywhere else to direct the legislature to do anything that you could not do yourself or that you did not have a definite idea could be done. Accordingly, I have taken the counties and gone over them in my own way and have attempted to ascertain whether this is a practical thing to do. I have made several typewritten copies of a tentative arrangement, and they are on my desk. I don't know whether you are interested in hearing them, but I will read a few of them. Beginning in the northwestern part of Ohio, on the senatorial ratio of 136,203, Williams, Fulton, Henry, Defiance and Wood would be combined for ten years, and they have 145,000; Ottawa, Sandusky, Erie, and Seneca, 138,000; Huron, Lorain and Medina, 133,841; Paulding, Van Wert, Putnam and Allen 130,000; Hancock, Hardin, Wyandot, Marion and Morrow, 139,000; Crawford, Richland, Ashland, and Knox, 134,000; Ashtabula, Trumbull, Lake and Geauga, 149,000; Mahoning and Portage, 146,000; Columbiana and Jefferson, 142,000; Stark and Carroll, 138,000; Summit and Wayne, 146,311; Holmes, Coshocton, Tuscarawas and Guernsey, 147,000; Harrison, Belmont, Monroe and Noble, 136,000; Licking, Muskingum and Perry, 138,000; Morgan, Athens, Washington and Meigs, 134,000; Lawrence, Gallia, Jackson and Scioto, 144,000; Ross, Pickaway, Vinton, Hocking and Fairfield, 142,000; Pike, Adams, Brown, Clermont, Clinton and Highland, 40,000; Warren, Butler and Preble, 118,000; Auglaize, Mercer, Shelby and Darke, 126,000; Miami, Clark and Greene, 141,000; Logan, Champaign, Madison, Union, Delaware and Fayette, 147,000; Cuyahoga, with a population of 637,000, has five senators; Hamilton three senators for the entire decade; Franklin, two senators; Lucas, one senator with a large fraction. The compensation there is that Lucas, which now has one senator for every term, will in the next decade certainly have two senators the whole time. Montgomery will have one senator, with such a large fraction over that probably Montgomery will have two if this arrangement should be undertaken in the next decade.

I suggested that we would make some comparison with the present senatorial districts. I have indicated the number in this tentative arrangement. Now let us see how they compare with some of the present senatorial districts.

For instance, the eighth senatorial district as at present situated is composed of Lawrence, Gallia, Meigs and Vinton with a population of 103,000. They have a senator all of the time during the entire decade. Clark, Champaign and Madison, the eleventh senatorial district, 112,000, which is 6,000 less than the one under the ten-

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tative arrangement that I have prepared, and they have one senator for the entire period. Miami, Darke and Shelby, the twelfth senatorial district with a population of 112,000, will have a senator for the entire time. The seventeenth and twenty-eighth joint senatorial district under present arrangement, Morrow, Knox, Wayne and Holmes, has 102,000 people and yet has a senator for the entire decade. I only make these comparisons to show you that as far as fairness is concerned the tentative arrangement that I have prepared is vastly more representative and fairer than the present apportionment.

Mr. RILEY: How many would you have?

Mr. HARRIS, of Ashtabula: Thirty-four. Under the apportionment of this decade the senate will be varying in number. For instance, in 1880 it was 33; in 1881, 33; in 1882, 36; in 1883, 33; in 1884, 37.

Mr. RILEY: Your scheme contemplates the change from year to year during the decade?

Mr. HARRIS, of Ashtabula: It absolutely retains the same number for the decade.

Mr. RILEY: What would be the size of the house the next term?

Mr. HARRIS, of Ashtabula: A hundred and twenty-five members for the entire decade.

Mr. McCLELLAND: Some advantages will accrue to some political parties and some disadvantages to others by this apportionment?

Mr. HARRIS, of Ashtabula: Yes, sir; almost inevitably.

Mr. McCLELLAND: Is it not hopeless that the board elected by a partisan caucus will ever agree without an umpire upon that redistricting?

Mr. HARRIS, of Ashtabula: I have not the slightest doubt of it. I should think and I should expect that four gentlemen would be chosen. I have provided here that they shall not be members of the legislature, and I would expect they would agree upon men of character who had reputations that they would not want to lose and men who could meet and discharge an important work like this on grounds above party.

Mr. MAUCK: The gentleman from Ashtabula is aware of the advantage that is always taken by political parties for congressional purposes. What warrant has he to believe that the general assembly will select any other but their own kind?

Mr. HARRIS, of Ashtabula: There will be two democrats and two republicans on the commission.

Mr. MAUCK: I understand that, and I think it will be a deadlock unless you make a fifth member of the commission.

Mr. HARRIS, of Ashtabula: I do not assume all wisdom and I do not know that I object to an amendment of that kind, yet I cannot conceive that four gentlemen could meet disposed to reach an honest, fair conclusion and have any serious difficulty in reaching it.

Mr. MAUCK: Does the member mean to suggest that his associates, not himself, at the various legislatures in which he has sat have lacked that quality which makes them willing to do what is called gerrymandering?

Mr. HARRIS, of Ashtabula: I never have assisted but once in gerrymandering the state. I thought it was a pretty piece of work, as far as I was concerned, but, understand, the two parties didn't do it.

Mr. DOTY: Just one party did it.

Mr. HARRIS, of Ashtabula: And the minority didn't have any say so in the proposition whatever. The two parties never did it at all.

Mr. DOTY: Only one party did it and the minority didn't have anything to do with it. Was the member from Defiance or your colleague present on those occasions?

Mr. HARRIS, of Ashtabula: No; I never got anything from him. I am always doing for him, and I never ask anything from him.

Mr. HOSKINS: How would you provide for this contingency: Suppose there would be some one nominated for president that everybody was for, and the entire senate would be elected from one political party?

Mr. HARRIS, of Ashtabula: I remember one time when we had only three democratic senators down in the South Carolina corner.

Mr. HOSKINS: But suppose those districts had gone the same way, how would the minority party be represented in this districting?

Mr. HARRIS, of Ashtabula: I would think if the state ever becomes so nearly of one political faith that it cannot have any senators of the other party the party in power ought to have everything.

Mr. HOSKINS: You provide that the democratic members of the house and senate may meet in one body and the republicans meet in one body?

Mr. HARRIS, of Ashtabula: Yes.

Mr. HOSKINS: That constitutes two separate boards made up of the men of both houses?

Mr. HARRIS, of Ashtabula: Yes.

Mr. MAUCK: By that you confer upon them in their political capacity power to disfranchise everybody else?

Mr. HARRIS, of Ashtabula: That is going all the way through the election machinery.

Mr. HOSKINS: What do you think are the necessities for this Constitutional Convention providing an apportionment method of any sort? Is not the present one good enough?

Mr. HARRIS, of Ashtabula: I think I have already indicated, so far as being representative is concerned, that the apportionment that I have provided here is a great deal fairer than the one that now exists. If you have heard my comparisons of the various tentative arrangements as compared with the present arrangement you will certainly say that.

Mr. PECK: What is your senatorial ratio?

Mr. HARRIS, of Ashtabula: It is 136,203. The division of 4,767,121 by 35 produced that ratio.

Mr. THOMAS: Was it not agreed in the committee that there might be a socialist and it might be a leading party?

Mr. HARRIS, of Ashtabula: It doesn't make any difference what the names of the two leading parties are, the two leading parties are the ones who will elect the board. There is nothing concealed about this. The figures are there to speak to everybody, and I simply present this to you compiled as it is to have it in convenient shape. Now if any further explanation is needed I shall be pleased to give it.

Mr. FACKLER: What objection could there be to creating an assembly of districts throughout the state on a basis of population?

Mr. HARRIS, of Ashtabula: You try it in a pro-

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posal and see. That is all the answer I can make to that. I have from the beginning up to this time stated, which I shall continue to hold, that this proposition is drawn along the line of securing at least one representative from each county to the house and at least one senator from each senatorial district, and any changes made in the old constitution have been made to conform to that.

Mr. KING: What argument would you advance why a county having sixteen thousand population should have one representative and one with seventy thousand only one representative in the lower house?

Mr. HARRIS, of Ashtabula: I shall answer that as I answered Mr. Fackler. We had a provision, as you know, in the constitution for combining counties, and a great many were combined to make up the ratio, and then we didn't reach it. We also had a provision that a county with half a ratio should have one representative, and then a resolution was submitted to the people providing for a constitutional amendment guaranteeing to each county one representative. Do you want me to answer why a county should have a representative?

Mr. KING: If it is desirable, and I am inclined to think it is, why should not the ratio of the smallest county be the ratio of the larger?

Mr. HARRIS, of Ashtabula: Because of the impossibility of the case. If you make your ratio small enough to provide for the small counties you would have in your house two hundred men.

Mr. KING: New Hampshire has over two hundred and is one-third as large as Ohio.

Mr. HARRIS, of Ashtabula: Well, it is not the ideal legislature.

Mr. KING: Vermont has about two hundred.

Mr. HARRIS, of Ashtabula: It is not an ideal legislature. The new constitution of Michigan provides for having the largest body in the assembly eighty, and never to exceed one hundred. It is fixed within those limits. New York has separate and distinct assembly districts and has had since 1873.

Mr. KING: Why should not the legislature be permitted to change it every ten years?

Mr. HARRIS, of Ashtabula: The matter of having it fixed within limitations is to conform to the idea that the legislature must not be too numerous in order to accomplish work successfully and to accomplish it rapidly, and to do this a smaller number is more desirable.

Mr. HURSH: I offer a substitute for Proposal No. 227.

The substitute was read as follows:

Strike out everything after section 2 of amended Proposal No. 227 and insert the following:

SECTION 3. The population of the state shall be divided by the number seventy-five and the quotient shall be the ratio of representation in the house of representatives. The population wherever mentioned in this article shall be ascertained by the preceding federal census.

SECTION 4. Each county having a population of more than one-half such ratio shall be a representative district, and shall be entitled to at least one representative; counties having a population equal to one and one-half such ratios shall be entitled to two representatives; counties having

a population equal to two and one-half such ratio shall be entitled to three representatives, and so on.

SECTION 5: The counties having a population of less than one-half such ratio, shall be formed into representative districts as follows: the county having the smallest population in the state shall first be attached to the county adjacent thereto having the largest population and less than one-half such ratio; then the county next smallest in population, not already paired shall be attached to the county adjacent thereto having the largest population and less than one-half such ratio, and so on until all the counties having a population less than one-half such ratio that can be, are thus paired. Should any county with a population less than one-half such ratio be unpaired, it shall then be attached to the legislative district adjacent thereto thus formed, having the least population.

SECTION 6. The ratio for a senator shall be ascertained by dividing the population of the state by the number "thirty."

SECTION 7. The state shall be divided into senatorial districts, as herein provided, and each district shall choose at least one senator, each district containing such ratio and three-fourths over shall be entitled to two senators and each district containing twice such ratio and three-fourths over shall be entitled to three senators and so on.

SECTION 8. Each senatorial district shall be composed of compact territory, as nearly equal in population as practicable, and shall be bounded by county lines.

SECTION 9. The apportionment so made for members of the general assembly shall be reported to the governor, by such commission, within two months after their appointment, and the general assembly shall provide by law for publishing said appointments and otherwise carrying into effect the foregoing provisions of this article.

Mr. HURSH: Mr. President and Gentlemen of the Convention: As to the advisability of the consideration of this proposal I wish to say that is a matter over which I have not much control. Proposal No. 227 has been introduced here for the purpose of providing legislative apportionment in the state of Ohio. Now, friends, we have succeeded in this Convention in getting along pretty well in regard to party matters. We have never been compelled, and I am very glad of it, to consider any partisan measures up to this time, but I want to ask you if there ever was in the history of the American government anything of the nature of a gerrymander or of an apportionment entered into that did not have more or less of a partisan tinge. When I first came to this Convention last winter I realized that the lines of cleavage were on entirely different lines than those of party politics, and until this time we have not had the necessity of considering anything of a partisan nature. When this question of apportionment comes up we will become more or less wary in referring to it. We can see how we could be affected politically, but there are other reasons for the introduction of this substitute proposal. The Legislative and Executive committee has considered



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Proposal No. 227 a good deal and we could not agree upon its contents. So by common consent we reported it back to the Convention without recommendation. Then it devolved upon some of us who could not agree upon the proposal to evolve something that came nearer to our ideas of what the apportionment should be and this question occurred to us: Is it the intention or the desire of this Convention or the people of Ohio to make smaller the representation in the legislature? Another thing to be considered was, is it necessary to regard the fact of population in this apportionment? In the studying of that matter we came as it were to the parting of the ways as to what should be the ratio that would serve best and give nearest equal representation to the different political subdivisions as provided by the proposal. Then the question occurred, shall the apportionment be smaller or larger? I want to say in regard to making the apportionment larger that the great fault I have with Proposal No. 227 is the fact that the ratio is not right, considering the fact that each county shall have at least one representative. To be absolutely fair, giving each county one representative, we would have to divide the population of the state by the number 13,096, the population of the smallest county, and that would give us three hundred and sixty-four representatives, which would be impossible. But let us not assume anything quite that large. Let us assume that we will take a number of small counties of practically twenty thousand population and make that a divisor and we find that that would give us two hundred and thirty-eight in the house. Then the question occurred, how can we make a larger ratio and give the people practically the same fairness in representation? Now, friends, in making this apportionment we should at least be somewhat fair. I know that there may be some prejudice against the idea of combining counties, but we must remember at all times we cannot afford to be anything less than is fair in this apportionment, and if we are going to be fair we must have a ratio that will at least assure the larger counties of the state something near equal representation according to their population. We have hit upon the divisor of seventy-five, which gives 63,588 as the ratio of the representative districts, and we have provided that every county having one-half of a ratio or 31,794, shall be entitled to a representative. If the county has not a half ratio then we commence, not exactly by arbitrary rule, but by an automatic rule, to combine the smallest county of the state with the largest county adjoining that county having less than half the ratio, and so on until the whole state is apportioned. That appeals to me as being somewhat fair. It gives this apportioning board very little discretion, just the same as our present constitution, and we got by that a representative body of eighty-four or eighty-five members. As the member from Ashtabula [Mr. HARRIS] has informed you, it is not desirable in these days to have your legislative bodies too large. And assuming that as a fact, we have gone upon this theory by which we can cut down the representation in the house of representatives to eighty-four or eighty-five as apportioned under the census of 1910.

There is one serious objection that we have to the proposition of the gentleman from Ashtabula [Mr. HARRIS]. The people become habited to certain usages and one of those usages in the state of Ohio is the political subdivision of the state, the county being the local

unit. Now we do object to the idea of dividing the counties up into these legislative districts. We feel that if an apportionment is submitted in the manner provided by Proposal No. 227 and this bipartisan board goes to work to divide the larger counties, then trouble will begin, for this proposal provides that you need not divide those counties by townships or ward lines, but by precinct lines. Then there will come trading and jockeying for advantage, and every ten years no citizen in any large county in this state will have any assurance as to what district or what kind of a district he is going to be put in. The fact that this does give an opportunity for a practical gerrymander is objectionable. I maintain that the ratio, whatever it may be, should always apply to the county as a whole. Now, this is a nonpartisan convention and I suppose this is a nonpartisan proposal and something may just have happened, but in the evolution of this proposal something did happen. As originally introduced section 4 provided that each county should be entitled to at least one representative; each county containing such ratio and three-fourths should be entitled to two representatives and so on. Later on it was changed so that a county with one and a half ratio should be entitled to two representatives and so forth. I find in looking over the census of the different counties that the county of Butler has 70,271 population, that that county just falls below the one and a half ratio, which gives it one representative; but I find that Belmont county has just a little over one and a half ratio, that Columbiana county is just a little over one and a half ratio and that Lorain county is just a little over one and a half ratio, and of course any of you who are familiar with the political complexion of these counties in a normal year can understand what advantage that is. But there is another thing I wish to call attention to, and I will take the county of Butler to illustrate. The county of Butler has 70,271 population; by the apportionment according to Proposal No. 227 it will have for the remainder of the present decade one representative.

The time of the gentleman here expired and on motion of Mr. Roehm was extended five minutes:

Mr. HURSH: The county of Butler has 70,000 population in round figures. Five smaller counties of Ohio have 75,000 in round figures. Therefore Butler county will get one representative and five other counties of the state of Ohio will get one each, and they have only five thousand more people than Butler.

But I find something else. I find in the last decade that Butler county has increased 13,401 and the other counties have decreased their population 7,615. So at that ratio we have a right to assume that Butler county is bigger than the other five counties just now, and yet it will only have one representative and they will have five.

Now I want to call your attention to another fact, that thirty of the smaller counties of the state have a population of 637,439. The county of Cuyahoga has 637,825. Increasing in population as it is and the other smaller counties decreasing in population, Cuyahoga county undoubtedly now has more population than those thirty smaller counties. Under the proposed apportionment of my substitute to Proposal No. 227 Cuyahoga would have ten representatives and under the same arrangement the smaller counties would have about fifteen representa-

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tives, so that you see that the smaller counties would have the advantage. I know you say that it is discriminating against the country, but I want to call your attention to the fact that we have got to do one of three things. We have either got to admittedly give many country districts three or four times as much representation according to population as the larger districts have, we have to combine the smaller districts or have to make the representation larger. I have chosen the course of making the representation smaller and combining the counties.

I wish to say that this is not a selfish motive with me, because my county is not benefited, but we must come to some conclusion whereby we can give at least a partially fair representation. All the larger centers of population in the large counties, when we go to making these apportionments, must necessarily have more than one representative and consequently that is one reason why the large counties should be prevented from being divided into districts from the fact that they are entitled to some compensation. Take the county of Montgomery, with a population of 162,000, and it will have three representatives and there are eight or nine or ten counties in this state that will have nine or ten representatives and have no more votes than Montgomery county.

Mr. ANDERSON: I understand you to say that county lines would be destroyed in your county.

Mr. HURSH: If I said that I misstated it. I wish to say that my county falls under the ratio and will have to be joined to some other county under this arrangement.

Mr. ANDERSON: Are the people of your county favoring this proposition?

Mr. HURSH: I don't know whether they are or not, but I want this thing to the apportioned fairly.

Mr. ANDERSON: Could you think of anything that would cause people to vote against our constitution more than your proposal wiping out county lines?

Mr. HURSH: We do not propose to wipe out county lines. We propose to join one county with another. The point we make is this: The fact that we have got to come to some definite arrangement by which we can give at least fair representation makes it necessary to provide a smaller or a larger representation.

Mr. WINN: Are you in favor of the adoption by this Convention of the substitute offered by you?

Mr. HURSH: I am.

Mr. WINN: Will you support it?

Mr. HURSH: Yes.

Mr. LAMPSON: Really, does representation depend so much on numbers, that is, the number of one's constituents, as it does upon the community of interest? In other words, may not a representative represent fifty thousand people quite as well as twenty-five thousand if the fifty thousand people have a community of interest?

Mr. HURSH: That may be true, as regards the community of interest, but I think you will have to admit that it is not fair to give one community twice the representation that you give another.

Mr. LAMPSON: Take a population of fifty thousand in a compact mass, living in a small area. Take another population of fifty thousand widely scattered, covering a very much larger area. Do you think that they should have the same representation?

Mr. HURSH: I will answer that by saying I cannot see where we can get away from the logic of the proposition that the population, wherever it occurs, should be represented; and I will remind you of another fact, that in all the areas of large population in the large counties of the state, no injustice is done by the apportionment arrangement that I have proposed. The smaller counties of the state, even by that arrangement, are going to get a larger representation than the larger population of Cuyahoga and Hamilton counties.

Mr. LAMPSON: Has it ever occurred to the gentleman that there was an injustice in allowing one citizen of Ohio living in one county to vote for ten or a dozen representatives, whereas a citizen living in another county can only vote for one representative?

Mr. HURSH: Did it ever occur to you—to give you a concrete example—that the citizens living in Montgomery county, being permitted to vote for three representatives, are only being represented by three men, whereas in nine smaller counties with no more population than Montgomery county they have nine representatives? Is it not unjust to the citizens of Montgomery county when it only gets one-third of the representation that the smaller counties get?

Mr. LAMPSON: I hardly think so. I think those three might give better representation if Montgomery county were divided into three districts arranged with some reference to the interest of each district. Let the agricultural district be represented and the manufacturing interest and the commercial interest. Take Cuyahoga county with all the mass of industrial, commercial and other conditions that go to make it up. If that were divided into districts so that they could have more representative representation of the population than they possibly can as it now is, it would be a great improvement.

Mr. HOSKINS: Do you not think in a large county like Cuyahoga you will get better representatives of its various interests by the selection of men rather than by dividing the territory?

Mr. LAMPSON: I think the dominating political interest will dominate the whole business whatever that dominating interest is. East Cleveland is a residence district and they might have a representative, and then each of several interests might have a representative, and that would give a very much stronger representation.

Mr. HOSKINS: The representative would be there to represent that particular interest rather than the interest of Cuyahoga county.

Mr. ROEHM: I am against Proposal No. 227 by Mr. Harris, of Ashtabula. I was against it in committee and I spoke against it and am still against it for two reasons: First that I am from Montgomery county and second that I happen to be a democrat. As it happens Montgomery county at present is represented by democrats elected by something like 2,500 plurality. If this proposal goes through, on account of the city of Dayton lying away to the east end of the county, we will have sliced off the heavy democratic district by a north and south line and the remainder will be cut by an east and west line, and the republicans would get two representatives whereas the democrats would get only one. There is no question in the world but that this matter is loaded

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with politics. I do not say that Mr. Harris has any designs in offering Proposal No. 227, but the matter is full of politics. The proposition of Mr. Hursh is much fairer. It does give a democrat a chance once in a life time at least, but a fair proposal would be to have a representation by population. If each county has to have a representative let it have it. Let it have one-fifth of a vote if real small and let the others vote in proportion. I therefore move that the proposal and amendment be indefinitely postponed.

Mr. HARRIS, of Ashtabula: I want to ask Mr. Hursh a question. Have you made any combination of the counties on your proposal?

Mr. HURSH: I have to some extent.

Mr. HARRIS, of Ashtabula: How many do you combine?

Mr. HURSH: Forty-eight.

Mr. HARRIS, of Ashtabula: Then you drop off twenty-four representative districts as not represented and combine?

Mr. HURSH: Yes.

Mr. HARRIS, of Ashtabula: You have been over it and made an estimate so that you can say that those will fairly combine in that way?

Mr. HURSH: Yes.

Mr. HARRIS, of Ashtabula: I wish you would show it to me. I would like to see it.

Mr. HURSH: I am sure it can be done.

Mr. HARRIS, of Ashtabula: The members of the Legislative committee treated me with the greatest kindness and I was not aware that Mr. Hursh's proposal went to the extent that it does. I deny any idea of loading this proposition in any way. If it is true, as these gentlemen assert, that the democrats would suffer by this, I am sorry and it was inadvertent, but I cannot help it. I don't know how anybody can help it. As to the matter of communities and counties having thirteen representatives and being allowed the same number as thirteen counties having so much less population, that simply cannot be helped.

Mr. PETTIT: Suppose some district now has a certain number of representatives and is left the same. Does not that in fact become less of representation from the fact that other districts have an increased representation given them?

Mr. HARRIS, of Ashtabula: Giving or taking away representation was not considered by me. I was simply trying to get something absolutely fair.

Mr. PETTIT: You have not answered my question. I asked you if thirteen members in a certain district remained the same now as before, and if you raise the voting power of the smaller counties don't you lower the voting power of those thirteen that remain the same?

Mr. HARRIS, of Ashtabula: Not at all. What difference does it make to the people of Cuyahoga county?

Mr. PETTIT: If you let the thirteen remain the same and increase some of the others, don't the thirteen necessarily lessen in value?

Mr. HARRIS, of Ashtabula: Not at all, relatively it is not much.

Mr. PETTIT: Don't those smaller counties that are increased have a greater voting power than under the old rule?

Mr. HARRIS, of Ashtabula: No, your county has

just the same. If a county has the same number of representatives all of the time there is no difference.

Mr. PETTIT: You say everybody has the same representation and yet some increases are made some places. Now wherever those increases are made and the other counties remain with the same number of representatives the power—the voting power of the representatives of those other counties is decreased.

Mr. HARRIS, of Ashtabula: You can figure it out that way. As a matter of fact it will not work that way.

Mr. DWYER: I came to this Convention as a free lance, pledged to nothing but to do the best for the interest of the state of Ohio. Up to this time we have avoided politics. Our relations have been of the most pleasant character. There has not been even a tinge of politics. We have met and discussed all questions before us entirely independent of politics, all looking to the welfare of the state. I would be sorry to have any politics injected into this discussion and therefore, Mr. President, I believe we should continue as we have in the past, to elect our representatives by counties. I am opposed to these changes suggested.

Mr. DOTY: I had expected to vote for this proposition and my expectations were based entirely on a casual conversation I had with the author. While talking with him he asked me if I was in favor of dividing my county up into legislative and senatorial districts and I said, "Yes, I am in favor of that." A few years ago when we had local legislation I was not in favor of it. That is all the information I got about this proposition. It is not his fault that he didn't give me more, so I came to this meeting tonight and for the first time to hear a full explanation and a very excellent explanation on the part of the member from Ashtabula [Mr. HARRIS], and I find many changes that prevent me from voting for this proposal. The objections I have are numerous and I do not know that I can remember them all. A bipartisan board would not work. The member from Gallia [Mr. MAUCK] has pointed that out. Any man who has ever had much to do with that kind of work knows that this scheme without an umpire will not work. The present constitution does not allow the legislature to elect one public official except its own officials. The general assembly of Ohio has not the power to elect any other living official, and now we are proposing that the legislature shall elect four.

Mr. HARRIS, of Ashtabula: We don't do any such a thing. This designates to the governor certain persons that he shall appoint.

Mr. DOTY: That is a distinction without a difference. I stand corrected on a technicality, but the practical result is that the legislature is going to be ripped up the back every ten years in electing these boards, and when you get the boards you are deadlocked; you would get a condition that would be simply indescribable. You may think it is a small thing to divide up legislative districts by classes when you have power, two to two, but you just try it once.

Mr. HARRIS, of Ashtabula: You don't think the decision could be made by anybody?

Mr. DOTY: Yes; one man could do it, or three men could do it, or five men could do it, but four men, equally divided in their political minds, in my judgment,

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as I have observed political workings in twenty years, will not do it.

Mr. HARRIS, of Ashtabula: Your opinion differs from those of men who have had considerable experience along the same line.

Mr. DOTY: Well, really, I think that is the first time in my life that anybody ever disagreed with me.

Mr. HARRIS, of Ashtabula: Very likely.

Mr. DOTY: I am giving my opinion for what it is worth. There are plenty of men who agree with me too on that.

Mr. BROWN, of Highland: I move that this proposal and amendment be laid on the table.

The yeas and nays were regularly demanded, taken, and resulted—yeas 57, nays 35, as follows:

Those who voted in the affirmative are:

Beatty, Morrow,	Dunlap,	Harter, Stark,
Beyer,	Dwyer,	Henderson,
Bowdle,	Earnhart,	Hoffman,
Brown, Highland,	Fackler,	Hoskins,
Brown, Lucas,	Farrell,	Jones,
Brown, Pike,	FitzSimons,	Keller,
Collett,	Fox,	Kilpatrick,
Cordes,	Hahn,	King,
Crosser,	Halenkamp,	Kunkel,
Davio,	Halfhill,	Leslie,
Donahey,	Harris, Hamilton,	Ludey,
Doty,	Harter, Huron,	Malin,

Mauck,  
Partington,  
Peck,  
Pettit,  
Pierce,  
Price,  
Redington,

Riley,  
Roehm,  
Rorick,  
Shaffer,  
Solether,  
Stalter,  
Stamm,

Stokes,  
Tetlow,  
Thomas,  
Ulmer,  
Weybrecht,  
Wise,  
Mr. President.

Those who voted in the negative are:

Anderson,  
Baum,  
Colton,  
Cunningham,  
Dunn,  
Fess,  
Fluke,  
Harbarger,  
Harris, Ashtabula,  
Holtz,  
Hursh,  
Johnson, Williams,

Kehoe,  
Knight,  
Kramer,  
Lambert,  
Lampson,  
Longstreth,  
McClelland,  
Miller, Crawford,  
Miller, Ottawa,  
Okey,  
Peters,  
Read,

Rockel,  
Smith, Geauga,  
Stevens,  
Stewart,  
Stilwell,  
Taggart,  
Tannehill,  
Wagner,  
Walker,  
Watson,  
Woods.

So the motion to table was carried.

Mr. OKEY: I move that we adjourn until nine o'clock tomorrow morning.

Indefinite leave of absence was granted to Mr. Tallman.

Leave of absence for Wednesday was granted to Mr. Johnson, of Madison.

The Convention then adjourned until tomorrow at nine o'clock, a. m.