

level, anyway. Certainly in recent years they have not been challenged in elections.

Inasmuch as their opinions are reported in the press and the electorate has an opportunity to know where they take their positions, we feel if you are going to have non-competitive elections that would be a proper place to have them, on the appellate court level.

I do not view it as "a strict experimentation" unless, of course, you would like to view the entire majority proposal as an experimentation. I do not think that that is your point.

THE CHAIRMAN: Delegate Macdonald.

DELEGATE MACDONALD: That is not my point.

I have no further questions.

THE CHAIRMAN: Are there any further questions of the minority spokesman?

Delegate Dukes.

DELEGATE DUKES: Delegate Johnson, do you have any information on how many presiding circuit court judges in the State of Maryland received their position by being elected, as opposed to being appointed?

THE CHAIRMAN: You mean when they first ascended the bench?

DELEGATE DUKES: First took the bench. How many were actually elected instead of being appointed by the governor?

DELEGATE JOHNSON: It is my understanding in the recent history of Maryland, going back 50 or 60 years—someone can correct me if I am wrong—I think only four judges have ascended to the bench by way of opposing an originally appointed judge and being elected.

DELEGATE DUKES: Over what period of time did that cover?

DELEGATE JOHNSON: I think fifty or sixty years. It might be beyond that.

DELEGATE DUKES: Thank you.

THE CHAIRMAN: Any further questions of the minority spokesman?

Delegate Byrnes.

DELEGATE BYRNES: Delegate Johnson, do I understand that you retain the lawyer poll for the appellate level and do not retain it for the lower level?

DELEGATE JOHNSON: Let me state that in the minority's view there was not

a clear distinction as to whether or not the minority would recommend a lawyer poll to this Committee of the Whole. We thought the question under section 5.21 would be easily divisible. In other words, what we would propose by way of amendment was that section 5.21 be titled "Term of Office of Appellate Court Judge," and then our amendment would go up through "State."

We would also introduce an amendment with respect to the lawyer poll only to keep it consistent with the majority draft, but I can say personally that I do not see where it is necessary on the appellate court level.

THE CHAIRMAN: Delegate Byrnes.

DELEGATE BYRNES: I am afraid I do not understand. I am correct in assuming you will not retain the suggested plan at the trial court level?

THE CHAIRMAN: Delegate Johnson.

DELEGATE JOHNSON: Under our view, if judges run—I didn't understand your question, perhaps. That is my fault, I am sure.

On the trial court level the judge runs in open election, and I see no necessity for having lawyer polls. Is that correct?

THE CHAIRMAN: Delegate Byrnes.

DELEGATE BYRNES: Would you see any benefit at all to the public in providing this poll for all four levels, even if it is competitive election?

DELEGATE JOHNSON: That is an excellent question and it gave the Committee some concern. What we had to weigh, Delegate Byrnes, was the real possibility of a judge receiving a substantial number of votes in the poll, perhaps 60 or 70 percent, but yet recognizing that that really would not be much of an endorsement, either.

What do you do with the judge who receives 51 percent? We were very concerned about that, particularly when there will be judges who will be running in the same election. In our opinion it is a necessary evil in non-competitive elections on the trial court level, but with an open election it just simply is not worth the risk in our opinion.

THE CHAIRMAN: Delegate Byrnes.

DELEGATE BYRNES: Would you suggest that there is a risk to the public in a competitive open election that an emotional, highly financed campaign would put someone in office in a very sensitive position? Did you consider that risk?