

Civil Rights and the Michigan Constitution of 1963

Sidney Fine

CONSTITUTION OF THE STATE OF MICHIGAN OF 1963

Effective January 1, 1964

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PREAMBLE

We, the people of the State of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure those blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

ARTICLE I

DECLARATION OF RIGHTS

Political power.

Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.

Equal protection; discrimination.

Sec. 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

Assembly, consultation, instruction, petition.

Sec. 3. The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.

Freedom of worship and religious belief; appropriations.

Sec. 4. Every person shall be at liberty to worship God according to the dictates

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Published with the assistance of the Frederick and Edith Heusel Fund,
an endowment of the Bentley Historical Library, University of Michigan.

Bentley Historical Library
Bulletin No. 43 June 1996

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The University of Michigan
Ann Arbor

Printed by University of Michigan's Printing Services.

On the cover: The Constitution of the State of Michigan of 1963. Article I contains the Declaration of Rights, including the section on equal protection and nondiscrimination.

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FOREWORD

As the twentieth century comes to a close and we reflect on the accomplishments of the State of Michigan during those one hundred years, the first thing that will leap to mind is that the state gave us the automobile and the culture that went with it. But that extraordinary industrial achievement can overshadow other significant accomplishments. With the expansion of industry in Michigan, its population became among the most diverse of the states. The issue of civil rights then loomed large as the state grappled with issues of equality and fairness. Along with many other concerns, this particular issue moved the voters of Michigan in 1961 to call for a state constitutional convention.

In this bulletin, Sidney Fine, Andrew Dickson White Distinguished Professor of History at the University of Michigan, recounts the little known history of the debates over the issues regarding civil rights for the citizens of the state. Out of what was a complex web of particular interests and fears, the convention adopted a clearly courageous, progressive and model platform guaranteeing human rights. This is an important story and a proud moment in the history of the state.

Francis X. Blouin, Jr.
Director



Constitution Hall. Part of the Lansing Civic Center was remodelled to accommodate the Constitutional Convention, 1961-1962. (Michigan Bell Telephone Co., Photograph Collection, Box 17.)

CIVIL RIGHTS AND THE MICHIGAN CONSTITUTION OF 1963

"[O]f all the Constitutions in the fifty states, the new proposed Constitution of Michigan does more in the field of civil rights than has been done in any state Constitution." These words were spoken by John A. Hannah, chairman of the United States Commission on Civil Rights and president of Michigan State University,¹ after the delegates to the Michigan Constitutional Convention of 1961-1962 had completed their deliberations. He was referring to the Declaration of Rights in the new constitution and, even more so, to the fact that the civil rights commission for which the constitution provided was the only such body in the fifty states to be accorded constitutional status.

In the years between the end of the Civil War and the drafting of the 1963 Michigan constitution the Michigan state legislature had taken a series of steps to promote civil rights in the state and to ban discrimination against Michigan's African-American inhabitants. In 1867 Michigan prohibited racial discrimination in public schools. Two years later the legislature forbade life insurance companies doing business in the state from discriminating between whites and African-Americans. In 1883 the state removed its ban on miscegenation, and two years later it prohibited racial discrimination in the selection of juries. In a key action in 1885, the state banned racial discrimination in public places of accommodation, recreation, and amusement, a ban that was strengthened in subsequent years and applied to public housing in 1952. In 1955, after many years of effort by its proponents, Michigan adopted a fair employment practices act. The guarantees of civil rights in the Michigan constitution of 1908, the document in effect when the constitutional convention met in 1961, were, however, "fragmentary and incomplete," and the constitution's Declaration of Rights did not include an equal protection clause, nor did it prohibit discrimination based on race, color, religion, or national origin.²



Adelaide Hart, John Hannah, and James K. Pollock. (Arthur G. Elliott Papers, Box 1.)

It was not civil rights concerns that provided the impetus for the drafting of a new constitution for Michigan to replace the 1908 document but rather the state's fiscal problems and its legislative apportionment system. An "aggressive political campaign" to place the issue of a constitutional convention before the voters was mounted by the League of Women Voters, the junior Chamber of Commerce, and the Citizens for Michigan, founded in 1959 by George Romney, the American Motors Company president. The voters on April 3, 1961, narrowly approved a referendum calling for a revision of the state constitution. A primary election to select delegates was held on July 25, followed by a general election on September 12.



George Romney, Bloomfield Hills Republican and one of three Convention vice-presidents, with fellow Republican delegate Erv Haskill of Lapeer. (Arthur G. Elliott Papers, Box 1.)

Of the 144 delegates the voters elected, ninety-nine were Republicans and forty-five Democrats. All but four of the Democrats, whose numbers included the convention's thirteen African-American delegates, were selected from districts in the Detroit metropolitan area, whereas only fifteen of the Republicans were selected from that region. Of the eleven women delegates, six were Republicans and five Democrats. The Democratic delegates were understandably a "much more homogeneous group" than the Republican delegates, composed of conservatives from "rural, outstate districts" and a much larger group of moderates and liberals from suburban Detroit and "second-line urban areas in outstate Michigan." Although the delegates did not always divide along party lines, partisanship was thrust to the fore when Republican George Romney, who had been saying since early December 1961 that he might become a candidate for Michigan's governorship, officially announced his candidacy on February 10, 1962. The convention began its deliberations on October 3, 1961, and essentially completed its work on the new constitution on May 11, 1962, although the final convention session was held on August 1, 1962.³

As it turned out, civil rights became "one of the most discussed" and most contentious issues at the constitutional convention.⁴ Until late in the convention, the Committee on Declaration of Rights, Suffrage and Elections grappled with the problem. It drew up a new section for the constitution's Declaration of Rights dealing with equal protection and discrimination but decided against acting on the question of whether to establish a civil rights commission to enforce the civil rights provisions of the state constitution and the state's laws. That matter, as it turned out, was addressed by the Committee on the Executive Branch.

The Committee on Declaration of Rights, Suffrage and Elections was composed of ten Republicans and five Democrats. Its chairman was the distinguished University of Michigan political scientist, James K. Pollock. Pollock described his committee as having among its members "everything from McKinley Republicans over to pretty close to pinks." Among the former he appears to have included fellow Republicans Detroiters J. Harold Stevens, the committee's first vice-chairman, and Edward K. Stranahan, from Charlevoix. Pollock did not indicate which of the Democrats, all from the Detroit area, he thought were "close to pinks," but he was presumably referring to Democrats who were to his ideological left and who were liberals rather than "pinks." Pollock actually thought Harold Norris, a Detroit College of Law professor and the committee's second vice-chairman, to be "a very wise man" although too talkative, and the committee chairman had a favorable opinion of Robert Hodges, a law-school graduate from a trade union family. As for the other three Democrats, Norris described the Reverend Malcolm Dade as "a kindly man committed to civil rights"; Lillian Hatcher, as "a dedicated trade unionist"; and Peter Buback, as experienced in local government. The head of research for the committee was Professor Alfred H. Kelly, the chairman of the Wayne State University history department.⁵

The questions that concerned the Pollock committee regarding the drafting of a civil rights section for the new constitution were whether to adopt an equal protection clause, whether to ban discrimination not only because of race, color, religion, and national origin but also because of sex and age, whether to prohibit discrimination not only by public authorities but also by private parties, whether to specify the particular areas to which the ban on discrimination applied, and whether to exempt private housing from any ban on discrimination. Committee members and other delegates started to submit rights proposals to the committee beginning on October 12, Democrats submitting most of the proposals. After committee members and Kelly made presentations to the committee regarding "problem areas" in the civil rights field, the committee turned its attention to the content of a rights section that it would submit to the convention. Pollock's assumption at this stage of the proceedings, that what the committee would agree to would not be "very much different" from the bill of rights in the 1908 constitution, proved to be erroneous.⁶

Seeking support for a strong civil rights measure, Norris, Hatcher, and Dade turned on October 31 to the Michigan Coordinating Council on Civil Rights. The council accurately described itself as "a non-partisan federation of Michigan organizations concerned with the extension of civil rights to all persons." Its co-operating affiliates included organizations of the state's three major religious faiths, the National Association for the Advancement of Colored People (NAACP), the Michigan state AFL_CIO, and the United Automobile Workers Fair Practices and Anti-Discrimination Department. Hatcher indicated to the council "the need for a strong Civil Rights lobby" to influence the Rights Committee, and Norris expressed the desire of his group to work with the council.

The Coordinating Council on October 31 drafted a proposal calling for the addition of a section on equal protection and nondiscrimination to the Declaration of Rights in the state constitution that Norris on November 13 converted into Proposal No. 1216. "No person," the proposal stated, "shall be denied the equal protection of the laws of the state or any subdivision thereof. No person because of race, color, creed, religion, national origin, age or sex shall be subject to any discrimination in any civil rights by any other person or by any firm, corporation, institution, or labor organization, or by the state or any agency or subdivision thereof. Each person shall have the right to equal opportunity to secure employment, education, housing, and public accommodations." In its inclusion of private parties and sex and age and in its specific reference to employment, education, housing, and public accommodations, the Norris proposal staked out a position from which the Pollack committee and the convention itself would retreat. By November 26 the Coordinating Council itself had dropped the inclusion of sex and age from its proposal, and age discrimination, unlike sex discrimination, never became an issue of importance in the Rights Committee or in the convention.⁷

On November 30 John Hannah, who was a Republican delegate to the convention, made a presentation to the Rights Committee. Because of the federal and state constitutions and pertinent Michigan civil rights legislation, Hannah concluded that there was no need to refer to such matters as education and employment in drafting a new Declaration of Rights. Nor, apparently, did he think it necessary to refer to sex or age discrimination or to ban discrimination by private parties. After consulting with the staff of the United States Commission on Civil Rights, he offered the following as the proper language for the new constitution's Declaration of Rights:

Section 1. Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the state.

Section 2. Civil Rights. No person is to be denied the enjoyment of any civil or political right because of race, color, religion, or national origin. The legislature shall implement this section.



University Of Michigan Professor James K. Pollock addressing the convention. (Arthur G. Elliott Papers, Box 1.)

In supporting his proposal, Hannah, Pollock later told the convention, gave the Rights Committee "impressive and moving advice" about the need for provisions such as his to protect African-Americans and other minorities against discrimination.⁸ In view of the Republican Hannah's position in the nation and the state, it is not difficult to surmise that his recommendation to the Rights Committee caused the majority Republicans to conclude that a civil rights addition to the 1908 constitution's Declaration of Rights was required.

The Hannah proposal did not deter Democratic delegates on the Pollock committee and in the convention from seeking a stronger civil rights section for the new constitution than the Michigan State president had recommended. On December 8, 1961, seven Democratic delegates, including Norris, the principal draftsman, and Hatcher, submitted Proposal No. 1621 to the Rights Committee. It was little different than Proposal No. 1261 except that discrimination on the basis of sex and age had been dropped from the proposal, probably in an effort to attract support among committee members who favored a less inclusive proposal than No. 1261.⁹

On December 13 former president Dwight D. Eisenhower addressed the constitutional convention, stressing the important role of the states in the American system of government. In the question-and-answer session that followed the address, Norris, seeking support for Proposal No. 1621, asked Eisenhower a question not specifically based on his talk but rather on a statement in the report of the Commission on National Goals that President Eisenhower had appointed to the effect that the " 'goals' " of " 'equal rights before the law and an equal opportunity to vote, to be educated, to get a job, to buy a house' " were to be " 'achieved by action at all levels.' " "Do you believe," Norris asked, "that 'action at all levels' to secure equal opportunity for employment, housing and education includes appropriate expression in a state constitution, and would not a clear cut expression at the level of state government on behalf of such equal opportunity, be helpful in strengthening America's moral position in the world?" To this question, Eisenhower replied, "Well, I think it is essential.... I would be very much in favor of it."¹⁰

Hoping to gain added support for Proposal No. 1621, the civil rights forces in the convention pressed for public rights hearings. "[R]esponding," in Pollock's view, "largely to Negro delegates" but also, and not incidentally, to the unanimous request of Pollock's own committee, the convention agreed to hold rights hearings in Detroit, Flint, and Saginaw on December 18 and 19. "I think the reasons for the hearings are largely public relations," a disgruntled Pollock commented. Citing hearings in Detroit in December 1960 by the United States Commission on Civil Rights and also the 1961 report of the Michigan Advisory Committee to the federal commission, the Coordinating Council pointed in the Detroit hearings to the extensive discrimination against nonwhites in housing, employment, education, and law enforcement as justifying the need for Proposal No. 1621. Strong support for the proposal was also voiced by the secretary-director of the Detroit

Commission on Community Relations. As 1961 drew to a close, the pressure was mounting on the Rights Committee to add a section to the constitution's Declaration of Rights calling for "equal protection and no discrimination." "There has been great pressure," Pollock noted. "I have hundreds of letters in favor of this, and apparently there is no serious objection to it."¹¹

On January 11, 1962, Pollock presented a rights proposal to his committee that he characterized as a combination of Hannah's Proposal No. 1455 and a civil rights provision of the new Hawaiian constitution. "No person," what became Proposal No. 26 declared, "shall be denied the equal protection of the laws, nor be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of race, religion, sex or national origin. The legislature shall have the power to enforce this section by appropriate legislation." The proposal, as Norris quickly pointed out, did not apply to private parties, Pollock stating that he did not think that this was the committee's responsibility. Unlike No. 1621, the Pollock proposal also did not include a reference to education, employment, housing, and public accommodations, but it did ban sex discrimination.¹²

Women's rights advocates were divided on the subject of banning sex discrimination in the Michigan constitution just as they were divided on the addition of the Equal Rights Amendment to the federal constitution. Some women, to be sure, favored a state constitutional ban on discrimination against women, but others feared that this would undo the protective legislation for women that reform-minded social feminists had fought to secure over the years. Thus, when Patricia Barrymore, Status of Women chair of the Michigan Division of the American Association of University Women, wrote convention delegate Dorothy Siegel Judd on December 11, 1961, that a guarantee of equal employment regardless of sex or marital status should be included in the Declaration of Rights, the Grand Rapids Republican Judd, a League of Women Voters activist, responded, "I have spent my forty years in the League fighting for the equal rights amendment.... and I am too old now to start off in the opposite direction." To put a reference to sex in the constitution, she said, would be "an anachronism." When the Rights Committee met on January 12, it discussed the sex discrimination issue "at length," particularly whether the inclusion of the word "sex" in the constitution would have a negative effect on dower rights, property rights for women, and labor legislation designed to protect women workers.¹³

The principal debate in the Rights Committee was between the supporters of the Pollock proposal and supporters of Proposal 1621, to which the sentence had been added, "The courts of the state shall afford every person a remedy, both legal and equitable[,] against such discrimination." An informal vote on January 16 revealed a division in the committee along party lines, the Republicans favoring the Pollock proposal, the Democrats, Proposal No. 1621. The minority agreed, however, that they would present their proposal to the convention as "a minority of preference and not opposition." The committee then unanimously adopted Proposal No. 26.¹⁴



Dorothy Judd, Republican delegate from Grand Rapids. (Arthur G. Elliott Papers, Box 1.)

Pollock presented Proposal No. 26 to the convention on January 19, and it came up for debate in the Committee of the Whole, to which it had been referred, on February 1. Pollock now described the proposal as "a modification and synthesis" of the civil rights provision in the Hawaiian constitution "incorporated" in the second paragraph of Hannah's Proposal No. 1455 and a proposal of October 12 (No. 1014) by Norris that also essentially repeated the key provision of the Hawaiian constitution. Although Proposal No. 26 did not refer to the specific civil rights areas to be protected against discrimination, Pollock nevertheless reported

to the convention, "The principal but not exclusive areas of concern [with regard to civil rights] are equal opportunities in employment, education, housing and public accommodations." Observing that the proposal was not "directly enforceable ... in regard to private persons," Pollock explained that, "as a general proposition," the committee majority thought that "constitutional limitations should restrain government action and not ... define private duties." It was for the legislature, he said, to decide just what private discrimination should be forbidden and what sanctions should apply.

Further explaining Proposal No. 26, Pollock told the convention that "in recognition of the modern doctrine of the equality of women," the proposal included "a guarantee against discrimination by sex." Commenting on this point, Stevens remarked, "We did not feel so much it was necessary, but the ladies wanted it in. They feel they must be designated as a minority group." The committee had concluded, he stated, that the language would not "interfere with the statutory or constitutional rights provided for women."

Speaking for the minority, Norris, as promised, stated that Proposal No. 1621 was "a report of preference," not of opposition. He asserted that the proposal constituted "a more adequate declaration of rights, in the light of contemporary reality," that its "enumeration" of rights did "not constitute limitation," and that its prohibition of discrimination was applicable not just to state and public agencies but to private parties as well. Hatcher noted that the individuals and the representatives of organizations who had testified at the Rights Committee hearings on December 18 and 19 had supported the minority proposal.

The minority gained an important supporter when George Romney rose to say that although Proposal No. 1621 was "to some extent, statutory in character" and "subject to some abuse," he favored its specificity because of "the urgency of dealing with the problem promptly and thus taking steps that are important to harmony within our state, and to the understanding of our true attitude and position in the world." Former Republican congressman Alvin M. Bentley of Owosso also expressed support for the minority proposal but offered an amendment to limit its housing reference to public housing. After Hannah opposed the amendment as divisive, the delegates rejected it by a 8-80 vote. The last, however, had not been heard in the convention regarding the matter of private housing.

Delegate Lewis Hubbs of Gladwin thought that the minority proposal went "too far in its attempt to preserve individual freedom." On the other hand, Republican Ruth G. Butler of Houghton "urge[d] the dames to vote against" Proposal No. 1621 "because there's no sex in it," which produced laughter. The minority proposal was subsequently defeated by a 50-80 vote. On February 2 minority proposal supporter Malcolm Dade asked for unanimous approval of Proposal No. 26, stating, "I think that we have written into the law of the state of Michigan a concept of democracy that is very fundamental and very gratifying." Assembled in Committee of the Whole, the delegates responded by approving the proposal by a vote of 126-0.¹⁵

The vote of February 2 did not put to rest the question of whether there should be some reference to private housing and sex discrimination in the proposed civil rights section. The effort to include language in the section that would permit private property owners to dispose of their property as they saw fit began in the Pollock committee in December 1961, when Republican Weldon O. Yeager of Detroit sought to persuade the committee to overrule Rule 9, a 1960 administrative regulation issued by the state's Corporation and Securities Commission prohibiting state real estate licensees from discriminating on the basis of race, religion, or national origin. What Yeager proposed was to include in the Declaration of Rights the right of real property owners in the state "to sell, lease or rent their private real property ... to any person whatsoever." When Yeager first raised the matter in the committee, it "brought up quite a bevy of people from Detroit," to quote Pollock, who provided the committee with "very impressive ... testimony" in favor of the regulation. The proposal gathered scant support in the committee and when put to a vote on January 18 was soundly defeated, 3-11. Stevens then sought "to get at the right of the home owner to dispose of his property as he wishes" by what became Proposal No. 45: "The right of the owner of real property to convey, grant, devise or control said property shall be limited only by general law. The legislature shall not delegate this power." The committee approved the proposal on January 24 by a 9-5 vote, Pollock, who thought the proposal "merely a statement of law as it has existed for years" and hence "meaningless," joining four Democrats in opposition. Pollock then presented the proposal to the convention on January 30 and recommended its approval as an amendment to Proposal No. 26.¹⁶

When Proposal No. 45 was first debated on the convention floor on April 10, Pollock defended it as creating "a specific constitutional guarantee" of a "long established principle of the common law" and as "not at odds" with the civil rights section the delegates had already approved. Opponents claimed that the proposal was "unnecessary," had been "very cleverly drawn" to "cover" its "intent" to abrogate Rule 9, and would give "constitutional sanctity" to the right to discriminate against blacks. The proposal was defeated by a 59-63 vote.¹⁷

Proposal No. 45 came before the convention for a second time on April 26. Supporting the proposal, Republican Richard D. Kuhn of Pontiac declared: "I think we've done a lot for civil rights. I think we've done a lot for a lot of people and now I think we should take care of the property owners of the state of Michigan, and give them some protection which they so rightly deserve." Such prominent Republicans as Hannah and John B. Martin, chairman of the Committee on the Executive Branch, attacked the proposal, Martin declaring that its "sole purpose" was to sanction residential segregation. The measure was defeated for a second time by a 47-73 vote, Romney and Pollock joining the opponents. The proposal suffered the same fate on a final vote on May 7, this time by a 54-70 margin.¹⁸

The question of whether to ban sex discrimination in the Declaration of Rights proved to be a troublesome matter for convention delegates. "Speaking for at least some of the women in this convention," the Dearborn Democrat and League of Women's Voters activist Katherine Cushman declared on the convention floor on April 18, "we are not completely sure at the present time whether the mention of sex is a good idea or a poor idea in the constitution."



ConCon in session. The delegates were seated alphabetically without regard for party affiliation. (Michigan Bell Telephone Co., Photograph Collection, Box 17.)

When Proposal No. 26 came back to the delegates from the Committee on Style and Drafting for a second reading on April 26, Pollock announced that two amendments would be offered dealing with sex, "as interesting a subject," he said, "as that always is," a remark that produced laughter. Judd, Cushman, and two other delegates then offered an amendment to drop the word "sex" from the place it then occupied in the proposal and to add, instead, "No woman shall be discriminated against because of sex or marital status in the securing of employment or in promotion therein." When the presiding officer then said that the question was open for amendment, "all male delegates rose," and once again there was laughter. Menominee Republican Clifford E. Perras remarked, "In case there was any doubt over what this was for, it was in honor of 'sex,' " which also produced laughter. Understandably annoyed at this display of male chauvinism, Cushman responded that she hoped the subject could be discussed without laughter.

The fear of women like Cushman was that an outright constitutional ban on sex discrimination would make "reasonable classification" based on sex unconstitutional just as it would classification by race. "Being women," Judd, apparently retreating from her earlier position, declared, "we want equality with men, but we also want our special privileges too." The amendment she and others had offered, she explained, was designed to deal with "the particular discrimination" that was "most difficult" for women at that time. Norris opposed the amendment, contending that the inclusion of the word sex in the ban on discrimination did not preclude "reasonable classification." When the delegates voted 68-44 not to drop the word sex from Proposal No. 26, Judd, disturbed that the men "took it all as a joke," withdrew the fair employment amendment.

In an effort to resolve the classification issue, Ann E. Donnelly, a Highland Park Republican, offered as an amendment to the nondiscrimination section of Proposal No. 26, "This shall not be construed to prevent reasonable classification for the protection of women." The amendment was defeated by a voice vote, but it was approved the next day, as was the retention of the word sex. The delegates then approved Proposal No. 26 once again, this time by a 116-3 vote, Judd voting in the negative.¹⁹

The vote of April 27 did not end the matter, and all reference to sex was soon to be dropped from Proposal No. 26. Alerted by the convention's co-directors of research, Al Kelly and University of Michigan law professor Charles Joiner, the Grosse Pointe Shores Republican William B. Cudlip, chairman of the convention's Committee on Style and Drafting and himself "a distinguished attorney," sought advice on the sex issue from Professor Paul C. Kauper, a Michigan law school professor and considered the state's "foremost constitutional expert." "We are bothered," Cudlip wrote Kauper regarding Proposal No. 26 in the form in which it had just been approved, "because of possible future inability of the legislature to enact discriminatory laws beneficial to women over and above any laws passed pursuant to the police power." Kauper responded that the inclusion of the word sex in the proposal would "create difficulties" for the legislature and the courts since, as legislative measures and court decisions had indicated, "classification by

sex," unlike classification by race or religion, "might be reasonable depending on the purpose to which it is directed." Even if the Donnelly amendment were added to the proposal, Kauper doubted that the inclusion of the word sex would be "of sufficient advantage to women in the enjoyment of political or civil rights to outweigh the legislative classification problem it introduced."²⁰

When Proposal No. 26 came back to the convention for a third and final reading on May 7, Cudlip noted that Kelly, Joiner, and many lawyer delegates were "very much disturbed" at the action the convention had taken regarding the sex issue. Cudlip read from Kauper's letter to explain why all reference to sex as well as the Donnelly amendment should be dropped from Proposal No. 26. "Women," he said, "need to be discriminated against for their own benefit many, many times." He feared, however, that the language the convention had adopted did "not go far enough to protect them." Lillian Hatcher was outraged. Kauper and the men, she asserted, simply did not see the matter as women did. She was also not surprised, she said, that some women - she meant women like Judd and Cushman - also wanted to omit any reference to sex since, Hatcher remarked, some slaves had not wanted to be freed from their bondage either. Donnelly also objected to what Cudlip had proposed, charging that "the underlying motive behind this is not to protect women."

Cushman, who observed that women suffered "unfair discrimination on account of sex" but also had "certain protections" for the same reason, thought it best under the circumstances to leave the matter to be dealt with by the legislature rather than by constitutional language that might "lead to unfortunate results." Judd agreed, and the two of them, along with Romney, were among the eightytwo delegates who accepted the Cudlip recommendation. Hannah, Pollock, and Norris joined Hatcher and Donnelly among the forty-eight delegates who voted to retain the word sex as well as the reasonable classification provision. Proposal No. 26, minus the reference to sex discrimination, thus remained precisely in the form in which Pollock had first presented it to the convention. This meant that, subject to the approval of the voters, the new Michigan constitution would contain a section dealing with equal protection and nondiscrimination that supporters claimed was "the best in any state constitution."²¹

"More deep-rooted emotion was roused in Con Con on the creation of a civil rights commission than over any other issue,"²² a veteran *Detroit News* reporter commented. The individual most responsible for placing the issue of a civil rights commission before the convention was Albert Wheeler, associate professor of bacteriology at the University of Michigan and a leader in the Ann Arbor-Ypsilanti NAACP. Perhaps acting on the advice of Professor Robert Harris of the University of Michigan Law School, Wheeler informed the deputy director of Michigan's Fair Employment Practices Commission (FEPC) that he would bring to the October 31 meeting of the Coordinating Council on Civil Rights Steering Committee not only a nondiscrimination proposal for the state constitution but also a proposal calling for the establishment of a civil rights commission in the executive branch of the state government that would be vested with the authority

to enforce the constitution's civil rights provisions. Wheeler stated that he was considering sending the proposal to the Committee on the Executive Branch rather than to the Rights Committee because of "the possible reactions of Professor Pollock," whom Wheeler obviously knew. The Committee on the Executive Branch was composed of fourteen Republicans and seven Democrats and was chaired, as noted, by John B. Martin, a Republican national committeeman and a former state senator and state auditor general.²³

The Wheeler proposal for a civil rights commission attracted surprisingly little Coordinating Council support when it was debated at the Steering Committee meeting on October 31. Although Lillian Hatcher saw "merit" in the proposal, the prevailing view was that the proposal was "statutory" or "legislative" rather than "constitutional," was not "politically feasible," and, if presented and defeated, might "hinder" attempts to secure appropriate civil rights legislation. In the end, the committee approved a motion that council members could support the proposal individually but that it was not to go forward as the council's recommendation.²⁴



*Albert Wheeler, University of Michigan professor and ConCon delegate from Ann Arbor.
(Albert H. and Emma M. Wheeler Papers, Box 6.)*

Wheeler submitted his proposal to both Pollock and Martin as the proposal of the Ann Arbor-Ypsilanti branch of the NAACP, and he requested the two to discuss the matter with one another. Writing to Hatcher, Wheeler remarked that the commission would be "the instrument for giving reality and strength to any general [civil rights] provision" in the constitution. In an enclosed document, he offered the two principal reasons that would consistently be employed to justify inclusion of the commission in the constitution. Responding to what he categorized as "the most common and justifiable argument" against according a civil rights commission constitutional status, namely, that the proposal was "legislative," Wheeler noted that the existing constitution already included a civil service commission against which a similar charge could be made. Secondly, he called attention to the fact that since the enactment of the Fair Employment Practices Act in 1955, the state legislature had again and again failed to follow the recommendation of first Governor G. Mennen Williams and then Governor John B. Swainson to broaden the FEPC's jurisdiction to include education, housing, and public accommodations. Under the circumstances, Wheeler contended, a constitutional provision to accomplish that purpose was "the only proper recourse."²⁵

Wheeler sought to win support for a civil rights commission by writing to delegates, polling NAACP branches, and contacting individuals and groups that might endorse the idea. He continued, however, to meet opposition within the civil rights community because of the supposed legislative character of the proposal and because, as Michigan Supreme Court Justice Otis M. Smith informed Wheeler, the proposal would "bring out the bigots" while having "almost no chance of adoption."²⁶



Delegate Lillian Hatcher of Detroit. (Arthur G. Elliott Papers, Box 1.)

On December 5 Hatcher, Detroit Democrats Daisy Elliott, an Executive Branch Committee member, and Coleman Young, Detroit's future mayor, and others submitted Proposals No. 1522 and 1523 to the Committee on the Executive Branch. Proposal No. 1522 provided for a civil rights commission with "enforcement powers to eliminate discrimination and segregation based on race, religion, color, national origin or ancestry in employment, housing, education, public accommodations and other such rights, privileges or immunities as are guaranteed under this Constitution." Proposal No. 1523 prescribed how the commission, which was to replace the FEPC, should be constituted and the procedures that it was to follow in exercising its authority.²⁷

Not having heard from Pollock or Martin, Wheeler wrote Martin on December 26 to express his fear that the civil rights commission proposal would be "bypassed." When Wheeler then inquired of Pollock whether the Rights Committee would hold hearings on Proposals No. 1522 and 1523 so that Wheeler and others could testify, Pollock, who thought that the commission proposal was not the responsibility of his committee and was, in any event, "a statutory matter," replied, correctly, that hearings had already been completed. When Martin, who, Pollock thought, left "something to be desired as chairman," nevertheless agreed to hold hearings on the proposals, the University of Michigan political scientist was indignant. He later testily complained that even though he had "worked very hard to get through a real strong ... civil rights section[,] ... this Dr. Wheeler of Ann Arbor, one of the more aggressive Negroes, kept telephoning me and sending me stuff" about establishing "this damn commission."²⁸

Testifying on January 4, 1962, before the Committee on the Executive Branch on Proposals No. 1522 and 1523, Hatcher hyperbolically predicted that the establishment of a civil rights commission would be "a step in the right direction to once and for all eradicate discrimination in Michigan in all areas." Wheeler received



Coleman Young (center), future mayor of Detroit, with fellow Detroit delegates Democrat Charles Youngblood and Republican Weldon Yeager. (Arthur G. Elliott Papers, Box 1.)

his opportunity to testify before the committee on January 31. After asserting that African-Americans suffered from poor health, "substandard housing, poor economics, inadequate education and the frustrations and despairs generated by discrimination and segregation," he argued that if minority groups were to be accorded equality of opportunity, it was not only necessary to enact "adequate laws" but also to provide "realistic machinery for their enforcement." He noted that twenty states had already created civil rights commissions, although none had been given constitutional status, and that Michigan had to go the constitutional route because of the consistent failure of the Michigan legislature to convert the FEPC into a civil rights commission with expanded jurisdiction. Following Wheeler's testimony, the Committee on the Executive Branch referred Proposals No. 1522, 1523, and 1569, which called for a civil rights commission but did not spell out the areas over which it would have jurisdiction, to its subcommittee on executive reorganization, chaired by Alvin Bentley.²⁹

Daisy Elliott essentially repeated Wheeler's arguments in seeking to persuade the Bentley subcommittee, of which she was a member, to report to the full committee in favor of a civil rights commission. She informed Pollock on February 15 that the subcommittee had agreed to the following amendment to the Committee on the Executive Branch's Proposal No. 71: "Within 2 years after the adoption of this constitution, the legislature shall establish a civil rights commission within the executive branch to secure the protection of the civil rights guaranteed by this constitution. In the event the legislature does not so act [the final language was "if the legislature does not establish a civil rights commission during this period"], the governor shall by executive order establish such a commission." The amendment, developed by Bentley and Elliott, was an obvious compromise between the position of committee members who viewed the establishment of a civil rights commission as a legislative matter and those who were willing to give the commission automatic constitutional status.³⁰



Rev. Malcolm Dade, a Detroit Democrat, with Republican Alvin Bentley, a delegate from Owosso. (Arthur G. Elliott Papers, Box 1.)

The full Committee on the Executive Branch accepted the subcommittee recommendation by a unanimous vote on March 5. One African-American committee member criticized the proposal as "meaningless" since the legislature, as he saw it, was "powerless to accomplish anything," but another African-American member advised, "It's a step ahead. Let's have it." As Wheeler saw it, the proposal was "the very minimum that could be written" given what could be expected from the legislature. Indeed, the legislature that very month "defeated all civil rights bills before it," and Wheeler was prepared to take the issue to the African-American electorate if African-American convention delegates, "to advance their own political ambitions," settled for what the Commission of the Executive Branch was proposing.³¹

On March 28 Martin brought the proposal for a civil rights commission before the convention assembled as a Committee of the Whole. That initiated a prolonged and heated debate that focused on the questions of whether to leave the initiative for establishing the commission to the legislature, as proposed, or to make the decision self-executing, whether to spell out the civil rights areas over which the committee would have jurisdiction, what the composition of the commission should be, and how broad its administrative authority should be. Supporting the proposal, Martin reported that his committee had concluded that it was "not sufficient to make general statements in the matter of civil rights but that some action is needed to secure the protection of these rights other than the general statement that such rights exist." The members of the committee, he said, agreed that, "under ordinary circumstances," the establishment of the commission was a statutory affair, but he reminded the delegates that the legislature had not considered that matter "in plenary session in any form." Also, he asserted, the committee was "impressed with the vital character of the rights involved" and the necessity of protecting them "if we are going to live in peace and harmony with our fellow men here in the state of Michigan and elsewhere."³²

Proposal No. 71 drew strong and important support from both Hannah and Romney. . . . the most important single problem that this country faces," Hannah stated in an "impassioned plea" that brought "a rare burst of applause from delegates and the gallery," "is the problem of decent treatment for minority groups in the United States and principally we are talking about negroes." He saw "nothing but good" coming from the proposal not just in terms of its domestic impact but in terms also of the Cold War, whose outcome, he thought, was "going to be determined to a large degree by how we treat minority groups at home."

"I speak," the Mormon Romney declared, "as a member of a minority group that knows the long time harmful effect of persecution and discrimination." He justified placing the commission in the constitution because "extraordinary circumstances require extraordinary action," and, he said, "we have an extraordinary case of human injustice that we are dealing with." He wanted Michigan, he remarked, to be "a leader in eliminating racial discrimination."³³

The civil rights commission proposal was criticized on the convention floor from both the right and the left. Speaking for delegates opposed to a commission with any real power, Weldon Yeager complained that the proposal would create "an administrative monster" that "could put any citizen in criminal jeopardy." Those who shared Yeager's concerns sought to strip the commission of the normal powers of administrative bodies and to limit its role essentially to that of "study and education." They could not, however, persuade a majority of the delegates to support their position.

Those who favored a strong commission were concerned that the rights it was to protect were not spelled out in the Martin proposal but even more so that the establishment of the commission was not to be self-executing. To meet the latter issue, Norris and Democrat Melvin Nord, a Detroit attorney and law professor, offered an amendment providing for the creation of a commission whose members would be appointed by the governor "to secure the protection of the civil rights guaranteed by the law and by the constitution."³⁴

When debate on Proposal 71 was to resume on the morning of March 29, Martin asked for more time so that differences could be worked out between majority and minority members of his committee. Once deliberations began later in the day, Norris and Nord withdrew their amendment in favor of a stronger amendment, in which they joined, offered by Richard Austin, Don Binkowski, Elliott, and Young, all of them Detroit Democrats. In addition to providing for the creation of a civil rights commission by the constitution itself, the Austin amendment stated, "It shall be the duty of the commission, in a manner which may be prescribed by law, to investigate violations of, and to secure the protection of the civil right [sic] to employment, education, housing, public accommodations, and to such other civil rights as provided by law and the constitution." Austin explained that the sponsors had withheld this amendment until the convention had decided that it wanted to adopt "the concept of a civil rights commission," which it now seemed prepared to do. "We have gone part of the way," he said, "let's go all the way." Romney praised the Austin amendment, and Hannah urged its support.

Defending the designation of the civil rights areas over which the proposed commission would have jurisdiction, Nord noted that these were the "exact civil rights" mentioned as being covered in the aforementioned report of the Pollock committee, but, it should be added, not in Proposal No. 26 itself. Martin, by this time, had changed his mind about leaving the establishment of the commission to the legislature, telling the delegates now that since the legislature had had the matter in its "lap" for so long, he did not "want it to continue to lie in the same lap for another 15 or 20 years while the problem gets worse and worse." He stated that his committee was not prepared to go as far as Austin and the sponsors of his amendment had but that the amendment seemed to have been "drawn in a judicious manner and in a careful manner."³⁵



Bloomfield Hills Republican Henry Woolfenden with Detroit Democrats Sidney Barthwell and Richard Austin. (Arthur G. Elliott Papers, Box 1.)

Numerous amendments were offered to the Austin proposal regarding the composition and functioning of the proposed commission, which the Austin amendment, unlike Proposal No. 71, spelled out. In the end, in a "strong display of bipartisanship," the delegates approved the Austin amendment by a 74-43 vote, moderate Republicans joining Democrats to constitute the majority and "the rural bloc of out-state Republicans" making up the minority. The debate, which had "raged" hour after hour, did not conclude until 11:20 p.m., and the parliamentary situation at the time of the vote was confused. There were "[p]lenty of hot tempers" among the Republicans and rumblings about reversing the vote. Two weeks earlier Republican moderates, led by Romney, and conservative farm bloc Republicans, led by former state treasurer D. Hale Brake of Stanton, had reached a compromise on such crucial convention issues as apportionment and taxation. Civil rights, which had not been a part of the compromise agreement, now endangered the accord, the farm bloc apparently threatening "to bolt the compromise." The Republicans held a special caucus early in the morning of March 30, a Friday, during which opponents of the Austin amendment expressed their displeasure at what had occurred. When the convention then reassembled, Brake moved that the report of the Committee of the Whole on Proposal No. 71 be postponed until Tuesday "[b]ecause," he said, "we have some studying we want to do on it." Democrats objected "rather sharply," but the delegates approved the Brake motion by a 82-46 vote.³⁶

The Republican caucus following the vote on the Brake motion appointed a ten-member group to deal with the Austin amendment. At stake, as the *Detroit Free Press* saw it, were the votes of African-Americans and other minority group members that, it was assumed, gubernatorial candidate Romney would not wish to lose. The caucus hammered out a compromise acceptable to both wings of the Republican party that was brought to the floor of the convention on April 5 by Richard C. Van Dusen of Birmingham and six other Republicans, including Martin, Hannah, and Bentley.³⁷

Thursday - Mar 29 '75

Have gone thru the bulk of
The Ed Elliotts Branch article
Caucus discussion had been
centered around civil rights
In general the caucus seems to
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Martin & Bentley are pushing
for a detailed, self executing
provisions.

Debate on floor is heavy. ~~and~~
Outstate not so happy.

Schedule worked with
L. Lindner, Elsie Condy, Knicker
- Elly re schedule during
dinner hour -- Made almost
complete adjustments because

Arthur G. Elliott, Jr., Republican from Oakland County, kept a diary during the Convention. His entry for Thursday, March 29, captures the tenor of the debate within the Republican caucus. "Caucus debate has centered around civil rights. In general the caucus seems to lean heavily in the direction of a moderate section with a minimum of legislative detail. Martin and Bentley are pushing for a detailed, self executing provision. Debate on the floor is heavy." (Arthur G. Elliott Papers, Box 1.)

The Van Dusen proposal, like the Austin amendment, provided for a self-executing civil rights commission "to investigate alleged discrimination against any person because of race, religion, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution and to secure the equal protection of such civil rights without discrimination." The proposal, however, omitted the "specific civil rights enumerated" in the Austin amendment, Van Dusen asserting that it would be "redundant" to include them in view of the report of the Pollock committee. It is likely, however, that it was the concern about private housing that led the Republican caucus to drop the reference to the enumerated rights, opponents of the Austin amendment fearing that the specific mention of housing could be interpreted as restricting the right of private property owners to dispose of their property as they saw fit despite the absence of any statute to that effect.

The Van Dusen proposal provided for an increase in the membership of the civil rights commission from a bipartisan four, the number previously approved by the delegates, to a bipartisan eight. Hannah explained that with the membership limited to four, each party would want to appoint one African-American member and "possibly" also a member of another minority group but that a membership of eight made possible the "full representation of the minority groups and at the same time the maintenance of equal or majority membership by folks that are not generally discriminated against."

The Van Dusen proposal also sought to respond to the concerns of Republicans about a commission with too much power. It provided that the exercise of the commission's authority had to be "in accordance with the constitution and of general laws governing administrative agencies"; it denied the commission subpoena power; and it specified that "[n]othing" in the section defining the commission's powers was to "be construed to diminish the right of any party to direct and immediate legal or equitable relief in the courts" of the state.³⁸

Democrats favoring the Austin amendment attacked the Republicans for abandoning bipartisanship in dealing with civil rights and, as Coleman Young put it, making "all basic decisions" by "deals" within the one party. "[C]ivil rights," he said, "has been thrown into the deal," and victims of discrimination in the convention most affected by the issue of civil rights, like himself, had been "excluded from any consideration." The Austin proposal supporters sought to restore "the major fields of discrimination" omitted from the Van Dusen proposal. This was not necessary, Pollock stated, since no one intended to exclude the rights in question, and he thought that it would not be "good constitutional language" to insert the words. "It seems to me," he added, "that we have gone much farther than my committee had imagined. We thought that everyone would be so satisfied with the civil rights amendment that to carry it on to set up a commission and to put the commission in the constitution, and now to add this very specific language, seems to me to be going so far it isn't very good constitution making." Although Hannah and Romney voted with them, the Austin amendment supporters failed to command a majority on this issue.

Unable to add the language they desired to the Van Dusen proposal, supporters of the Austin amendment, led by Norris, also failed to persuade the delegates to strengthen the administrative powers of the civil rights commission. On April 6 the Committee of the Whole approved the Van Dusen proposal by a 101-9 vote. Austin characterized the proposal as "a halting step in the right direction," but Daisy Elliott thought it "a giant step forward in the area of civil rights."³⁹

When the Van Dusen proposal came back for a second reading on April 24, all efforts to amend it failed. On May 8, however, on the third reading, the delegates, by a voice vote, approved an amendment providing that "[a]ppeals from the final orders of the commission, including cease and desist orders and refusals to issue complaints, shall be tried de novo before the circuit court ... having jurisdiction provided by law." This meant that the reviewing court could simply disregard the record of fact on which the commission had based its decision. The delegates had defeated the same proposal by a voice vote on March 28, but they adopted it now

in the same manner. This completed the convention's deliberations on the civil rights commission issue, and the resultant Article V, Section 29 of the Michigan constitution distinguished Michigan as the only state in the nation with a civil rights commission provided for in its constitution. In the form in which it was adopted, it was, as Hale Brake correctly observed, "not as much as many of the members wanted," but he was "sure" it was "more than many of them expected to get."⁴⁰

In addition to including an equal rights and nondiscrimination section in the constitution's Declaration of Rights and establishing a civil rights commission in the executive branch, the delegates to the 1961-1962 constitutional convention added a civil rights section to the constitution's education article and strengthened the protection against discrimination of employees in the state government's classified service. "Every school district," the new constitution stated, "shall provide for the education of its pupils without discrimination as to religion, creed, race, color, or national origin." In presenting this language to the convention, Alvin Bentley, chairman of the convention's Education Committee, indicated that his committee was aware that some would say that the proposed addition to the constitution was unnecessary in view of United States Supreme Court decisions. His committee, however, Bentley told the delegates, "feels this concept is so important to the preservation of our democracy that it wishes to leave no doubt as to where Michigan stands on this question." The 1908 constitution protected personnel in the classified service from discrimination because of race, religion, or partisan considerations in demotions or removals. The new constitution extended the ban on discrimination to appointments and -promotions as well.⁴¹

The state highway commission shall appoint and may remove a state highway director, who shall be a competent highway engineer and administrator. He shall be the principal executive officer of the state highway department and shall be responsible for executing the policy of the state highway commission.

Civil rights commission; members, term, duties, appropriation.

Sec. 29. There is hereby established a civil rights commission which shall consist of eight persons, not more than four of whom shall be members of the same political party, who shall be appointed by the governor, by and with the advice and consent of the senate, for four-year terms not more than two of which shall expire in the same year. It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination. The legislature shall provide an annual appropriation for the effective operation of the commission.

Rules and regulations; hearings, orders.

The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures, to hold hearings, administer oaths, through court authorization to require the attendance of witnesses and the submission of records, to take testimony, and to issue appropriate orders. The commission shall have other powers provided by law to carry out its purposes. Nothing contained in this section shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state.

The Civil Rights Commission section of the Michigan Constitution of 1963. (Michigan Manual, 1963-1964, p. 50.)

The new constitution was approved by the voters on April 1, 1963, and went into effect on January 1, 1964. Whatever doubts staunch civil libertarians like Harold Norris might have had regarding the document's shortcomings⁴² were largely dispelled when Attorney General Frank J. Kelley issued a lengthy formal opinion on July 22, 1963, regarding the authority of the Civil Rights Commission. The commission, Kelley ruled, had "plenary power in its sphere of authority to protect civil rights in the fields of employment, education, housing and public accommodations" and had "authority to enforce civil rights to purchase, mortgage, lease or rent private housing." The legislature, he declared, was "without authority to abrogate or limit" the commission's power in the fields specified. The expansive Kelley opinion was based on the attorney general's reading of the convention debates, court decisions, and the federal Civil Rights Act of 1866 as it applied to housing.⁴³

The Kelley opinion was at variance with the views of such legal scholars as Professors Kauper and Roger Cramton of the University of Michigan Law School. William Cudlip informed Dorothy Judd that he had not spoken to a single convention delegate who agreed with Kelley's opinion regarding the civil rights protected by the constitution. One can guess that he was referring particularly to private housing. "I would be less than honest," Hannah told Judd, "if I did not say that I was surprised by the sweeping authority conferred on . . . the Civil Rights Commission" by the Kelley opinion. Hannah was not inclined, however, to argue about the matter since he liked the outcome.⁴⁴

Even though Richard Van Dusen, who became the legal advisor to Michigan's new governor, George Romney, thought that Kelly had "stretched a good bit in several ... areas" and that it was "a little difficult to find support for some of his broader claims," Romney himself viewed the opinion as vindicating his own role in the convention and as refuting the charge of some Democrats that the constitution was just "a piece of paper! " " 'Michigan's new constitution,' " the governor publicly stated, " 'contains the most complete, the most direct and clearest expression of state policy guaranteeing human rights of any state constitution in the country, and the civil rights commission established ... provides an unequalled opportunity for Michigan to blaze new trails for other states to follow.'"⁴⁵ Beginning on January 1, 1964, the Civil Rights Commission began to "blaze" those "trails."



ConCon in session. (Dorothy Judd Papers, Box I.)

NOTES

¹ James K. Pollock, *Making Michigan's Constitution, 1961-1962* (Ann Arbor: George Wahr Publishing Co., 1962), p. 68.

² Roger C. Crannton, "The Powers of the Michigan Civil Rights Commission: A Problem in Constitutional Interpretation" [July 1964], pp. 18-19, Box 6, Tom Downs Papers, Bentley Historical Library (hereafter BHL), Ann Arbor, Michigan; Michigan Coordinating Council on Civil Rights, Memorandum in Support of Proposal #1621, Dec. 18, 1961, Box 1, Don Binkowski Papers, BHL.

³ Willis F. Dunbar, *Michigan: A History of the Wolverine State*, rev. ed. George S. May (Grand Rapids: William Erdman's Publishing Co., 1980), pp. 648-49; Albert L. Sturm, *Constitution Making in Michigan, 1961-1962*, University of Michigan Governmental Studies No. 43 (Ann Arbor: Institute of Public Administration, University of Michigan, 1963), pp. 27-28, 41-45, 47, 49, 55-56, 106-7, 114-16, 250, 258-60; Harold Norris, *Education for Popular Sovereignty through Implementing the Constitution and the Bill of Rights* (Detroit: Detroit College of Law, 1991), p. 398.

⁴ Pollock, *Michigan's New Constitution*, p. 66.

⁵ Sturm, *Constitution Making*, pp. 157, 294; Pollock notes on Con Con Meetings, Nov. 11, 1961, Jan. 20, Mar. 3, 1962, Box 8, University of Michigan Institute of Public Administration Papers, BHL; Norris, *Education for Popular Sovereignty*, p. 407.

⁶ Proposals No. 1010 (Oct. 12, 1961), 1014 (Oct. 12, 1961), 1093 (Oct. 25, 1961), Box 16, Michigan Constitutional Convention, 1961-1962, University of Michigan Law School, Ann Arbor, Michigan; Committee on Declaration of Rights, Suffrage and Elections, Action Journal, Oct. 12, 17, 19, 24, 25, 1961, Box 46, Alvin M. Bentley Papers, BHL; Pollock Notes, Nov. 11, 1961, Box 8, U. of M. Institute of Public Administration Papers.

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⁸ Hannah to William H. Combs, Nov. 30, 1961, and enclosed "Civil Rights and the Michigan Constitution," Box 3, John A. Hannah Papers, University Archives and Historical Collections, Michigan State University, East Lansing, Michigan; Rights Committee, Action journal No. 19, Nov. 30, 1961, Box 46, Bentley Papers; State of Michigan Constitutional Convention 1961, *Official Record*, vol. 1: 742, University of Michigan Law Library.

⁹ Proposal No. 1621, Dec. 8, 1961, Box 3, Wheeler Papers; Norris, *Education for Popular Sovereignty*, p. 429.

¹⁰ *Official Record*, vol. 1: 384-86, 389.

¹¹ Pollock Notes, Dec. 9, 1961, Jan. 13, 1962, Box 8, U. of M. Institute of Public Administration Papers; Coordinating Council, Memorandum in Support of Proposal #1621, Dec. 18, 1961, Box 1, Binkowski Papers; Statement by Richard V. Marks, Dec. 18, 1961, Box 1, American Civil Liberties Union, Ann Arbor-Washtenaw County Branch Papers, 1959-1967, Box 1, BHL; *Detroit News*, Dec. 19, 1961.

¹² Pollock to Committee on Declaration of Rights. . . , Jan. 11, 1962, Box 3, Wheeler Papers; Rights Committee, Action journal No. 33, Jan. 11, 1962, Box 46, Bentley Papers.

¹³ Barrymore to Judd, Dec. 11, 1961, Judd to Barrymore, Dec. 16, 1961, Box 4, Dorothy Siegel Judd Papers, BHL; Rights Committee, Action journal No. 34, Jan. 12, 1961, Box 46, Bentley Papers.

¹⁴ Rights Committee, Action journal No. 35, Jan. 16, 1962, Box 46, Bentley Papers.

¹⁵ *Official Record*, vol. 1: 658, 739-52, 777-78.

¹⁶ Pollock Notes, Dec. 19, 1961, Box 8, U. of M. Institute of Public Administration Papers; Rights Committee, Action journal No. 36, Jan. 18, 1962, No. 37, Jan. 23, 1962, No. 38, Jan. 24, 1962, Box 46, Bentley Papers; *Detroit Free Press*, Jan. 19, 1962; Norman C. Thomas, *Rule 9* (New York: Random House, 1966); Norris, *Education for Popular Sovereignty*, pp. 430-31; *Official Record*, vol. 1: 717.

¹⁷ *Official Record*, vol. 2: 2272, 2278-85, 2287.

¹⁸ *Ibid.*, vol. 2: 2866-69, 3092-94.

¹⁹ *Ibid.*, vol. 2: 2557,2888-92, 2911-16; Judd to Barrymore, May 29, 1962, Box 4, Judd Papers.

²⁰ Cudlip to Kauper, May 1, 1962, Box 8, William Byrnes Cudlip Papers, BHL; Kauper to Cudlip, Apr. 4, 1962, Judd to Barrymore, May 29, 1962, Box 4, Judd Papers; Analysis of the changes made in Article I . . . , n.d., Box 2, Katherine Moore Cushman Papers, BHL. See also Kauper to Cudlip, Apr. 4, 1962, Box 48, James Kerr Pollock Papers, BHL. Cf. Norris to Cushman, Apr. 19, 1962, Box 3, Harold Norris Papers, BHL.

²¹ *Official Record*, vol. 2: 3088-92; Cushman, "Civil Rights in the New Constitution," Jan. 28, 1963, Be. 4, Judd Papers.

²² *Detroit News*, Mar. 10, 1963.

²³ Harris to Wheeler, Oct. 25, 1961, *Wheeler to William Seabron*, Oct. 27, 1961, Box 3, *Wheeler Papers*; Sturm, *Constitution Making*, pp. 188, 294-95.

²⁴ Coordinating Council, Steering Committee Meeting, Oct. 31, 1961, Box 3, *Wheeler Papers*.

²⁵ Wheeler to Martin, Dec. 4, 1961, *Wheeler to Hatcher*, Dec. 4, 1961, and enclosed "A Testimony in Support of the Proposal. . .," Wheeler to William O. Greene, Dec. 26, 1961, *ibid.*

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²⁷ Proposals No. 1522, 1523, Dec. 5, 1961, *ibid.*

²⁸ Martin to Wheeler, Dec. 2, 1961, Wheeler to Martin, Dec. 26, 1961, Wheeler to Greene, Dec. 26, 1961, *Wheeler to Pollock*, Oct. 28, 1961, *Wheeler to W.B. Harvey*, Jan. 3, 1962, Pollock to Wheeler, Jan. 3, 1962, *ibid.*; Pollock Notes, Oct. 14, 1961, Mar. 3, 1962, Box 8, U. of M. Institute of Public Administration Papers.

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³⁰ Elliott, Supporting Statement on Civil Rights Commission. . . , n.d., Box 2, Martin Papers; Elliott to Pollock, Feb. 15, 1962, Box 49, Pollock Papers; *Official Record*, vol. 2: 1921-22; Bentley to Alphonse N. Gaspard, Mar. 20, 1962, Box 44, Bentley Papers; *Detroit Free Press*, Mar. 29, 1962.

³¹ *Committee on the Executive Branch*, Action journal No. 44, Mar. 5, 1962, Box 51, Pollock Papers; *Detroit Free Press*, Mar. 6, 1962; *Detroit News*, Mar. 6, 1962; *Weekly Digest* - Public Information Office, Mar. 9, 1962, Box 47, Bentley Papers; Young to Wheeler, Mar. 7, 1962, Wheeler to Young, Mar. 15, 1962, Box 3, Wheeler Papers.

³² *Official Record*, vol. 2: 1921-22.

³³ *Ibid.*, vol. 2: 1929-30, 1933-34; *Detroit Free Press*, Mar. 29, 1962.

³⁴ *Official Record*, vol. 2: 1924-28, 1941, 1945-46, 1950-52; *Detroit News*, Mar. 29, 1962; Sturm, *Constitution Making*, p. 106.

³⁵ *Official Record*, vol. 2: 1954, 1976-89.

³⁶ *Ibid.*, vol. 2: 1989-2005; Joe Schore to Steering Committee, Apr. 5, 1962, Box 56, UAW Fair Practices and Anti-Discrimination Department Collection, Archives of Labor and Urban Affairs, Wayne State University, Detroit, Michigan; Arthur G. Elliot, Constitutional Convention 1961-1962 Memo Books, Mar. 29, 30, 1962, Arthur G. Elliot Papers, BHL; Pollock Notes, Mar. 31, 1962, Box 8, U. of M. Institute of Public Administration Papers; League of Women Voters of Michigan, Constitutional Convention Report No. 12, Apr. 9, 1962, Box 30, League of Women Voters of Michigan Papers, BHL; *Detroit Free Press*, Mar. 30, 31, 1962; *Detroit News*, Mar. 30, 1962; *Ann Arbor News*, Mar. 30, 1962; Sturm, *Constitution Making*, pp. 117-21; *Official Record*, vol. 2: 2010-11.

³⁷ Pollock Notes (Ferrell Heady), Mar. 31, 1962, Box 8, U. of M. Institute of Public Administration Papers; *Detroit Free Press*, Mar. 31, Apr. 1, 1962; *Detroit News*, Apr. 3, 1962; Bentley to Marion K. Smith, Apr. 4, 1962, Box 44, Bentley Papers.

³⁸ *Official Record*, vol. 2: 2182-83, 2186-88; *Convention Report: A Resume of Michigan's Proposed Constitution, 1962*, May 21, 1962, Box 2, Martin Papers.

³⁹ *Official Record*, vol. 2: 2183-88, 2197-2200.

⁴⁰ *Ibid.*, vol. 2: 2743-44, 2756, 3118; Brake, "The Old and New Constitutions - A Comparative Approach," n.d., Box 8, Cudlip Papers; Norris, *Education for Popular Sovereignty*, pp. 453-54.

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⁴² On this point, see *Detroit Free Press*, Feb. 24, 1963.

⁴³ Kelley Opinion No. 4161, July 22, 1963, Box 2, Cushman Papers.

⁴⁴ Kauper to Judd, Jan. 20, 1964, Box 4, Judd Papers; Cudlip to Judd, Jan. 7, 1964, Hannah to Judd, July 1, 1964, Box 5, Richard C. Van Dusen Papers, BHL; Cramton, "Michigan Civil Rights Commission," Box 6, Downs Papers.

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