

*New Jersey, 1941-1944 (Charles Edison)*

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A NEW CONSTITUTION  
FOR  
NEW JERSEY

186

ADDRESSES BY  
CHARLES EDISON  
FORMER GOVERNOR OF NEW JERSEY  
1941-1944

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## FOREWORD

In my second annual message to the legislature, January 12, 1943, I had this to say:

"The most important problem before the State of New Jersey is an old one. It is a problem that almost every governor since the Civil War has recognized. As the years have passed, the problem has grown steadily worse, and new aspects of it have cropped up to plague each succeeding generation of citizens. The problem is how to obtain modern, effective, responsible, and economical state government under the constitution of 1844. That constitution was perhaps satisfactory for a rural, thinly settled state, such as New Jersey was a hundred years ago. There is absolutely no question that the constitution is unequal to the tasks of our present complex, urban, industrial society.

"The campaign, now more than fifty years old, to revise and modernize the constitution of New Jersey was not ended by the failure of the last Legislature to act. I have been much heartened by the expressions of confidence I have received in the last few months. I know that the campaign will continue, will increase in intensity. But I dread the possibility that a sudden crisis may find the government of New Jersey under its 1844 constitution unequal to its tasks before the inevitable reform is accomplished."

The campaign for revision did continue. The 1943 legislature and the 1944 legislature have acted. And now, less than two years later, the people of New Jersey have the opportunity to celebrate the 100th anniversary of their old constitution by taking a long step toward bringing it up to date. The vote this coming November on the adoption or rejection of the proposed revised state constitution, submitted, at popular request, by the 1944 Legislature, is literally the opportunity of a lifetime for New Jersey democracy. I consider it so important that I am devoting all the time and energy at my disposal to urging my fellow citizens, after careful study and reflection, to take full advantage of this opportunity to strengthen our state government before the crisis of post-war readjustment is upon us.

That does not only mean that we should all vote on and, I hope, for the new constitution. Perhaps more important than the actual vote in November will be the understanding of fundamental principles and sound procedures of democratic government that lies back of the vote. For it is literally true that no constitution can be better or stronger than the public understanding and support with which it is launched and operated.



This little pamphlet of speeches is submitted as part of one Jerseyman's contribution to the widespread discussion which alone can develop the requisite public understanding and support for the successful launching of the 1944 constitution.

The speeches are printed substantially as delivered before a variety of audiences in different parts of the state during the spring and early summer of 1944. The remarks appropriate to the local setting in each case have been retained because they illustrate the essential unity of our political life with the social, intellectual, or economic aspects of our lives. Useful constitutional discussion cannot be conducted in a vacuum.

In view of the pressure under which these speeches were written and delivered, it seemed best, in preparing them for publication, to make a few minor changes. Such editorial changes have been kept to the bare minimum, however. Some needless repetitions have been eliminated, a few observations of more passing than permanent interest have been deleted, and a few statements of secondary importance have been slightly modified as a result of opportunity for further investigation or reflection. Some notes have been added in the interest of completeness.

Perhaps the best way to acquaint the reader, at the outset, with the basic plan of these speeches is to quote here from what was the first speech, chronologically, delivered in my home town on March 20. Here is the way I explained my plan to my fellow citizens of the West Orange Community Council:

"The century old constitution of 1844 has such a multitude of defects that I found, after many attempts in the past, that I could not discuss them all in one evening. I did not have the strength—I think no man has the strength—to talk the necessary number of hours. Nor does any audience have the patience to listen.

"About all that I could do in any one evening was to point out the worst spots in the constitution of 1844. But in spite of any disclaimers I could make, people tended to assume that the defects I mentioned were the only ones that existed.

"Last summer, therefore, I tried a different method of attack: I made a series of talks on the constitution, taking it up point by point, attempting to show exactly what I thought was wrong and what needed to be done to correct the deficiency.

"Then these talks were brought together in a pamphlet to form a connected and somewhat detailed examination of the constitution.

"I propose to do much the same with the proposal that is now before the voters. Beginning, happily, in my home town, I should like to take up this proposed constitution.

"I have been asked to speak on Thursday of this week in Montclair. On that occasion, and on others that are scheduled, I shall continue a point-by-point discussion of the proposed constitution.

"I shall try to show exactly where the proposed constitution will, if adopted, be an improvement over the one we have and where the defects of the old one were not remedied or where improvements could have been added but were not."

In arranging these talks for publication, I have departed from the chronological order of their delivery to put first a short radio address giving the highlights of the new constitution and, second, a general talk on citizen action, political bosses, and constitutional revision. Then follow the eight speeches which take up the proposed constitution article by article. The final speech is a "summing up" talk on both the background and the contents of the revision.

In each talk I called attention to the fact that it was impossible to tell all about the subject at one time. It is equally impossible to tell all about it in a series of speeches that will fit into this pamphlet. Therefore, let me repeat here what I said in most of my speeches about the easy way to obtain more information. Here is what I said in South Orange:

"If any citizen wants more information about the proposed constitution, we have in this state an organization to provide it—The New Jersey Constitution Foundation, with offices at 790 Broad Street, Newark."

The Foundation exists to serve the citizens in this matter; I hope they will use it fully.

## HIGHLIGHTS OF THE NEW CONSTITUTION

Radio Address, Station WAAT, Newark

May 17, 1944

In the midst of events of world-wide importance, we citizens of New Jersey have before us a problem of great importance—the problem of improving our own democracy. Thousands of our fellow citizens are abroad in other lands fighting for our liberty and for the freedom of decent men everywhere. Some of them have given their lives for the ideals for which this country stands.

While they make these great sacrifices, we here at home can make our democracy better, so that when they return, they will find a commonwealth with more modern devices of democracy, one better able to meet the needs of the post-war world. We can bring this about by adopting a more modern constitution for New Jersey in November.

I would not ask any citizen to vote blindly for the proposed constitution. That is not the way democracy should work. I should like to see each voter take an hour off from the news of the world struggle for democracy and read over the draft for a new constitution. It forms a pamphlet of only 26 pages of print. Every one should read it as an exercise of his citizenship.

I will not say that it is a perfect instrument of government—constitutions are made by, as well as for, men. No constitution ever drawn up anywhere, anytime, by anybody was perfect. But just as the Constitution of the United States was a vast improvement over the Articles of Confederation, so is this proposed constitution for New Jersey a vast improvement over the constitution of 1844. There are some provisions in it that I do not like, perhaps others that you do not like. These are provisions taken over from the old constitution that should have been improved—and were not.

While, in more than a score of important ways this constitution is better, in no way is it worse. We have much to gain by adopting it; we have nothing to lose.

In the time that I have tonight I cannot possibly go over either the defects of the constitution of 1844—it would take hours to discuss them—nor can I take up all of the corrections that are made in the proposed constitution. I can only mention a few of the most important improvements and express the hope that you will read the draft to see the remainder, which I have not the time to discuss.

Look at each of the three divisions of government as they would be set up by the proposed constitution—legislative, executive, and judicial—and you will see improvements. Let us look first at the legislative branch.

Under the proposed constitution we would have a legislature that would have one regular, 90-day session a year; not a legislature in session the year around. This new legislature could not interfere with the executive department by electing numerous officials whose offices are little independent governments within the state government, as the legislature can do under the 1844 constitution. The proposed constitution would restore to the legislature the power to investigate suspected officials, a power which the courts took away in the famous case *In re Hague*. In these and in many other respects we should get, under the proposed constitution, better legislators, better legislation.

As to the executive branch—the governor under the revised constitution would be more nearly a chief executive than he is at present. His veto would be strengthened by requiring a three-fifths vote instead of a bare majority to overcome it. His nominations would have to be acted upon by the Senate, or they would automatically be confirmed. He would be authorized to investigate any executive official and remove him for cause.

All the existing multitude of agencies, boards, bureaus, commissions, and departments would be consolidated into not more than twenty. Their employees would be protected by constitutional civil service. Under these provisions we should get better public administration in New Jersey and thus obtain more service for less money.

Now, a word about the judicial branch. Our present constitution has been said to provide the most complicated and confusing judicial system in the world. We have more than a dozen different kinds of courts headed by the largest known court of last resort. Not all of our judges even need to be lawyers.

The proposed constitution would remove these mechanical obstacles to justice. The many courts would be replaced by only two—a superior court and a supreme court. The whole judicial system would be integrated, with the Chief Justice made the actual administrative head of all the courts of the state. The proposed judicial article should help immensely to bring "Jersey Justice" back to the high position it once held in American law.

In general, the financial aspect of the business of our state is now so confused by separate funds, different fiscal years, and various appropriation acts that no one can tell where the state stands financially. All this will be remedied if the proposed constitution is adopted, for it requires a single state fund, a uniform fiscal year, and one appropriation act. Over the years, this clause alone should save the taxpayers millions of dollars.

The proposed constitution would not be as difficult to amend as the present one. An amendment could be submitted to the people by one legislature (instead of by two) and could be passed upon by the people at any general election, instead of at a special election. Each time an amendment is proposed under the present hundred-year-old constitution the required special election costs about \$750,000. That expense will be entirely eliminated if the proposed constitution is adopted.



I have mentioned some, but by no means all, of the improvements that the proposed constitution offers. It is, on the whole, markedly better than the constitution of 1844.

Men and women who value true democracy and who love their state can vote "yes" on the referendum in November in full confidence that the proposed constitution will bring about a better democracy and a better New Jersey.

We owe this improved government to our fellow citizens now abroad, and we owe it to ourselves, that, after the war, we and they may go forward to a finer and better commonwealth.

## EFFECTIVE CITIZENSHIP AND CONSTITUTIONAL REVISION

Address, Orange—West Orange Kiwanis Club

April 11, 1944

You do me a great honor today, and I appreciate it deeply. The approval of one's fellow citizens is always desired, but the approval of one's friends and neighbors is even more desirable—and generally harder to obtain. For that reason I am particularly grateful for the honorary membership that has been given me by my friends and neighbors.

Arthur Howe wrote me that this "recognition has no attachments, no fees and no requirements about attending meetings." It has, however, this string to it—that I have to make a speech.

And with what I thought was an undeserved implication, concerning the normal length of my speeches, in the two letters that Arthur wrote me he mentioned and then repeated that my remarks should not exceed twenty minutes. I will try to stay within limits. Whether I can also stay within the title of "Effective Citizenship" that he set for me, you will later have to decide for yourselves.

"All persons," says the Constitution of the United States, who are "born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside." That legal language makes us citizens, but nothing in any constitution, nothing in any law, can make effective citizens of us. That we must do for ourselves if it is to be done at all. If our citizenship turns out to be more than the accident of birthplace it will be what we make it.

## THE VALUE OF DEMOCRATIC CITIZENSHIP

Among the qualities that make a democracy the most desirable form of government under which to live is that, within it, citizenship may indeed mean a great deal. Democratic citizenship is more than being, as in Germany, only a cog in the great wheel of the state. A democratic state invites every citizen to take part in his own government. It offers an opportunity for effective citizenship that no other form of government does.

The citizens welcome this opportunity to govern themselves, and because they know their own wants and needs better than any ruler can possibly know them, they do a better job than any ruler could possibly do. This is the *theory*. But how does democracy work out in *practice*?

In time of peace the great majority of American citizens are conscious of government only during the excitement of campaigns; or when some scandal breaks; or when, as individuals, they get tangled up with some law or regulation; or when they pay their taxes. Every four years a good many citizens—but seldom more than half of those eligible—exert themselves and vote.

In time of war, however, we all realize the value of this citizenship of ours. We fight for it. Some die for it. We buy bonds, and give blood, and do civilian defense work. More or less cheerfully we put up with heavy taxes, rationing, and various deprivations. Perhaps patriotism cannot be kept at that high pressure in peace as well as in war; but, if it could, what a democracy we would attain!

#### CITIZENSHIP VS. MACHINE POLITICS

While the average man pays but little attention to his government, there are two classes of individuals who, year in and year out, pay close attention to the activities of government. The ineffectiveness of our citizenship makes their activities possible.

First, there are the professional and machine politicians. They seek to take control of government and run it for their personal benefit and for the benefit of their political organizations—to provide jobs, contracts, legal immunities, and various other privileges for the members of the gang. They will, if possible, control the courts so that they can use the processes of justice to protect their adherents and to punish their opponents. The *Longo* case is a recent example in our own state.

I could discuss machine politics for all of the twenty minutes that Arthur Howe allowed me—and more. But you read the newspapers, too, and you know that New Jersey has produced some of the biggest, the most tenacious, the most efficient—and the most ruthless—machines that this country has seen.

Their existence and their strength are measures of the ineffectiveness of our citizenship. But powerful as they are, they would not last a moment if the majority of the people of this state were really determined to get rid of them.

#### BI-PARTISAN BOSSISM

Many good citizens do not understand that there is a sort of community of interest between and among bosses and their machines. The bosses belong to different parties, to be sure, and they have different brand names; but their real rivalry may be compared with the competition that exists between Chevrolet and Pontiac. It is good for both organizations to contend with each other, but since they both have, in the welfare of the General Motors Corporation, a common interest, we may be sure that the competition they show will never be a fight to the death.

The political bosses likewise denounce each other in campaigns, but they work together whenever they need to between times. The Republican opposition to Mayor Hague, for example, has generally been for campaign purposes. I often wonder what the Republicans will talk about when that inevitable day comes when the now aged mayor retires or goes to join the shades of Penrose, Croker, Platt, and Big Bill Thompson.

One reason that the opposition is unreal is that there are still plenty of Republican bosses—perhaps not so big, so loud, so brassy, or so famous as Hague—who really admire the mayor and his methods and only wish

that he were on their side. They really have more interests in common with him than they have with the electorate.

The referendum for a new constitution in New Jersey carried nineteen counties last November. Which two did it *not* carry? Two boss-ruled counties, one Democratic and one Republican, Hudson and Ocean. This is a good example of the separation of interests, of how the people line up on one side and the machines on the other.

#### SPECIAL FAVOR SEEKERS SUPPORT BOSSES

The second group who pay close attention to politics are those who seek some special advantage, privilege, or immunity from government. They work with and for the machines. They regard the politicians as brokers of public favors with whom they must deal and to whom they must pay commissions in one form or another.

Perhaps they seek something positive—a contract, the removal of a zoning restriction, or the sale of something. Perhaps they want something negative—the lax enforcement or the non-enforcement of some law, such as that against gambling. Or, perhaps, they have a legitimate grievance, such as an excessive assessment.

But instead of joining with other taxpayers similarly aggrieved for a frontal assault upon the machine that performs the injustice, they make a back-door deal with the boss or with his henchmen. Whoever they are, or whatever the motives, when they deal with the boss because, as they say, "You can do business with him," they undermine democracy. This kind of citizenship is markedly non-constructive.

#### WHAT CAN I DO?

The ordinary citizen as consumer, as taxpayer, has no one to make a deal for him, no one to lobby for him in Trenton or in Washington. He cries loudly about his woes and about the government.

We could be a lot sorrier for him if we did not realize that his plight is pretty much his own fault, and that any time he gets mad enough to join with others they can make their country run just about as they want it to run. But they must get over the notion that government is somebody else's business. That is just what the bosses want them to believe.

All of this, you may say, is fairly familiar stuff and very general. People have often asked me, "But exactly what can I do?"

My answer is: learn all you can about your democracy and then take an active part in it. Expect to devote as much of your time to your citizenship as you do, say, to your golf. Work in the political party of your choice to make it a more effective instrument for carrying out the ideals you have for your country.

Get acquainted with the leaders of your party. If necessary, help to get your party better ones. See that your party nominates good candidates, and if it fails to do so, don't vote for them just because they are *your* party's rascals.



## CONSTITUTIONAL REVISION

If all of this still seems too general, let me make a very specific suggestion toward making your citizenship more effective. Our state is this year considering a proposal for a new constitution. To change constitutions is the most important act that a sovereign people can perform. Not for a hundred years, not since 1844, have we done this.

Any man who would make his citizenship effective can begin by studying our old constitution. He can find out what has been said and written about its defects and their relationship to the bad government that we have so long been burdened with in our state. Then he can examine the proposed constitution and determine for himself whether and to what extent it remedies the defects of the old one.

If he should feel that he doesn't know enough about constitutions to make intelligent comparisons let him seek the advice of those who have specialized in the subject. The New Jersey Constitution Foundation exists just for the purpose of helping him—let him use it!

Most honest citizens, I hope and believe, will conclude after such a study that the proposed constitution with its many important improvements is such an immense improvement over the old one that it ought to be ratified by the people next November.

But there are few people making this kind of examination who will conclude, I imagine, that the proposed constitution, if accepted by the people, will, of itself, make bossism impossible. Only an ever-alert citizenship can accomplish that. But a reasonable man can only conclude that the proposed constitution will make bossism more difficult, especially through smashing control of the courts by bosses.

If you decide to vote "yes" in November, that will be fine. But you should do more than merely make a mental note of your determination to do so at November's election. You should work to persuade others to study the problem and to vote "yes" also. You can easily educate yourself and you could educate others on the subject through the information obtained from the New Jersey Constitution Foundation, 790 Broad Street, Newark, New Jersey.

Everyone present belongs to one or more business, professional, or social organizations. You can interest your fellow members of these groups in constitutional revision. Perhaps you can induce them to bring their joint pressures to bear for it.

Here, then, is democracy brought right home to everyone. Here is a way to make one's citizenship effective, a specific action that anyone may take—and not sometime, but now, today.

Democracy is not an other-worldly, mystical theory. It is as close and everyday as the policeman on the corner, as the teacher in the village school. If we make our citizenship in this democracy effective, we will have a clean, healthy, vigorous, progressive, and serviceable government—one that exists neither for itself nor for the bosses, but for all the people, and for all of those who will come after us through the endless generations of the future.

## HOW THE PROPOSED CONSTITUTION CAME ABOUT

Address, Annual Meeting of West Orange Community Council  
at Town Hall—March 20, 1944

This is indeed a happy occasion for me, and I appreciate this opportunity to speak to my home town's Community Council. Our democracy needs more and more groups like yours interested in local and state needs and problems.

My talk tonight will be on the proposed constitution to be voted upon by us this coming November.

### VOTE "YES"

Lest there be any misunderstanding, I declare at the outset that I intend to vote "yes" for the proposed constitution, and I also plan to campaign in order that others may be persuaded to vote "yes."

It seems that, when one studies the problem as to whether or not he or she should vote "yes," it is necessary to analyze the improvements in the proposed constitution and compare them with the stultifying straitjacket detriments of the present century old 1844 constitution. List in one column all the good changes in the proposed constitution. Compare that column to one listing all the changes which each individual person decides are not good. I am sure you will agree with me when I say that the first column will contain so many excellent changes, far outnumbering the items of the second column, that only one conclusion is reasonable—we citizens of New Jersey should vote "yes."

We must keep in mind that under our form of government—in which freedom of thought and speech are necessary bulwarks—there are always differences of opinion as to what you might think is good and what I might think is good. Moreover progress under our system of government may not be as quick as some of us may desire, but we do progress, and perhaps the slower rate of our progress is for the ultimate good. We have often found that compromises were necessary in some points in order to permit progress in an over-all plan.

Many, many people have written or spoken to me about the proposed constitution. They have asked me whether or not I would vote "yes" and just what is my opinion of the proposal. I would not be fair to you, or to myself, were I not to say that I am disappointed in certain of its parts, and I am also disappointed that certain other provisions were not included in the proposed constitution. But in our democracy no man or woman should say that his or her opinion is the best and only one and no other is or would be agreeable to him or her. That would be assuming the character and the arrogance of a dictator, who always seems to say: "You do it my way or else—!!"

There can be no question in the minds of reasonable men and women that the proposed constitution is far and away superior to the 1844 constitution—and only one reasonable conclusion can be reached—vote “yes.”

#### IMPROVED CONSTITUTION

On March third the majority leader of the State Senate made a speech on the proposed new constitution at the time it was passed by the Senate. According to the newspaper accounts, he said, “No one can gainsay the fact that there has been deliberate, continual, and thoughtful consideration of this subject [constitutional revision] for more than two years.” This observation of his I take to be a masterpiece of understatement. More than two years indeed!

In 1873 Governor Joel Parker proposed a constitutional convention. Woodrow Wilson, when he was governor, now considerably more than two years ago, urged constitutional revision upon the legislature. And I can remember, away back in 1940, campaigning over this state and advocating a constitutional convention. Thousands of other citizens, ever since the Civil War, have also recognized the need for a new basic law for New Jersey.

In spite of many excellent features the proposed constitution seems to me far from being, as the senator further asserted, “the best draft that possibly could be submitted to the people at this time.” It would be closer to the facts to say that it is a much better constitution than the one under which we have struggled toward representative democracy in New Jersey for a century; but it is still not a model constitution.

I have said this because I am not selling gold bricks. I would not want anything I might say to induce any friend or neighbor of mine to shut his eyes and to vote “yes” on the referendum in the belief that an affirmative majority next November will produce for us a perfect state government. Instead, it should produce for us an *improved* state government. In the years to come perhaps we can work to get this proposed constitution perfected.

I therefore strongly urge you to work for the passage of this proposed constitution by voting “yes” and getting your neighbors to vote “yes.”

#### RECENT HISTORY OF CONSTITUTION FIGHT

It might give us a better perspective on the whole matter if at this point we review briefly the events that brought this proposal before us. Perhaps we shall then know better why we stand where we do.

In the campaign of 1940 my opponent and I were agreed upon the need for constitutional revision; and we were agreed that a constitutional convention was the best means to bring it about. In my inaugural address I urged the legislature to call a convention. Had this been done, I believe that we should have had a better chance of getting a new constitution unscarred by political compromise.

The legislature of 1941, however, had little enthusiasm for constitutional revision, and the Senate was especially fearful that a convention might make the Senate into a more representative body. The legislature, therefore, set up a Commission on the Revision of the New Jersey Constitution. To the surprise and chagrin of many legislators that commission did an excellent job.

It has been said that a majority of the members of the commission thought at first that a few amendments might be drafted that would correct the deficiencies in the constitution. But it was soon apparent that all attempts to draft a satisfactory set of amendments were going to be futile, because such a vast number of amendments were necessary. The commission then wisely abandoned all attempts to draft amendments and instead unanimously proposed an entirely new constitution. That constitution would have been better in many respects, than the proposed draft we have before us; and most of the best parts of the current proposal are those taken from the constitution suggested by the commission.

#### LEGISLATIVE DELAY

That proposed constitution was widely studied and very generally approved, but the legislature was not satisfied. It established a joint committee that held public hearings throughout the summer of 1942. Scores of witnesses appeared before this committee to point to the defects in the constitution of 1844.

So far as I know not one person appeared to say that the constitution we now have is all right as it stands. The record of the testimony is now published. It forms a volume of 1,124 pages, a book that weighs three pounds. It is a compendium of all that is wrong with the constitution we are now attempting to replace.

Notwithstanding this mass of testimony, the joint committee followed the usual legislative practice when confronted with a major problem and recommended to the legislature that nothing be done.

The committee did not defend the old constitution. It merely begged the question by asserting that the constitution should not be revised while there are thousands of voters in the armed services, or, in other words, that we should not attempt to improve democracy at home while our fellow citizens are fighting for it abroad. Had there been anything in this argument—and there was not—the very holding of their hearings in the first place was absurd. The legislature of 1942—which was certainly not among the best ones the state ever had—joyfully grasped this specious argument, however, and smugly did nothing.

#### LEGISLATURE—A CONSTITUTIONAL CONVENTION

In my annual message in January, 1943, I urged the need for constitutional revision in the strongest language at my command. At length Assemblyman Milton Feller of Union County got a bill through the Assembly to refer to the people at the election of 1943 the question whether the



legislature of 1944 should draft and submit to the voters in 1944 a new and revised constitution. This method of having the legislature act as a constitutional convention was not expected to be entirely satisfactory. A convention elected for the express purpose of drafting a new constitution would have been preferable, and most friends of revision realized the fact.

But it was the best that could be obtained, perhaps for years to come. It was this or nothing. Even this plan was not satisfactory to the politically minded Senate. The Feller Bill stuck tight in a Senate committee until Hon. Walter E. Edge, then clearly to be the Republican candidate for governor, insisted that the Republican senators pass the bill. He induced twelve Republican senators—one more than a majority—to vote for the Feller Bill, with amendments to protect the present status of the Senate. As soon as it passed the legislature I signed the bill, and it became law.

#### SERVICE MEN AND WOMEN BAYONET BOSSES

As a result the people of New Jersey last November got their first chance in a century to make known their views about their old constitution. They spoke emphatically against the old constitution and overwhelmingly in favor of its revision. The final and official majority was a stunning 154,334.

This majority cut across party lines, tearing into the political vitals of the Democratic and Republican bosses. Revision carried nineteen counties and lost in only two counties—in Democratic Boss Hague's Hudson County and Republican Boss Mathis' Ocean County. The men and women in the service certainly used their political bayonets on the political machines by voting four to one in favor, and since that result was announced we have heard no more of the wait-until-the-boys-come-home argument.

#### LEGISLATIVE ACTION OF 1944

The legislature of 1944, following this mandate of the people, set up another committee on January 11. After some hearings it proposed the draft constitution that was introduced on February 25 and passed on March 3. This brings us up to date. Next November the voters will decide whether or not they want the proposed constitution to supersede the constitution of 1844.

#### BILL OF RIGHTS

This proposed constitution has eleven articles, of which the first, entitled "Rights and Privileges," is our State Bill of Rights. Under the provisions of the referendum legislation of last year this Bill of Rights was taken over bodily from the old constitution. There have never been many criticisms of the first article of the old constitution. The framers took many of the ideas and much of the wording directly from the Constitution of the United States. Where they added to the rights set forth in the federal constitution, the additions have been satisfactory. They provided, for example, in paragraph 2 of Article I:

All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

Under this provision we are seeking now to revise our government. If our own work becomes outdated, or otherwise inadequate for our descendants, they may use the same clause to reform what we do. I only wish that we were setting up machinery to make the process more definite and available.

In an age of dictatorships paragraph 12 of Article I, written a hundred years ago, is interesting: "The military shall be in strict subordination to the civil power." I need not dwell further upon the Bill of Rights, because it is carried over without change in the proposed constitution.

#### SEPARATION OF POWERS

The second article of the proposed constitution was also taken over substantially from Article III of the old one. It is called in the new draft "The Powers of Government." It is so brief that I may easily quote all of it to you:

The powers of the government shall be divided among three distinct branches, the Legislative, Executive and Judicial. No person or persons belonging to or constituting one of these branches shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this constitution.

#### DIVISION OF POWERS

This three-fold division of powers is now classic American constitutional doctrine. Where it is not thus explicitly stated in constitutions, courts have tended to infer it and to require that legislation conform to it. The constitution of 1844 required the separation of powers. But it did not make the distinction among the powers sufficiently specific, and over the years the legislature tended to encroach upon the acknowledged normal executive powers. Some of these legislative invasions upon the executive department are prohibited by the new draft, and to that extent it is much to be preferred to the old constitution.

#### BUREAUCRACY

In the last hundred years, and especially in the last fifty, the duties of government have become so complex that all legislative bodies, both federal and state, have had to set up agencies whose functions cut across the traditional three separate and distinct branches of government. Some departments have duties that are partly legislative, partly executive, partly judicial.

When, for example, a commission sets up rules and regulations (which it may change as it wishes within the law establishing the commission) it exercises legislative powers; when its agents police some industry to see that the rules and regulations are obeyed, it exercises executive powers;

and when a rule or regulation is disobeyed the commission may hold a hearing (the equivalent of a trial) to determine whether the offender shall lose some license, franchise, right, or privilege. Examples in our state of such agencies that cut across the lines of separation of powers are: Alcoholic Beverage Control, Civil Service Commission, Labor Department, Motor Vehicle Department, State Board of Tax Appeals, and the Public Utilities Commission. There are many others.

The functions performed by these quasi-judicial, quasi-legislative bodies are necessary in any modern state, especially in an industrial state such as New Jersey. I cannot foresee the time when we shall not need such agencies. What they can do and cannot do, and how they may do what they are permitted to do has all come to form a new branch of the law called administrative law. The occasional caprices of administrative agencies and their almost uniform tendency to extend their jurisdictions has led to much opposition to what is often called bureaucracy. Like it or not, it is here to stay, and the best we can do is to be ever vigilant and to keep it within bounds.

The Commission on the Revision of the New Jersey Constitution of 1941 proposed to add to the article on the distribution of the powers of government the following new section:

"The exercise of any power or discharge of any responsibilities of a legislative or executive character by administrative agencies shall be limited to the effectuation of declared general standards or principles set forth by law and, to the extent that private rights are affected or privileges conferred or withheld, shall conform to established and published practices and procedures which, so far as practicable, shall be of uniform character."

Our legislative constitution makers, however, did not see fit to follow the commission and to incorporate this excellent provision in the new draft. Perhaps the same result can be obtained by legislation:

#### DEMOCRACY IN ACTION

I said earlier that I could not, in one evening, discuss the whole constitution. I have been able to cover tonight only two articles of the proposed constitution.

Our democracy is still alive—very much alive—when in the midst of a great war we, the people of New Jersey, can undertake in peaceful fashion to revise our fundamental law. The proposal that we have before us, while not perfect, while not by a long way a model constitution, is still so much better than the constitution of 1844 that I shall work for it and vote "yes" at the next November election. I hope that after studying the matter with all the care it deserves you will agree with me, and that you too will be moved to vote "yes." If such is your final decision, please help put across the "yes" vote by urging your friends and neighbors to vote the same way.

#### THE LEGISLATURE

Address, Men's Club, Watchung Congregational Church, Montclair  
March 23, 1944

There can be no possibility of overestimating the importance of the discussion of the constitution that should take place in New Jersey this spring and summer. Not for a hundred years have the voters of this state had a decision of equal importance to make. By their votes last November they showed by a majority of 154,000—a proportion of about three to one—that they are dissatisfied with the century old constitution of 1844. Now they must decide whether they want this proposed constitution to supersede the old one. To make an intelligent choice between the two we need all the debate we can get over the next few months.

I think that I need not tonight review the events that brought us to this point. I am sure you are aware that for many years the constitution of 1844 has been very generally regarded as inadequate to meet the needs of a modern state. The vote in the legislature on March 3rd to submit the revision to the people was only the last in a long series of events in the general movement for constitutional reconstruction in New Jersey.

I do not hesitate to say that I believe that the proposed constitution is far preferable to the constitution of 1844. The new draft is not a perfect constitution, not a model one, but it is still emphatically better than what we have now. I intend to vote "yes," and I urge others to vote "yes" on the proposed constitution at the November election.

#### THE LEGISLATURE—ARTICLE III

The draft constitution has eleven articles. The third article—the one in which I wish to speak tonight—covers the legislative branch of the state government. It contains very extensive changes from the constitution of 1844.

Our present constitution provides for annual sessions of the legislature, and this requirement is carried over into the proposed constitution. Only our states have annual sessions. In the other 44 the legislatures meet regularly only in alternate years. I cannot believe that our problems are so much more continuous than those of the other commonwealths that our legislature really needs to meet annually. The Commission on the Revision of the New Jersey Constitution recommended that a new constitution provide for biennial sessions, but our legislative constitution makers preferred to keep the old annual sessions.



### LIMITED SESSIONS

In recent years our legislature has been technically in session all the year 'round, though actually and physically only in Trenton two or three days a week for four or five months. If the draft constitution is adopted, the annual sessions will be limited hereafter to ninety days. That will be something of a relief except that—as in many other places in the proposal—the framers tended to take back with one hand what they gave with the other. While regular sessions are to be limited to ninety days, special sessions shall be called upon the petition of a majority of the members. So far as I know, this provision, if adopted, will be unique among American state constitutions. The almost universal rule is that the governor of a state alone has the authority to call special sessions.

It would be conceivable that on this matter of legislative sessions we could stand under the new constitution about where we are now, but instead of our having the outright year-long session, we would have one ninety-day session, followed by as many special sessions as the legislature might wish. But I do not regard this business of sessions as of fundamental importance. How many days or weeks or months a legislature is in session does not matter so much as what the members may constitutionally do or not do when they are in session.

### TERMS OF LEGISLATORS

Our 1844 constitution is the *only* one among the 48 state constitutions which requires members of the Assembly to run for election every year. This provision has been generally deplored by students of the New Jersey constitution. The chief objection raised to it is that with annual elections, the assemblymen can never get far enough away from campaigning to do their job of legislating. The proposed constitution would lengthen their terms to two years, a change that seems to me most desirable.

The terms of our senators are now three years. Here again, New Jersey is unique among the states. Though the three-year term is odd, it is not so undesirable as the one-year term for assemblymen. The proposed constitution would extend the term of senators to four years.

### A LEGISLATOR'S COMPENSATION

At present the constitution sets the salary for legislators at \$500 a year. This amount is much too low, considering their responsibility. I have often said that, paying only \$500 a year, we should regard ourselves as fortunate that our legislators have been no worse than they have been. The public, like any other employer, must pay for service, and in the long run it will not get more than it pays for.

The proposed constitution would increase the salary of legislators to \$2,000 a year. This amount compares more favorably than does our present \$500 to the salary of \$2,500 paid by New York and the \$3,000 paid by Pennsylvania.

I should like to see our states strengthened in every possible way, because I believe that local and state democracy is the foundation of national democracy. One way in which they can be strengthened is by encouraging able men to make careers of legislative service, as able men make careers of service in Congress. We have not done it while we have offered only \$500 a year. Most legislators have always had one eye on the work of their house and the other on such vacancies as appeared in state courts, boards, and commissions. But I fear that the sort of men we want and need will not be willing to make careers of \$2,000 positions, either. I urged the legislative committee that was considering the draft of the new constitution to leave out all references to salary, which could better be set by statute from time to time. But here it is, and I imagine it will be very difficult to change.\*

### STANGER CASE INFLUENCE

Someone once observed that every law is the relic of some old abuse. There is an element of exaggeration in that remark, but there is an element of truth, too. Many a provision in a constitution is a relic of some old abuse as well. I observe that the draft of the one before us adds one word to each of three paragraphs in Article III, section III, which put restrictions on the right of legislators to receive or to hold other public posts. The present constitution forbids any legislator from holding any state office of profit, or to be appointed during his term to any such office which was created or increased in pay during his term. The new constitution extends these prohibitions to *positions* as well as *offices*.

I imagine that the new word is a relic of the *Stanger* case, decided last year. You will remember that the senator was made counsel to the Milk Control Board (which he had helped to create) but the courts, with one of those nice distinctions that only lawyers can see, held that his employment was a position and not an office, and therefore not forbidden by the constitution. The word *position* now goes into the constitution right alongside *office*.

Dual officeholding is wisely prohibited by 42 of the 48 state constitutions. No man ought to be on both sides, or to be a judge in his own cause. Let us hope that the two words *office* and *position* will suffice where one word did not, and that the courts will not in the future accept some other constitutional synonym for *job*.

### BLACKJACK APPOINTMENTS

If the evil of dual jobholding will be ended by the proposed constitution, there are other evils that are not ended. There is in the new draft no really effective, direct barrier against the practice that has been common

\* But the \$2,000 figure is a definite improvement over \$500. It will certainly enable conscientious legislators to give more and longer service to their constituents without such personal sacrifice as the present constitution requires of a legislator who is not looking forward to a judgeship or a well paid post in the state administration.

in recent years of blackjacking a governor into appointing or promising to appoint certain legislators to state offices before the legislature will take up the governor's program. I had perhaps an unusual amount of that pressure in my term, but other governors before me had the same experience.

The Revision Commission of 1941 proposed a clause for a new constitution that would have made any legislator ineligible for appointment to any state position during the term for which he was elected, and for one year thereafter. Such a provision would have solved the problem, because it would have removed the temptation; it would have destroyed the motive that causes legislators to gang up to coerce a governor.

But our present legislators, when they came to draft a constitution, could not, we may assume, bring themselves to accept any such self-denying ordinance as the one proposed by the Revision Commission. Having their eyes on many a judgeship and commissionership, they watered down the proposal to the mere prohibition of a legislator's "qualifying into" any office or position "during any regular ninety-day session of the legislature."

I take it that this new clause would still permit a group of members of the legislature to work out a squeeze play to compel a governor to nominate them to state jobs as the price of their passing necessary legislation; then they could be confirmed by the Senate; but they would not take over ("qualify into") their new jobs until the ninety-day session came to an end. If my interpretation is correct, the new constitution in this respect is not much better than the old.\*

#### OFFICERS ELECTED BY LEGISLATURE

The framers of the constitution of 1844 recognized the evil effects of the election of commissions, judges, and administrative officers by the legislature. Their records show that they discussed the matter with understanding, but they did not adequately guard against it in the constitution that they drafted. We have had a considerable number of administrative officers, judges, and boards elected by—and that usually means from—the legislature in joint meeting. Among these are the Milk Control Board, the State Treasurer, the Commissioner of Alcoholic Beverage Control, Director of Municipal Aid, Comptroller, and State Auditor. In recent years the legislature has been moving toward the

\* There are other provisions of the constitution which would tend to make the governor more blackjack-proof than he is now. His longer term; the stronger veto; the knowledge that the legislature could not deprive him of the power to appoint the heads of his principal departments or withdraw substantial portions of the state's funds from his administrative supervision—these and other results of the proposed revision would put the governor in a much more favorable position in dealing with bargain hunting legislators than he is at present.

The separation of powers principle has never worked properly in New Jersey largely because the essential cooperation between the governor and the legislature has almost always had to be on terms dictated by just one of the parties—the legislature. This is because the present constitution gives all the high cards to the legislature.

election of judges and local officials, such as the county superintendents of elections. This tendency has even more undesirable effects than the election of state officers.

#### EVILS

The evils that flow from this practice are of two types: those upon the legislature itself, and those upon the office of governor. When administrative officers are elected by the legislature there is an overpowering temptation to logrolling and vote trading. If, say, Senator X wants to be State Auditor and if Senator Y wants to have a four-lane highway built through the pine barrens of his county, what is more natural—indeed, what is more inevitable—than that the two should get together and satisfy two ambitions at once? It has been done over and over again.

The second evil in the election of administrative officers is on the office of governor. He is by title the chief executive, but he finds that many of the men who head the important state offices and who ought to form his cabinet are men who are not really responsible to him, but to the legislature. Owing their appointments in the executive branch of the government, not to the executive but to the legislature, they very naturally tend to run their departments, not as part of the executive team, but to suit the politics of the legislature. Even worse, they may be members of a different party from the governor and tend, therefore, to use the powers of their offices to frustrate and discredit him.

#### PROPOSED PROVISION

The proposed new constitution will put a stop to this election of administrative officers by the legislature. It provides in Article III, section VI, paragraph 1:

Neither the Legislature nor either House thereof shall elect or appoint any executive, administrative, or judicial officer, except as expressly provided in this constitution.

The three officers expressly provided for are the Comptroller, the Treasurer and the Auditor. Except for the Comptroller, I am not sure why these are preserved for election. The Constitution of the United States does not direct Congress to elect the corresponding federal officials. We may be charitable and assume that the fact that the three mentioned are positions usually filled by former state senators had nothing to do with saving these three offices for legislative patronage. It is just a State House mystery. The important thing, at any rate, is that a stop is put at some point to the practice of encroaching upon the executive. We shall get three executive officials elected by—and probably from—the legislature; but these three and no more.



## VOTING ON LEGISLATION

The constitution of 1844 contains some satisfactory provisions with regard to the legislative branch of the state government, and it is gratifying to notice that these provisions are preserved in the new draft. I need not go over them all, but I might give you one example. "No bill or joint resolution," states the constitution, "shall pass unless there be a majority of all the members of each body personally present and agreeing thereto and the yeas and nays of the members voting on such final passage shall be entered on the journal." These words are taken over in the new constitution now proposed to the voters.

The provision I quoted forbids two bad legislative practices that have plagued some other states. The first is the habit of passing laws by a majority of the members present, which may mean a tiny fragment of the total membership. The second is passage by acclamation. Whether there are more yeas than nays on an oral vote often depends upon the hearing of the presiding officer, and his hearing in turn often depends upon his politics. Whatever else may ever have happened in the legislative history of New Jersey, at least under our constitution the members of the legislature are supposed to answer one by one as the roll was called—and the will in the future.

## RECORD OF LEGISLATIVE DEBATES

We might wish that the draft constitution had required that a record be made of the debates, as is done by Congress in the "Congressional Record." Legislation could, of course, provide such a transcript, so that the voters might review what their representatives have said. But I expect that it will be a long time before the legislature will agree to such a law. The excuse of the expense will always stand in the way.

I have not been able this evening to discuss the proposed constitution in the detail it deserves. I have not even been able to say all that I want to say about the new legislative article. There is, for example, the very interesting and promising prohibition of lobbying.

## VOTE "YES"

Perhaps I have said enough tonight to show you that the constitution that is offered to supersede the old one is on the whole far better than the constitution of 1844. I shall vote "yes" on the referendum, and after you have thought it all over and compared the two I hope that you also will be moved to vote affirmatively.

It is one of the great privileges of democracy for the people to pass upon the very form of government under which they will live. To create a new constitution is an extraordinary act of the sovereign people. Our generation of voters is fortunate to be able to do something for self-government in our state while thousands of our fellow voters are away fighting for the right to self-government. Let us do it well.

## TWO OTHER IMPROVEMENTS IN THE PROPOSED CONSTITUTION

Address, Rotary Club of Belleville

Forest Hill Field Club, Bloomfield

April 19, 1944

The service ideals of Rotary are well known, and I am here today to appeal to you to do a service for yourselves and for your state. I know that you are all busy—extremely busy. Everybody is these days. We are all engaged, both at home and abroad, in fighting the treacherous and ruthless enemies of our country. While this war against foreign enemies is going on, there is something we can do for our state, so that when the war is over, our commonwealth may be a better democracy than it was when our men and women went away.

My appeal, to be specific, is that you study the proposed new constitution that was passed by the legislature on March 3. It has been submitted to the people, who will vote on November 7 whether or not they want it to supersede the constitution of 1844. I feel sure that if you will make a careful examination of the two you will conclude that the proposed constitution is so much better than the constitution of 1844 that you will vote "yes" on November 7. That, at any rate, is my conclusion, and I should like to get you to share it.

The story of how we got to the point of having a proposed constitution before us for acceptance or rejection, is a very long one. It goes clear back to the framing of the constitution of 1844. I will not take the time today to discuss the constitutional history of New Jersey. I will only say that, especially since the administration of Woodrow Wilson, there has been an increasing dissatisfaction with our old constitution, a dissatisfaction that has finally led to the proposal by the legislature of a new constitution.

The proposal, printed in ordinary type, forms a pamphlet of 26 pages. That is not long, as state constitutions go. You could read it carefully in less than an hour. But in the time that we have this afternoon I cannot discuss many of its provisions. Perhaps the best that I can do is to take a point or two to illustrate how the proposed constitution would be an improvement over the one that we have.

## LOBBYING

The proposed constitution has in Article III, section IV, an entirely new clause that reads as follows: "Lobbying in the legislative chambers of either house shall be prohibited. The Legislature shall impose suitable penalties for violations of this provision." Thirty-five states now regulate or prohibit lobbying. By the adoption of the new constitution New Jersey will

move toward getting in line with her sister states. We have had no recent investigation of lobbying, but it is common knowledge that there is a great deal of it. The control exercised by lobbies over legislation in decades past was notorious.

It will be noted that there is no definition in the proposed revision of what constitutes this lobbying which is to be prohibited in the legislative chambers. The legislature will be free to make illegal any conduct by any non-members on the floor. This freedom of action for the legislature seems to me desirable. Conditions change, and lobbyists' tactics change. The legislature should be at liberty to change its definition and its penalties from time to time.

Pictures have been published showing the agents of various groups and interests swarming over the floors of the two houses while the legislature was in session. These people have been shown whispering into the ears of some legislators while other members were speaking; sitting alongside legislators to see that they voted as directed, or walking up and down the aisles to the distraction of all the members.

Such conduct, even when not positively hostile to the public interest, gives an undignified air to proceedings that should be serious. Lobbying on the floor of the Assembly has been very well checked by the last three Speakers, John Boswell, Manfield Amlicke and Dominic Cavicchia, but not all of their predecessors were as vigilant as they. Now there will be a constitutional injunction against lobbying, which presumably any member may invoke.

It would, of course, have been possible for past legislatures to have prevented or regulated lobbying by law at any time had they had the desire and the courage to do so. But none of them acted to curb this vicious practice. If the proposed constitution is adopted we will, at long last, have a clear statement of public policy on the matter. This constitutional provision will have to be filled out by statute.

#### PERMITTED LOBBYING

Any citizen will still be free to write, telegraph, or telephone his representatives. He will be free to call upon them and to urge his desires upon them to his heart's content. His right to petition for redress of grievances is preserved in the Bill of Rights. But he will not be allowed to go into the legislative chambers while the houses are in session to buzz into the legislators' ears.

It is well known that some of the professional lobbyists—and we have some who will work for any group or interest that will pay them—did not like this clause in the proposed constitution. They have too long been accustomed to going on the floor of either house whenever they wished. Moreover, they feared that this clause was only a beginning, and that with lobbying in legislative chambers forbidden by the constitution, New Jersey would go on to follow her sister states and regulate lobbying still further.

Some states, as you know, require lobbyists to register with the secretary of state and to reveal who pays them, how much they are paid, and what legislation they have been paid to oppose or champion. Since they work best in the dark, they do not like the bright spotlight that such laws focus upon them. I think that the present legislature showed commendable independence when it accepted this clause for the new constitution.

#### MILITARY AFFAIRS

I should like to turn now to a very different sort of improvement that the proposed constitution makes over the old one. The military section ought to be especially interesting to us now, in war time.

A century ago it was the custom for soldiers to elect their officers, so that before the militia went off to fight the Indians the men held an election and picked their leaders. It seems obvious to us now—but apparently it was not obvious to our forefathers—that the qualities that make a good politician are not necessarily the qualities that make a good military leader. Many great military leaders have, in fact, been unpopular with their men during campaigns. It was only after the success of the campaigns that their military talents were recognized.

The New Jersey constitution of 1844 sets up a whole hierarchy for the election of officers. One rank elects another. Privates elect "captains, subalterns, and non-commissioned officers." They, in turn, elect the "field officers" and these elect the brigadier generals. The major generals, however, are appointed by the governor with the advice and consent of the senate.

#### REMOVAL OF OFFICERS

The rank of commissioned officer constitutes an office under our constitution, and a man cannot be removed from this office except by the sentence of a court-martial. A man may be a thoroughly incompetent officer, but once elected or appointed, he has to be guilty of some court martial offense before he can be replaced by a competent man. I do not know of any more absurd provision in our constitution—or in any other constitution, or that matter.

There are many more antiquated and obsolete military provisions in our present constitution. I need not go over all of them today. Anyone who is interested in military curiosities will find them in Article VII, section I, of the New Jersey constitution of 1844.

#### PROPOSED MILITARY PROVISIONS

Instead of all this, the proposed constitution has a very simple and flexible military clause. It is so short that I can quote all of it to you:

The Legislature may provide by law respecting the enrolling, organizing, and arming of the militia, the appointment, terms of service, qualifications, and removal of its officers other than its commander-in-chief, and all other matters relating to the militia.



That is the kind of drafting that ought to go into a constitution. It is an outline of constitutional powers and not a statute that freezes contemporary whims or conditions for all eternity.

The proposed clause is simple, clear, and flexible. It will permit us to change our military arrangements as times and conditions change. It seems likely now that in the years to come the nature of warfare—with huge and expensive bombers, tanks, and much other mechanical equipment—will limit what any state military establishment can do. But whatever the conditions of warfare, if the proposed constitution is adopted, we and our successors will be free to do what needs to be done.

Perhaps I should add that the commander-in-chief referred to in the clause I quoted is the governor. This title is given to him by the executive article of the proposed constitution.

#### THE PEOPLE'S SOVEREIGNTY

In the midst of a world war we are considering the revision of our state constitution. Such an exercise of sovereignty shows that democracy is still alive and forceful in our midst.

The proposal that we have before us is so much better than the century old constitution of 1844 that I shall vote "yes" for it, confident that it will help us to improve our democracy. I hope that after you have studied the matter with the care it deserves, you also will vote "yes", and that you will urge all your friends and neighbors to join us.

#### A REAL CHIEF EXECUTIVE

Address, Orange Church League Bowling Association  
First Baptist Church, East Orange  
April 20, 1944

Your season is over, and you have again discussed that one "touch" which should have been a strike, that certain "perfect pocket hit" which gave you a 7-10 split—and which would have given you the high game mark. Now I would like to address you on a topic which will be of timely importance when your league hits the wood next bowling season.

May all your hits then be perfect strikes on the alleys and may you all make pocket hits at the polls in November. My subject tonight is on the proposed constitution.

This opportunity to talk to you about constitutional revision is very welcome to me. I have been urging a new constitution for New Jersey for several years. I want to do my part to promote continued discussion of constitutional reform, now that the people have before them a proposed constitution. On November 7th of this year they will vote "yes" or "no" on whether they want this one to supersede the constitution of 1844.

Our present constitution was adopted exactly 100 years ago. We have had ample experience with it to demonstrate its good and its bad points, and no one can say with truth that the people of New Jersey have moved too fast, or that they have been impatient. The evidence for revision is in an immense amount of it.

#### THE OFFICE OF GOVERNOR

Tonight I should like to talk about just one article in the proposed constitution—the new Article IV which covers the office of governor, the executive department. I sat in the governor's chair, and so I feel a little more familiar with the problems of that department than with the problems of any other.

In general, the so-called chief executive, under our present constitution, is a well-nigh powerless personage with a resounding title. He can lay cornerstones and sign his name a thousand times a day, but his constitutional powers do not allow him to do much else. In spite of his title he is not in fact a chief executive at all. There really is none in New Jersey.

Executive authority under the 1844 constitution is shared with the legislature and scattered among a hundred or more independent and semi-independent boards, bureaus, agencies, commissions and departments. The proposed constitution goes a long way toward the correction of this fundamental defect. Under it the governor would come much closer to being a real chief executive.

### QUALIFICATIONS

Under the proposed constitution the governor would have to meet the same qualifications of age, residence, and citizenship as at present. They are reasonable. He would also be ineligible to hold any other office of profit under the United States or under the government of this state. That, too, is a reasonable requirement. I can testify that being governor is enough of a job to keep any man busy, and it will be more of a job if the proposed constitution is adopted.

### TERM OF OFFICE

The governor is at present elected for the odd term of three years. This term is unique among the states of the Union, and coincides with nothing except the election of one-third of the State Senate. I have never discovered just why the framers of the constitution of 1844 hit upon three years; perhaps it was the result of some compromise between four and two—the usual terms.

There are two important disadvantages to the three-year term. First, every twelve years it coincides with a presidential election, and in that year the state issues are likely to be submerged by the national issues of the campaign. The second disadvantage is that three years is too short a time for a governor to work out a thorough-going program—to plan it, to set it up, to get the men to administer it, and to get the bugs out of its operation. Though no other state has a three-year term, many have tried a two-year term; but as they have, in recent years, revised their constitutions the tendency has been, for the reasons I have mentioned, to increase the term to four years.

### PROPOSED TERM

The proposed constitution for New Jersey would extend the governor's term to four years and provide that the election of the governor shall take place in the even numbered years between presidential elections. The first such election, if the constitution is adopted, will take place in 1946. I believe that every one will agree that here is a clear improvement over the constitution of 1844.

Other changes should be made in Article IV, but they can, and will, come with time. For example, the legislature, in drafting the proposed constitution, preserved the provision of the old one that a governor cannot succeed himself. This requirement that a governor cannot be re-elected without a four-year wait represents one of the places where the legislature deliberately missed an opportunity really to modernize the constitution. At some future time this clause will, I am sure, be amended.

### LAWS FAITHFULLY EXECUTED

In a phrase familiar in American constitutions the proposed draft directs the governor to "take care that the laws be faithfully executed." What is more significant, it gives him more means than the present constitution to see that they are. Let us examine a few of these improvements.

A governor, whatever his ability, is only one human being. He has only the normal number of eyes and ears. He gets only twenty-four hours in each of his days. He cannot be in more than one place at any given time. He must, therefore, discharge his responsibilities to see that the laws are faithfully executed through other people in whom he has confidence.

Under our present constitution his power of appointment of these people has been extremely limited. He has the responsibility, but not the authority he needs to fulfill it. When I took office I found that with the single exception of the Commissioner of Finance, the head of every department was a person appointed by a predecessor and serving for a term—often long—established by law, or was a person elected by the legislature, or elected by some independent board or commission.

### SENATE OBSTRUCTIONS

As vacancies occurred the governor has naturally wished to fill the offices with men in whom he could repose confidence, but the State Senate, having the power to advise and consent to nominations, has often refused to do either. Sometimes they have refused because some senator or group of senators wanted to preserve in office, when the man's term ended, an official in whom the governor did not have confidence; or they wanted to compel the governor to appoint a man of their choice—often a senator. So the Senate has held up long lists of appointments for months, even for years.

Courts have been left without judges; counties have been left without prosecutors for month after month, tax boards have been left without quorums; important state departments without heads. By the misuse of its power of consent the Senate has really attempted to deprive the governor of his power to nominate; the senators have refused to consent to appointments they did not, in fact, originate. The senators grew so brazen that their conduct was notorious all over the state.

But if the proposed constitution is adopted their misuse of power will be ended, for they will be required to make up their senatorial minds in six weeks. The new clause (Article IV, section I, paragraph 11) is so short and concise that I can quote all of it to you:

The Senate shall either confirm or reject each nomination to office within a period of six weeks after the same has been submitted to it by the Governor unless within that period the nomination is withdrawn by the Governor or returned to the Governor by the Senate; and any nomination not rejected, withdrawn or returned within the period shall be deemed confirmed at the expiration of the period. The withdrawal or return of a nomination before its confirmation shall render it of no effect. No appointment or nomination shall be made by the Governor during the last week of his term.

### VAST IMPROVEMENT

Not only will this clause make the Senate act one way or another, it will also allow a governor to withdraw a nomination. There were instances during my term when the Senate would not confirm or reject a nomination, would not allow me to withdraw it, nor permit me to substitute another



name. In those cases the senators were determined to keep an official in office after his term had expired.

The business of returning a nomination without rejecting it is new. Perhaps the device is intended to be a painless way of rejecting one. It will have the same result, at any rate, and probably over the years will come to be indistinguishable from rejection.

This whole clause is so much an improvement over the constitution of 1844 that sometimes I can hardly believe that almost the same Senate that was long accustomed to holding up nominations for months and months should have accepted it. The senators have given away nine-tenths of their power to obstruct a governor. I cannot account for this outburst of virtue, unless like St. Paul, they saw in the way a light from heaven. To judge from the newspapers none of them has to date admitted such a miracle.

#### VETO POWER

There are a number of other improvements in the executive article of the proposed constitution. The governor's veto, for example, is strengthened a little.

What I have said has, of course, been illustrative, rather than exhaustive. There are many major improvements in the proposed constitution, and mind you, in no place is the proposed constitution worse than the present one, so that all the improvements are net improvements.

For copies of the proposal; for copies of a list of the major changes, or for the answers to any questions that may arise in your minds, you should feel free to write or to call the New Jersey Constitution Foundation. This foundation, which has headquarters at 790 Broad Street, Newark, exists to provide just this service to the people of the state.

#### VOTE "YES"

I am confident that you will feel as I do—that the proposed constitution is of such marked improvement over the present one that we not only should vote "yes" on the referendum, but we should also persuade others to do so.

Moreover, this meeting is another example of Americanism in action—although we are gathered here for a good time, we find time on our program for a talk on a public question which will affect our well-being and the well-being of generations to come.

#### DEMOCRACY AT HOME

We may take renewed faith in our democracy because in the midst of a great world war the people of our state instructed their legislature to draft a new constitution; because the legislature followed the people's mandate, and because the people, busy as they are with war work, still find time to study the very fundamentals of their government.

This is an answer to the dictators. This shows that democracy can work, and can work even in the midst of a great crisis.

In closing, I wish each of you a high average in both bowling and citizenship in November.

#### MORE ON A REAL CHIEF EXECUTIVE

Address, Parent-Teachers' Association  
Mount Hebron School, Upper Montclair  
May 8, 1944

The open discussion of public problems is one of the privileges of democracy. We, the people of New Jersey, are engaged in an extraordinarily important discussion these days on the problem of a new state constitution. Not since our present constitution was adopted in 1844 has such an important problem been presented to the people of the state.

Last November by a majority of 154,000, the people of New Jersey directed the legislature to draft a new constitution to be submitted to the electorate in November, 1944, for their acceptance or rejection. I need not tonight review the long series of events which brought about the referendum, nor discuss the maneuvering in the legislature that produced the draft that is now before us. I have taken up both of these matters on other occasions. The legislature did draft a proposed constitution, and that is what matters now.

A citizen could read this most important document carefully and thoughtfully in less than an hour. We could not, however, discuss in detail in one evening all of its eleven articles. I shall confine myself tonight to Article IV, the executive article, but if later anyone has any questions upon any of the articles, I am sure Spencer Miller, Jr., or Winston Paul, your neighbor and friend, will attempt to answer them.

#### RESPONSIBLE GOVERNOR VS. POLITICAL BOSS

In general, the draft constitution would tend to make the governor a real chief executive. It is a vast improvement over the constitution of 1844. To have an executive with authority equal to his responsibility is absolutely necessary to the maintenance and progress of democracy.

When we Americans have governors of states whose constitutional powers are limited and scattered, we tend to get bosses—the very opposite of democracy. The reason is that if a governor cannot be governor in fact, some one will be. We will get either leadership within the government and thereby responsible to the people, or a boss outside the government and responsible to nobody. It is worth noting that New York State, which had a long history of state bosses, has not had a single state-wide boss since it reformed its state constitution and made the governor of New York a real chief executive. I will not say that the numerous local bosses are now powerless in New York, but I will say that they have less power than they did. State-wide bosses will be less likely to exist and prosper in New Jersey if the proposed constitution is adopted. Let me give you some specific reasons.

### EFFECTIVE VETO POWER

Under the present constitution the governor has a futile veto power. Any bill to which he objects can be passed over his veto by a simple majority—the same vote that passed it in the first place.

Inasmuch as the governor of New Jersey is elected by all of the people of the state, while the legislature is elected by counties, he ought to have a veto that would mean something. His objections should stick. This necessity has been so widely recognized that the only real question in our recent constitutional discussion has been how much the governor's veto should be strengthened.

The proposed constitution would require a three-fifths vote in each house to pass a bill over a veto. Although a two-thirds vote is the general rule in American constitutions, both federal and state, here again, what we will get will be better than what we have and is without question another step forward.

In other minor respects the governor's veto is improved. He has at present only five days to sign or veto a bill. If he does neither at the end of the five days, it becomes law without his signature. Under the proposed constitution that period will be doubled while the legislature is in session. Ten days is better than the present five.

If you follow the doings of our legislature in the press, you know that the legislature works in spurts. Few bills come through the mill in January and February, and then they come out faster and faster until, just before the final rush for a summer recess, they pour out, a hundred or so a day. Unlike the legislature of some other states, ours is most reluctant to hold hearings on bills. So a citizen may first learn of some bill that will tax him or regulate his business or affect his opportunity to vote when the bill is passed and on the governor's desk.

Governors have often wanted to hold hearings to get an expression of opinion from the citizens who would be affected by proposed legislation. But with only five days to sign or veto, and with hundreds of bills to act upon, no man can do it. Ten days will give the governor a better chance.

### LAST MINUTE BILLS—LEGISLATIVE JOKERS

At the very end of a session, when bills are jammed through the legislature under suspension of the rules, often unread by the members and sometimes not even printed, it is possible for the lobbyists or for unscrupulous members to slip through bills containing jokers. These are innocent looking provisions that actually do something that the members or the public do not suspect and generally do not want. To detect these jokers it is frequently necessary to have experts study the bills—experts on the tax law, the election law, on the law concerning utilities, and so forth. When bills are forty or fifty printed pages long and when they contain thousands of words this examination is not possible in five days.

Under the proposed constitution the governor would be allowed thirty-five days if the legislature should adjourn, though if he should decide to

veto a bill he must call a special session of the legislature for reconsideration. The new provision would allow a governor to examine the last-minute bills carefully and to have them studied for jokers.

### INVESTIGATIONS BY THE EXECUTIVE

The constitution of 1844 gives the governor no power of investigation into the conduct of any official. Recent state constitutions have recognized this as a power essential to the governor's performance of his executive duties. The proposed constitution would give the governor considerable power to investigate, and the legislature even more. With respect to the executive the new proposal reads:

The Governor may cause an investigation to be made of the conduct in office of any State officer except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting or a judicial officer. After notice, service of charges and an opportunity to be heard at a public hearing, the Governor may remove any such officer whenever in his opinion the hearing discloses misfeasance or malfeasance in office. Upon application on behalf of the Governor or officer under investigation or subject to charges, a Justice of the Superior Court may issue subpoenas and, under penalty of contempt of the Superior Court, may compel the attendance of witnesses, the giving of testimony, and the production of books and papers, in the investigation or at the hearing.

This would be fair enough as to method. The governor, who is head of the executive department, could remove an official after a public hearing. He could also use judicial processes to produce witnesses and papers, so that a hearing could be complete. The governor could not—as has happened in the past—be defied by recalcitrant witnesses or by officials who might wish to cover up their misdeeds by a refusal to testify.

It is interesting to notice that the legislature, which drafted this proposed constitution, limited the scope of the governor's investigations to officials in the executive division of the state government; and indeed he will not be able to examine all of them, for those elected by the legislature are specifically excepted.

### INVESTIGATION BY THE LEGISLATURE

Yet when the legislature drafted a clause (Article VI, section III) to provide for legislative investigations it authorized legislatures to investigate any public official or employee, state or local, and the performance of any public trust.

The governor of New York, as you probably know, can investigate local officers; and many governors have used this power with salutary effects upon city and county officers. The governor of New Jersey should have the same power, and perhaps by amendment we can some day have it so.



#### "PERSON ADMINISTERING THE GOVERNMENT"

The proposed constitution, like the old one, uses the curious phrase "the governor or person administering the government." The reason is that in the event of the death, resignation, removal, or absence of the governor from the state the duties of the office would devolve upon the president of the senate, and in the case of *his* disability, upon the speaker of the assembly. The awkward phrase "person administering the government" is necessary to cover these various possibilities, since we do not have a lieutenant governor, nor will we get one under the proposed constitution. The office has been found necessary, however, in three-fourths of the states, and it is needed in New Jersey.

The failure of the legislature to allow in the proposed constitution for the governor to succeed himself, and the failure to provide for a lieutenant governor, seem to me two outstanding omissions in the proposed constitution. They are not new defects, however. They are simply omissions carried over from the old constitution. They can be more easily cured by amendments if we adopt the new constitution. The draft constitution is in other respects so much an improvement over the old one that I feel that we can vote for it with considerable enthusiasm.

#### MAJOR IMPROVEMENTS

I can not in any one evening discuss in the detail that its importance demands all of the proposed new constitution. I have not been able, indeed, to discuss all of the executive article tonight. The proposed constitution would also make very extensive changes in the power of pardon and it would provide a new twenty-department arrangement for the state administration. These are also improvements.

What I have said has, of course, been illustrative, rather than exhaustive. There are at least 60 significant changes and substantial major improvements in the proposed constitution, and in no place is the proposed constitution worse than the present one, so that all the improvements are net improvements.

#### EXECUTIVE DEPARTMENTS

Address, Citizens' Meeting—75th Anniversary of the Incorporation of the Village of South Orange  
May 12, 1944

A resident of West Orange, such as I am, is singularly fortunate to be invited to help South Orange celebrate its corporate anniversary. Most of the residents of South Orange, like Senator Walsh, are so convinced of its superiority among the Oranges that I am surprised that any outlanders like myself got in here today.

#### INTEREST IN LOCAL AFFAIRS

Your village is known as one where the citizens have a high degree of civic spirit and where they have kept machine politics out of town government. I congratulate you upon this civic consciousness.

The activities of the South Orange citizens are especially pleasing to those of us who are worried about where our democracy is going. We are particularly concerned about the refusal of many able citizens to have anything to do with politics or public affairs at the local and state level. Many are willing to go to Washington—but few are willing to go to the village board of trustees, to the county seat or to the state capitol.

It is the recognized style to be a man who is engaged in government work in Washington. It should be the style to stay home and mend one's own backyard of democracy by participating in local, county and state affairs. We must remember that, if our democracy is to work, it cannot drain off all the able and intelligent citizens to serve the federal government while leaving our local and state affairs to the incompetent, the corrupt or the indifferent.

The citizens of South Orange have made their influence felt for the benefit and progress of democracy by working in their own village—on the school board, the trustees' board, and on the different village committees. You have found that at the local level of politics, there are many issues and problems that appeal particularly to each of you; those issues concern public health, wholesome recreation, village planning, education and the care of the sick and the unfortunate, and so forth. Not only have you found these problems but you have been interested as citizens in working at them for the welfare of the village at large and yourselves as individuals.

You have not found it necessary to go to Washington to make democracy more effective. You have learned that it can be done and should be done in one's home town. Again, I congratulate you citizens of South Orange upon your civic consciousness.

I would like to take advantage of that civic consciousness to direct your interest in public affairs—to direct it to one of the problems of the larger democracy of which you are also a part, the State of New Jersey. The Village of South Orange is running pretty smoothly. You who are responsible should find time to put your civic talents to work on this problem, as your distinguished fellow citizen, Spencer Miller, Jr., has done.

#### BETTER GOVERNMENT IN NEW JERSEY

He and I have long been interested in improved democracy for New Jersey. We—and 395,000 other voters, a majority of 154,000—came to the conclusion that the best hope for better government in New Jersey lies along the road of constitutional revision. For generations the citizens of New Jersey have struggled under a constitution adopted just a hundred years ago. Although the defects of that constitution have long been recognized, it is only recently that much real progress has been made toward their correction. Last March the legislature submitted a new constitution to the voters of New Jersey for their approval or disapproval at next November's election.

The defects of our present constitution are so numerous that I could not discuss them all here today, nor could I discuss all of the changes proposed to correct them. The best I can do is to give you a few examples of the ways in which the executive article—the one concerning the office and powers of the governor—has been improved.

#### COSTLY, IRRESPONSIBLE STATE ADMINISTRATION

The new constitution provides that there shall be not more than twenty principal departments in the state government. Within and among them shall be allocated all the executive and administrative functions. Opinions differ as to how many agencies we have now, because a count depends upon whether only primary agencies are included or whether the secondary agencies—those formed from primary agencies—are also counted. In the last few months a number of departments have been merged. But I imagine we still have at least eighty or ninety by anybody's count.

No matter what the exact number may be, there is unanimous agreement that we have too many boards, bureaus, commissions, departments, and agencies—not even the nomenclature is uniform. Their functions also often overlap. They have sometimes conflicting authority. Their duplication of office and field forces causes a needless burden on the taxpayer. Worse, probably, than their unnecessary cost, is the fact that they are essentially irresponsible. A governor has at present only nominal control over them.

#### TWENTY PRINCIPAL DEPARTMENTS

The Commission on the Revision of the New Jersey Constitution that reported to the governor and the legislature in 1942 recommended nine administrative departments, and it would have had them named in the constitution. The present legislature has in my opinion improved upon that recommendation by requiring that there shall be "not more than twenty" departments. I feel that conditions will change from time to time, and that departments useful in one generation will not be needed in another. New conditions and new needs which we cannot now foresee may require new departments. Leaving them unnamed, but permitting a maximum number, seems to me the best way of providing both for efficiency and for flexibility.

Twenty is a reasonable number of departments. The chief executive and the people can follow the operations of that many, whereas nobody can follow the work of eighty or a hundred. The ordinary functions of a state government can easily be apportioned among twenty departments, so that overlapping and conflicting jurisdictions can be avoided.

#### RESPONSIBLE CHIEF EXECUTIVE

The draft constitution would give the governor very considerable authority over the twenty departments. As chief executive he ought to have his authority over them.

He ought to be responsible to the people of the state for the efficient performance of their duties, just as the president of a corporation is responsible to the stockholders for the efficient operation of each division of company. The stockholders have other things to do besides checking up on a company's purchasing agent, its advertising manager, its vice-president in charge of sales, and so on. But they can hold the president responsible for the work of all the departments. In the same way, the voters of the state should be able to hold the chief executive responsible for the work of the state administration.

The new constitution would clearly make the governor responsible for the departments and give him the authority to organize and reorganize them as times and conditions change "to promote efficiency and economy in the operation of the state government." He would not need to wait for legislation—which long experience has taught us is very slow in forthcoming—but he could make the necessary mergers by executive order.

The new constitution would properly preserve for the legislature a veto over these executive orders. Each one would have to be submitted to the legislature before it could go into effect. The legislature could approve or disapprove immediately, but if it did neither, the order would go into effect at the end of six weeks. The tenure rights of civil service employees are specifically protected by the new constitution, so that no governor could use these powers merely to sweep political opponents out of office.



Under these provisions it ought to be possible for a governor to obtain a degree of unity and efficiency in the state administration that we have never had before. Instead of having eighty or a hundred independent and semi-independent agencies he would have not more than twenty departments, which he could organize as an effective group. He could produce teamwork rather than have to contend with inter-departmental jealousies and frictions throughout his term.

#### DEPARTMENT HEADS

The draft constitution also provides that "The head of each principal department shall be a single executive unless otherwise provided by law." We have, as you know, two types of administrative set-ups: The board or commission type and the single administrator type. The State Board of Tax Appeals is an example of the board or commission type. The Superintendent of the State Police is an example of the single administrator type.

Both forms are needed, depending upon the duties of the department. Where a department has quasi-judicial functions, the board type is generally preferable; where it does not, the single administrator is preferable. For an intelligent distinction between the types of functions and for the establishment of the appropriate kind of executive we should, under the proposed constitution, still be dependent upon the good judgment of the legislature.

The proposed constitution would make the single executives directly responsible to the governor, because it provides that he shall appoint them and he may remove them "as shall be provided by law." I take that clause to mean that the legislature would be directed by the proposed constitution—not merely permitted—to provide by law a procedure by which a governor could remove the head of a department when he did not have confidence in the man's loyalty, integrity, or efficiency.

#### GOVERNOR'S CABINET

From among the officers of the state the governor would be authorized by the new constitution to select the men he wanted to form a governor's cabinet. The cabinet could be five, fifteen, or fifty, as a governor might wish. Since most of the important state officials would be responsible to the governor under the proposed constitution, such a cabinet ought to be satisfactory. This proposed arrangement seems to me most promising. Under it a governor ought to be able to get a cabinet that he wants composed of men who have some real authority in the state administration.

#### ADMINISTRATIVE IMPROVEMENTS

All of these administrative improvements in the new constitution should give us, if it is adopted, a more efficient and responsible state government, which should cost the taxpayers less. In other words, they should reasonably expect under this proposed constitution to get better government for fewer dollars. Exactly how much money can be saved is very hard to predict. The amount of the saving will depend upon what services the state continues to provide and how thoroughly governors under the new constitution take advantage of its provisions. The potential saving ought to run around a million dollars a year.

I should like to see every citizen examine this constitution carefully, and vote "yes"—not blindly, however, because Spencer Miller, Jr., and I urge a "yes" vote, but neither should you vote "no" blindly because Mayor Lague is opposed to it. But vote for it because it is the best hope we have for an improved democracy for New Jersey.

#### VOTE "YES"

Nothing that we can do as citizens at the local and state levels can be more important than the revision and improvement of our constitution. The discussion that should take place this summer on the constitution is of invaluable importance. I am certain that all of you citizens of South Orange will undertake, at least, to make a careful examination of the improvements of the proposed constitution. I feel sure that, when you make such a study, you will conclude as I have that the proposed constitution is so much better than the old one that you will vote "yes" and that you will urge your neighbors and fellow citizens to vote "yes" in the November election.

#### CONGRATULATIONS TO SOUTH ORANGE

Celebrations such as this help citizens to renew their pride in their citizenship. Even citizens of West Orange must agree that you have something to be proud of. I wish South Orange at least another 75 years of lively civic life and a continued vigorous democracy.

## JUSTICE—IN TAXATION AND IN THE COURTS

Address, Monmouth County Board of Realtors  
"Shadowbrook", Shrewsbury  
June 20, 1944

A month ago the New Jersey Association of Real Estate Boards at its annual meeting officially recognized in a resolution the "paramount importance to real estate owners and to those engaged in the real estate business of obtaining a new state constitution. The association noted two important interests of home owners that will be served by constitutional revision—first, the general interest that all have in the "more efficient and economical administration of government" and second, the reform of the property tax system.

Because of these and other improvements the Association of Real Estate Boards urged all members to vote for the constitution in November; recommended that all home owners vote for it; and directed the officers of the association "to wage a vigorous campaign to assure the ratification of the proposed constitution."

The Association's action is gratifying to all who have long worked for constitution revision. It shows on the part of real estate men an awareness of the fundamental nature of most of our state problems affecting home owners and the future of billions of dollars invested in New Jersey real estate.

In many previous speeches delivered throughout the state I have discussed in some detail how the proposed constitution would improve our state administration and would give New Jersey better government at lower costs. Tonight I should like to say something about the tax reforms and the judicial reorganization under the proposed constitution.

### THE OLD TAX CLAUSE

The constitution of 1844, as amended in 1875, fixes the general property tax upon the state in Article IV, section VII, paragraph 12 which states that "Property shall be assessed for taxes under general laws and by uniform rules, according to its true value."

When almost all property was real property, that provision might have been adequate. But property today has all sorts of forms besides lands and buildings. There are stocks, bonds, debentures, patents, copyrights, franchises, and many other forms of intangible property. Various estimates exist of the relative proportion of wealth in New Jersey invested in tangible and in intangible property, but all estimates agree that investments in intangibles far exceed the total value of land and buildings. One estimate is that the proportion is 17 to 3.

Intangible property escapes most taxation because of the difficulty of administering the constitutional requirement of assessment according to true value. Real estate therefore has to bear a disproportionate share of the costs of government in New Jersey.

The true value test required in the constitution of 1844 is so difficult to administer where intangibles are involved that most assessors make no attempt to reach this form of property. Who can determine accurately the true value of unlisted stock? Of a patent? Of a franchise?

### TAX AVOIDANCE AND TAX LIGHTNING

Difficult as is the determination of true value, once some value (true or not) is set upon an intangible a new practical problem arises. The taxpayer may move out of the taxing district and thus deprive the taxing district of the amount of the assessment. We have seen the ridiculous flight of corporations to Flemington and other places to obtain extremely low assessments. We have also seen corporations having assets of about three-quarters of a billion dollars leave New Jersey altogether. Such results do not benefit you realtors, or the rest of us taxpayers.

The owners of intangible properties do not seek to escape all taxes, but they cannot stand the uniform tax assessment constitutionally required. A bond, for instance, paying 3% interest might be subject to a 5% general property tax. Such property, moreover, may not be taxed for years and then suddenly taxes may be levied. The sudden imposition of these taxes which confiscate wealth is known as *tax lightning*. You cannot blame the owners for seeking to escape it.

When I was governor I tried to get the legislature to do something about the taxation of intangibles. Among the reasons advanced why the legislators would not do anything was that any attempt to tax intangibles under a different system of assessments and at a different rate from real estate was unconstitutional in that it violated the requirement for uniform taxation at true value. Whether unconstitutional or not, this reason formed a convenient excuse for inaction.

### THE NEW TAX CLAUSE

The proposed constitution, however, would remove the excuse. It provides in Article VII, paragraph 4, that "Property shall be assessed for taxes under general laws, and by uniform rules, according to standards of value as may be provided by law but not in excess of true value. . . ." That little change of wording would make all the difference in the world to the New Jersey home owners. Under it the legislature could classify different kinds of property for purposes of assessment at different rates, setting the rates low enough so as not to drive intangibles out of the state but still requiring them to bear a fair share of the costs of government.

Because there are no really good statistics upon the amount of intangible wealth in the state we do not know how much a low tax, of say 2½ or 3½ mills, would bring in to relieve real estate. Somewhere between fifteen and twenty millions of dollars a year, probably.



For this reason alone I should think that every home owner in the state would vote for the proposed constitution. Even if the proposed constitution were not a generally improved constitution—and it most certainly is—should think this would be enough to make any owner of real estate vote "yes" in November.

#### COURT REORGANIZATION

But owners of real estate and dealers in real estate, as well as all other citizens, are also vitally interested in the court system of the state. Sure as often as any other group, and probably more often than most other, your profession has had and will continue to have occasion to appeal to the judicial processes of our commonwealth.

What do they and all other citizens who have to go to law find? A system of courts which has, according to our leading lawyers, "conflicting, concurrent, and overlapping jurisdictions." A system of courts, which, is authoritatively said, is "productive of inefficiency," "cumbersome and unwieldy." Critics have, in fact, exhausted the vocabulary of disparaging adjectives upon it. There is on record the testimony of Professor Theodore M. Marsh of the New Jersey Law School that our system of courts is so confused and confusing that it cannot successfully be explained to students in law schools.

#### MYRIAD OF COURTS

I will not even attempt to explain it. I will only say that the constitution of 1844 establishes or mentions the following courts: A court of errors and appeals; a court for the trial of impeachments; a court of chancery; a court of pardons; a prerogative court; a supreme court; circuit courts; an orphans court; common pleas courts; courts of quarter sessions; and courts of justices of the peace. We have also courts of oyer and terminer; courts of special sessions, county traffic courts, juvenile courts, district courts, criminal judicial district courts, and recorders' courts. I am not sure that I have mentioned them all.

A citizen who gets into them may have his case shunted about from one court to another for years and years, while fees and costs eat up his substance. Let me cite an illustration that was presented in 1942 by one of our leading lawyers to the joint committee of the New Jersey Legislature that held hearings on the proposed new constitution.

If a landowner brings a suit in the Court of Chancery to restrain repeated and continuing trespasses on his property, the Court of Chancery will issue an injunction only if his title is clear. If the Court of Chancery determines that his title is not clear, it will not issue the injunction until the landowner establishes his title by an action in the court of law. This question may have to be carried to the New Jersey Supreme Court; then when the question of title is determined, the landowner can begin again in equity and eventually get his case decided.

#### LAW AND EQUITY

The division of courts into Law and Equity was an accident of English political history. The framers of the Constitution of the United States provided the separation and gave United States courts both law and equity jurisdiction. In 1873 the British themselves merged their court systems into one, rectifying their ancient mistake. New Jersey is one of the three remaining states of the Union that still have a constitutionally separate system of law and equity courts. It cannot be that all jurisdictions are out of step except New Jersey, Delaware and Mississippi. It must be we who are.

#### PECULIARITIES OF OUR COURT SYSTEM

In New Jersey a man must study law and pass the bar examination before he can practice law in the courts, but it is not necessary under our 1844 constitution for a man to be a lawyer to be a judge. All any man needs is to be nominated and confirmed.

Some judges of our courts sit in one, in two, in three, or in four courts. Some carry on private businesses or the practice of law on the side.

There are many other defects in our present judicial system, but I will not take time to discuss them all. The proposed constitution would cure these defects by establishing a unified and simplified system of courts.

#### PROPOSED ORGANIZATION

At the top there would be a Supreme Court, consisting of seven justices, all of whom would have to be attorneys of at least ten years standing, and the Chief Justice would be the administrative head of all the courts in the state. The Supreme Court would have power to make rules governing the administration of all courts. The Supreme Court would be solely a court of appeals.

Under the Supreme Court there would be a Superior Court with not less than twenty-seven justices, at least one from and resident in each county. But if cases should pile up in one county and not in another, the Chief Justice would be permitted to transfer justices from time to time as needed appeared.

Neither law nor equity would be abolished. But the Superior Court would have both equity and law jurisdiction, and it would be able to exercise either whenever justice required it.

Any litigant could go into a state court without fear that he might be in the wrong court. No mere procedural or technical differences between courts could delay or deny justice. Indeed the proposed constitution expressly directs that "every controversy shall be fully determined by the court or justice hearing it."

### FULL TIME JUSTICES

To keep justices out of politics the proposed constitution would require a judge to forfeit his judicial office if he should become a candidate for an elective office. And all justices would be required to give up the practice of law "or other gainful occupation" during their terms on the bench, and would be forbidden to hold any other public office or position of profit.

Further to take justices out of politics the proposed constitution would provide that justices of the Supreme Court should serve during good behavior without limited terms until they reach the retirement age fixed in the constitution. This is substantially the arrangement for federal judges under the Constitution of the United States. Justices of the Superior Court would serve for seven years, and if then reappointed, hold office during good behavior or until retirement.

Ten miscellaneous state and county courts that we now have would be abolished and their jurisdictions transferred either to the Supreme Court or to the Superior Court. The justices and judges now sitting who do not qualify as lawyers of ten years standing would be assigned to the new courts.

### EFFICIENT FRAMEWORK

There are many other points besides those I have mentioned in which the proposed constitution would improve our system of courts. But the two I think, are the most important points. As one of the most respected justices of the present Supreme Court recently said, "On the whole, it seems to me that Article V of the revised constitution provides the framework upon which can be built an efficient court system—something that in the judgment of many persons is an impossibility under the existing constitution." I may add to what the justice said that the new system of courts would also be simpler and clearer, and as free from political interference as could be expected.

The constitutional improvements I have discussed on this occasion are only a few of the many that are made in the proposed constitution. A greater exercise of sovereignty than to change a constitution is conceivable in a democracy, and our generation is unusually fortunate to have the opportunity. Not since 1844 have the voters had the chance that we have this year.

When our fellow citizens in the armed services voted four-to-one for constitutional revision in the referendum last November, they, in effect, directed us at home to put our democracy in order while they are fighting for it in France, in the islands of the Pacific, and on all the oceans of the world. We can, by providing a better state constitution, provide a better democracy to which they will return—one infinitely more able to meet the needs of post-war New Jersey. Every citizen, every home owner, should vote "yes" on the referendum in November and should urge all his friends and neighbors to vote "yes" as well.

### MORE BUSINESSLIKE GOVERNMENT UNDER A MORE FLEXIBLE CONSTITUTION

Address, Salem Rotary Club—Salem Country Club, 6:30 P. M., and  
Sproptomist Club—Fort Elfsborg Club, 8:30 P. M.  
June 28, 1944

All of us these days are following with intense interest the progress being made by our fellow citizens now fighting in foreign lands. Most of us can hardly hold ourselves to our daily jobs because of our desire to get the latest news on the radio. It is difficult for us with great events occurring to bring ourselves down to earth and to think about our own problems here at home.

We must do so, however. We buy bonds and give blood and work for the Red Cross, and all that is fine and necessary. But we must keep our country going, so that those men and women who are fighting for it will return to find as good a democracy as they left—and if we can improve they should return to find a better one.

I say this because I want to direct your attention tonight to a tremendously important problem of democracy right here at home. It is one that is in our hands. I suppose that we could discuss the progress of the war, the subject that is uppermost in everybody's mind. But since we are not under General Eisenhower's confidence and therefore have no unusual facts at our command, I doubt if our discussion could be very profitable; whereas a discussion of the democracy of New Jersey can be as profitable as we make it. The facts are all available to us.

### PUBLIC EMPLOYEES

I should like to begin tonight by taking up Article VI of the proposed constitution, the article on public officers and employees, much of which is entirely new.

It may surprise you to hear that only twenty states, of which New Jersey is one, have civil service or merit systems covering the whole state government. Our system was established in 1908, and while it has never worked to perfection—and the investigation last year showed that its administration is still far from perfect—still it is better than the old spoils system. Its failures have not been failures of principle but failures of administration, and those can always be corrected.

### NEW CONSTITUTIONAL PROTECTION

Our system, however, has always rested only on a statute. There has been the constant danger that some year 31 assemblymen and 11 senators might be found who would abolish the whole merit system in order to place their political adherents in jobs. Such sweeping repeals have oc-



curred in other states, and we have seen our own legislature do some very surprising things. The proposed constitution would take the matter out of the hands of the politicians and would protect the merit system by constitutional requirement. This would indeed be a great step forward protecting public employees. The new provision reads:

In the civil service of the state and all of its civil divisions, all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions shall be made according to merit and fitness to be ascertained, insofar as practicable, by examinations, which, so far as practicable, shall be competitive; except that preference in the appointment of persons who have been or shall have been in active service in any branch of the military or naval forces of the United States in time of war may be created by law.

Only six states now have constitutional civil service, and if the proposed constitution for New Jersey is adopted our state will deserve to rank among the most progressive in this regard. Public employees should greet the charge that they are losing merit protection with scorn in view of the great advance. So much for civil service; now let us turn to another subject.

#### LEGISLATIVE INVESTIGATION

You may have heard or read somewhere that the old mayor of Jersey City, Frank Hague, is opposed to the proposed constitution. He has advanced a lot of so-called reasons, but his opposition might possibly be caused chiefly by section III of Article VI of the proposed constitution. Back in 1928 a committee of the legislature, now famous in New Jersey political history as the Case Committee, sought to find out from the mayor about certain sums of money; about certain pieces of real estate; and among many other things, about horse race gambling in Hudson County. To a long series of questions the mayor had but one reply, "I decline to answer."

For his refusal to answer he was charged with contempt of the legislature and arrested; but in the famous case *In re Hague* the Court of Errors and Appeals held that the legislature had no right to investigate illegal acts by a municipal officer, for, they said, that is solely a judicial function, and they released the mayor.

A legislative body cannot be expected to pass wise laws to forbid various schemes of public plunder unless the legislators can investigate and prove that illegal acts exist—to prove that present laws are inadequate. We ought not to have our representatives limited to the investigation of legal acts merely; it is the illegal acts that need to be exposed and prevented. And that is the way most courts, state and federal, have looked at the question.

The framers of the proposed constitution have sought to restore to the legislature the power that was taken away from it in the *Hague* case. The

new section gives such a good clue to so much of the opposition to the draft constitution that I should like to read all of it to you, even if it is a mouthful of legal language:

The Legislature may by concurrent resolution and either house thereof may by resolution constitute and empower a committee thereof or any public officer or agency to investigate any and all phases of state and local government, or any part thereof, the fidelity of any public officer or employee, or the performance of any public office, employment or trust. No person shall be privileged from testifying in relation to any such matters, and upon so testifying he shall be immune from criminal prosecution with respect to any matter to which such testimony may relate unless he has waived such immunity. Any person holding public office, position or employment who shall refuse or willfully fail to obey any subpoena lawfully issued by such investigating committee, officer or agency, or who shall refuse to testify or to answer any questions relating to any matter under investigation, or who shall refuse to waive immunity from prosecution with respect to any matter upon which he may testify, shall thereby become disqualified to continue in his office, position or employment, which shall forthwith be deemed vacant and he shall be ineligible to hold any public office, position, or employment.

Had this provision been in the constitution of 1844, and had Mayor Hague declined to answer the Case Committee, his office as mayor of Jersey City would have been vacated, and he would today be ineligible to hold any public office.

But with such a provision as this in the proposed constitution his opposition would naturally be expected. Perhaps, even today, he shudders at the thought of what would have been his fix had such a provision been in our hundred-year-old constitution. The very reasons, however, that have led the old mayor and other bosses to oppose the constitution should lead citizens who favor democracy and who oppose dictatorship to vote against it. Perhaps we may estimate the value of this proposed constitution by the enemies it has made. Indeed, in a great many respects this draft gives no comfort to our home grown dictators of either party. We may count upon their opposition, with all their financial and political resources thrown in.

#### FINANCES

A word about how the proposed constitution would improve the financial operations of the state government as students of public finance have long recommended that they be improved. We have had in the past one fiscal year for the highway department and another for all the other departments and agencies. The proposed constitution would require one fiscal year for all departments. That, I am sure you will agree, is only common sense. No business could tell where it stood if different parts of the government operated on different fiscal years.

In the past many of the revenues of the state went into special funds, some of which were handled directly by the agencies controlling the funds, so that the money did not appear in the governor's budget. This haphazard financial practice will be abolished if the new constitution is adopted,

for it provides that "All revenues of the state government from whatever source derived, including revenues of all departments, agencies, and offices shall be paid into a single fund to be known as the General State Fund and shall be subject to appropriations for any public purpose. . . ." There are certain necessary and proper exceptions in favor of trust funds; funds earmarked for any county, municipality or school district; and funds such as hunters' license fees which must be segregated in order to receive a federal grant.

#### AMENDING CLAUSE

Now let us turn briefly to another subject. The last important matter that I wish to take up is the amending clause. Our present constitution is extremely difficult to amend. A proposed amendment to the constitution of 1844 must pass each house of two successive legislatures and must then be approved by the people at a special election, which costs about \$750,000. As a living document any constitution should be more easily amendable than that. It must keep up with the times. It must not fix upon all future generations the political ideas of the drafters.

In proposing what will become, I hope, the constitution of 1944, the legislature made the process easier. The draft constitution would require that any amendment or amendments receiving an affirmative vote of three fifths of the members of each house of the legislature would be submitted to the people at the next general election. It would eliminate an extra session of the legislature and the costly expense of \$750,000.

Any way you look at it that process would be simpler, quicker, easier and less expensive than the present constitutional requirements, yet not too easy. Even if the proposed constitution is not as easy to change as ought to be, still it is easier than the 1844 constitution. We have not gone as far as we might, but still we have taken important forward steps. We had to wait for the perfect constitution we should wait forever.

#### 1944 vs. 1844

On the whole, the constitution that the legislature of 1944 drew up and submitted to the people is much better than the constitution of 1844. It would provide a more responsible, more simplified, more workable state government. It could be a less expensive, less wasteful state government.

The proposed constitution has kept all the good features of the 1844 constitution. It contains numerous material improvements; in no respect is it worse than the present one; so that all of us have everything to gain and nothing to lose by its adoption.

Any citizen sincerely devoted to democracy can vote "yes" on the referendum in November in the belief that the proposed constitution will provide a better democracy for citizens at home and for our fellow citizens now fighting abroad. And this proposed constitution, I am sure, will provide a better government for thousands of citizens yet unborn who will live and prosper under an improved state democracy.

#### THE CLIMAX OF THE BATTLE FOR BETTER GOVERNMENT IN NEW JERSEY

Address, Atlantic Rotary Club—Atlantic City  
July 11, 1944

The campaign to obtain for ourselves and for generations yet unborn a new state constitution adequate for the needs of modern life is approaching its climax this summer. Just as the war for freedom in Europe and the Pacific seems to be approaching its decisive hour, so the long struggle for an improved and effective democracy in New Jersey nears its culmination. It seems to all of us appropriate that the forces of democracy should push forward on many fronts at once.

In spite of the amount of credit that has been given for the present success of the campaign for constitutional revision in New Jersey to those who have been active the last few years, it is a simple historical fact that the movement is older than any of us alive today.

I took up the task where my predecessor had left off; and Governor Stokes carried on when my term of office expired. Constitutional revision has been urged by a majority of our governors since the Civil War days—by Republican and Democratic governors alike.

#### MANY GOVERNORS URGED REVISION

The broken down constitution under which we struggle to govern ourselves was drawn up exactly one hundred years ago. But it had not been perfect thirty years when Governor Joel Parker urged its revision. He was the legislature that less than thirty years' experience had demonstrated its inadequacy to the needs of his day. Mind you, it was inadequate in the 1840's!

Governor Robert Green in 1886 and Governor Franklin Murphy in 1904 urged upon the legislature the necessity for revising the constitution of 1844 throughout. Governor Stokes and Governor Fort also attempted to obtain fundamental constitutional changes.

#### WOODROW WILSON

Governor Woodrow Wilson recommended to the legislature a complete constitutional overhauling. He said:

"The constitution of the state needs reconsideration in a score of parts, some of them of the first consequence. No doubt its provisions were considered wise and suitable at the time of its adoption;



but that was quite two generations ago, and the circumstances of our life have altered fundamentally within that time, politically, socially, economically.

"The powers of corrupt control have an enormous and abiding advantage under our constitutional arrangements as they stand."

I repeat for your special attention that last sentence of Wilson's: "The powers of corrupt control have an enormous and abiding advantage under our constitutional arrangements as they stand." That statement is just true now as it was in Wilson's day.

#### "POWERS OF CORRUPT CONTROL" AGAINST REVISION

The corrupt political machine manipulators did not want an improved constitution then, and they do not want it now.

They are very happy and smugly satisfied under our century old constitution. Good government is not merely electing good men, nor is government merely the result of the election of bad men. Rather, good government results when good men are elected and are aided in giving service by good laws and not frustrated by obsolete laws or constitution.

This fact is no secret, understood only by those who seek to improve our democracy. It is understood just as well by the bosses, who do not want to have their control disturbed. They know that even though good men are elected to office, they can hamstring such office holders if the present constitution is retained.

And for that reason largely they are opposed to the proposed constitution. While they are filling the air full of dust with their absurd objections to it, they really are opposed to it because they recognize it for what it is—a basic menace to their "enormous and abiding advantage," in the words of Governor Wilson.

Bosses are opposed to any constitutional change, and they did their best to defeat the referendum of last November before they even knew what constitutional changes would be offered. And it is worth noting that in the counties of Hudson and Ocean—both boss-shackled—voted against the referendum.

In all the other counties, the bosses were brushed aside by the vigorous action of the voters. In Atlantic County, for example, you will recall the referendum carried by more than 8,600.

#### AMENDMENTS NOT ENOUGH

Not only have a majority of our governors sought substantial constitutional changes, but they have generally felt that constitutional reconstruction could not be accomplished by amendment.

For example, my predecessor as governor, Honorable A. Harry Moore, in a message to the Legislature of 1927:

"I am opposed to piecemeal changes in or amendments to our constitution. That instrument is so archaic and so inadequate to meet the conditions of the present day as to require a complete revision."

That statement is just as true now as it was when he made it—time only produced additional evidence.

Following the mandate of the people of last November, the legislature submitted a complete revision. It is not perfect, as no document ever framed by human hands is perfect. But the legislature followed largely the recommendations of the Commission on the Revision of the New Jersey Constitution that was appointed during my term as governor.

In not one respect, as far as I know, is the proposal worse than the constitution of 1844, and in scores of respects it is better. The people will therefore have nothing to lose and everything to gain by voting "yes."

Even though the proposed constitution forms only a thin pamphlet, I will not, without keeping you all afternoon, discuss each of the improvements in detail. I hope that every citizen before he makes up his mind in November will read the proposal carefully and compare it point by point with the constitution that we have—the one that was adapted to New Jersey as it was a century ago.

I do not believe that any citizen who sincerely has the welfare of the State at heart can make this comparison and not determine to vote "yes" in the referendum in November.

#### HIGHLIGHTS OF REVISION

In a brief and summary fashion we may say that the proposed constitution will be superior to the constitution of 1844 in these important respects:

First, it will effectively reestablish the separation of powers among the great divisions of government, the legislative, the executive, and the judicial.

The framers of the constitution of 1844 intended to establish this separation, but because they failed to prohibit the legislature from encroaching upon the power of the executive, the governor's normal powers have, over the years, whittled away until he is little more than the ceremonial head of the state government. Whatever he is able to accomplish depends on factors other than constitutional authority.

While the legislature was trespassing upon the field of executive authority, the courts in the famous case *In re Hague* took away from the legislature one of the fundamental powers that all legislative bodies need—power to investigate illegal acts.

Without going into details, I may say that although the proposed constitution would confine the legislature within the field of legislation, it would restore to the legislature the power to investigate legal as well as illegal acts—and that power to investigate is feared by the “powers of corruption” mentioned by Governor Wilson.

The proposed constitution would get us away from the annual election for assemblymen by giving them, as most states do, two-year terms, senators four-year terms. It would increase their salaries from \$500 a year now paid to \$2,000 a year.

Many of the powers of the legislature would be strengthened. The whole military organization of the state, for example, would be made subject to legislation instead of having the 1844 ideas of military organization frozen in the constitution.

The powers of the governor would be strengthened. He would be actual head of not more than twenty state departments. In these departments there would be constitutional civil service so that appointments and promotions would be according to merit and fitness.

The governor's veto would be strengthened by requiring a three-fifths (instead of a bare majority) vote in each house of the legislature to override it. The time allowed for him to consider bills before signing or vetoing would be extended from five to ten days, and at the end of a session (when bills come pouring out of the legislative mill) he would be allowed 35 days.

The governor's term of office would be four years instead of three, and the elections for governor would be held in the even numbered years between presidential elections, so that the decisions of the voters on state questions could be separated as much as possible from their decisions on national questions.

The proposed constitution would sweep away completely our complicated and confused system of courts. Ten courts would be abolished or merged, and in their place there would be only two; a Supreme Court that would really be supreme and a Superior Court that would have at least one justice in each county.

The Chief Justice of the Supreme Court would be the administrative head of the state judicial system with the authority to assign justices to the Superior Court among the counties, as needs arise.

Finally, the proposed constitution would be easier than our present one to amend. An amendment must now pass each house of two successive legislatures and then it must be accepted by the people at a special election; that is, an election called for the single purpose of voting on the proposed amendment.

Such elections now cost around \$750,000 apiece. Instead of this very expensive and extremely difficult system, an amendment to the proposed constitution could be submitted by a three-fifths vote of each house of the legislature, and the people could pass upon the amendment at the next general election.

have this afternoon undertaken to give you only the highlights of the proposed constitution. It would take me several hours to discuss the changes that are offered in the draft constitution.

But if questions occur to you later, you should feel free to write to the New Jersey Constitution Foundation, 790 Broad Street, Newark, for copies of the proposed constitution and for analyses of it and comments on it. That organization exists for the single purpose of providing information upon constitutional problems in New Jersey to citizens of New Jersey.

### VOTE “YES”

All of us should look upon the vote in November as a unique opportunity for those of us who cannot fight for freedom abroad to do something important for it at home. We should show our fellow citizens who are in the armed services that we want them upon their return to have a better government than the bungling, irresponsible and inefficient one they left behind.

We want a constitution, above all, more capable of meeting the needs of the post-war New Jersey. For democracy to survive, constitutions must remain changeless in a changing world, but they must progress and keep pace with the times.

We are hopeful that the members of Atlantic City Rotary Club will vote “yes” and will work for and urge their friends and neighbors to vote “yes” in this important referendum at the November election.





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