

discretion to do or not do things. The word "shall" gives it all to the Supreme Court. And I am unwilling to do that and I would oppose Senator Brown's amendment.

SENATOR WILL: Thank you, Senator Wickersham. Senator Kristensen on the Brown amendment.

SENATOR KRISTENSEN: Thank you, Mr. President, members of the Legislature. I want to go a little bit into what we did in committee about one part of this amendment. You'll see in Senator Brown's amendment and quite frankly her amendment brings up a real good discussion point that we discussed. If you'll look at hers on line 8 of her amendment and line 9, we replace "may" with "shall." It seems like a fairly simple change. But if you read that literally, and this is on the very first part of the constitutional amendment, right now the wording says "The Legislature may provide for the merger or consolidation of counties or other local governments." Now read it with the change, "The Legislature shall provide for the merger or consolidation of counties and other local governments." The Legislature shall provide for the consolidation or merger of counties. How many...our problem was in committee when you say shall, how many counties do we merge? Worse yet, that language would require mandatory school consolidation. That was our fear. It says that the Legislature shall provide for the merger of other local governments which include the school districts. How many school districts should there be? And when that's a constitutional direction that forces you to go do that, we have no way and only the courts are going to tell us how far. Our biggest danger is that we put that in as "shall" and somebody would file a lawsuit against us and say, Legislature, you're supposed to merge these schools. You've not done it. You're supposed to merge these counties. You've not done it. And that they're going to begin to really hammer on us and thus the words "may" were put in there. If I was on the other side of this what I would say is, look, the Legislature will never do it. They don't have any resolve to do this. I'll tell you that's the reason 1085 is there. As you saw the commitment that's here to go out and do mergers, I think it's extremely dangerous to put the word "shall." The other provision that I had some control with or some trouble with was where we're going to require a vote of the people in each local government. Right now we have a majority vote if we're going to merge a city and/or a county because those are your major government units.