

merely a procedural matter as you view it.

SENATOR MATZKE: No, I think the question of whether other courts acknowledge a decision of the Court of Appeals as precedence establishes a procedure which is binding upon lower courts and, therefore, is a procedural matter.

SENATOR CHAMBERS: Thank you. Members of the Legislature, that's why a lot of people don't follow lawyers' discussions because when they've spoken, they haven't really said anything in some instances. This is not just a matter of procedure, telling you which court to file a case in, what steps you have to go through to file it, and what the consequences are if you miss a filing date or whatever. This is saying that, in effect, the appellate court makes law in a given case, and it remains the law in that case until the Supreme Court says otherwise. But in talking about the circumstances, when the appellate court does this, the Legislature doesn't say when that occurs. The appellate court does not have to accompany any order with a memorandum opinion if it chooses not to. And if it doesn't, then none of its opinions have precedent-setting power. So we're going to, by legislation, give more discretion to the appellate court, if that's what we have the power to do, than we're going to give to the Supreme Court. That's what we're being asked to do. We can dictate to the Supreme Court but not to the appellate court. We can't tell the appellate court, you shall accompany every order with a memorandum opinion, and these are the elements you shall consider in issuing this memorandum opinion. We didn't say that in the existing law.

SENATOR BERNARD-STEVENS: One minute.

SENATOR CHAMBERS: All of that is may. The appellate court may do whatever it wants to but, on the other hand, we're going to come to the Supreme Court and say, the Supreme Court shall view these appellate court decisions in a certain way. That's what we're saying. We're not saying how these lower courts are to regard these opinions. We're trying to overturn a Supreme Court decision by saying, this is how the Supreme Court shall regard these decisions by the appellate court. We insist that they regard them this way. And the way we want them to regard them is to let them be precedent-setting, and the Supreme Court has no power to change what the Legislature has said about the question.