

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

March 5, 2003 LR 11

petition by the public, the court is going to say that every word must be given meaning, but it may not necessarily make sense, because there's no way to determine what people had in mind when they signed the petition. There is no legislative history or any history anywhere that would say why a petition was signed, or even any reliable evidence as to why it was circulated. Most people who circulate petitions have an agenda which they do not openly declare to the public. On the other hand, as a Legislature, we produce a legislative history. The debate is utilized to try to figure out where the Legislature was going, what the Legislature meant, when you come to language that is not clear on its face as to what it means, or even why it is there. And if the legislators say there was no purpose in it, that is not going to excuse the court from giving it meaning. Because it's not the court's job to add to what the Legislature lays down, or to take away from what the Legislature has done. On occasion, the court will say that the Legislature ought to have done a better job, or this is not clear, it is not consistent, then add that in construing a statute, and especially a constitutional provision, words have to be given their ordinary meaning. So if we have a collection of words here that don't mean anything, why put them into the constitution? This is what would remain if my amendment is adopted: "Nothing in the Constitution of Nebraska shall be construed to prohibit or restrict gaming operated by a federally recognized Indian tribe in Nebraska," period. That's all you need. So I want to strike that language. If it were left to me to craft language for this proposed amendment, I would bring together the two groups that were apparently at odds over the form this amendment should take. I would have each side tell me what it is that side thinks the agreement was. Then I would ask both of them to look at this and tell me, is this what the agreement is? This is what your purpose is? And if both sides said, yes, then I would give them some language that would accomplish that purpose clearly. But if the idea is to leave some wiggle room, then you take language that can have more than one meaning, be interpreted more than one way, and leave it to litigation on a case by case basis, to the court, to resolve each case that comes up. And as a result of that case being decided, a definition or a meaning will be given to the words that are in dispute. Any time a constitution is written, any