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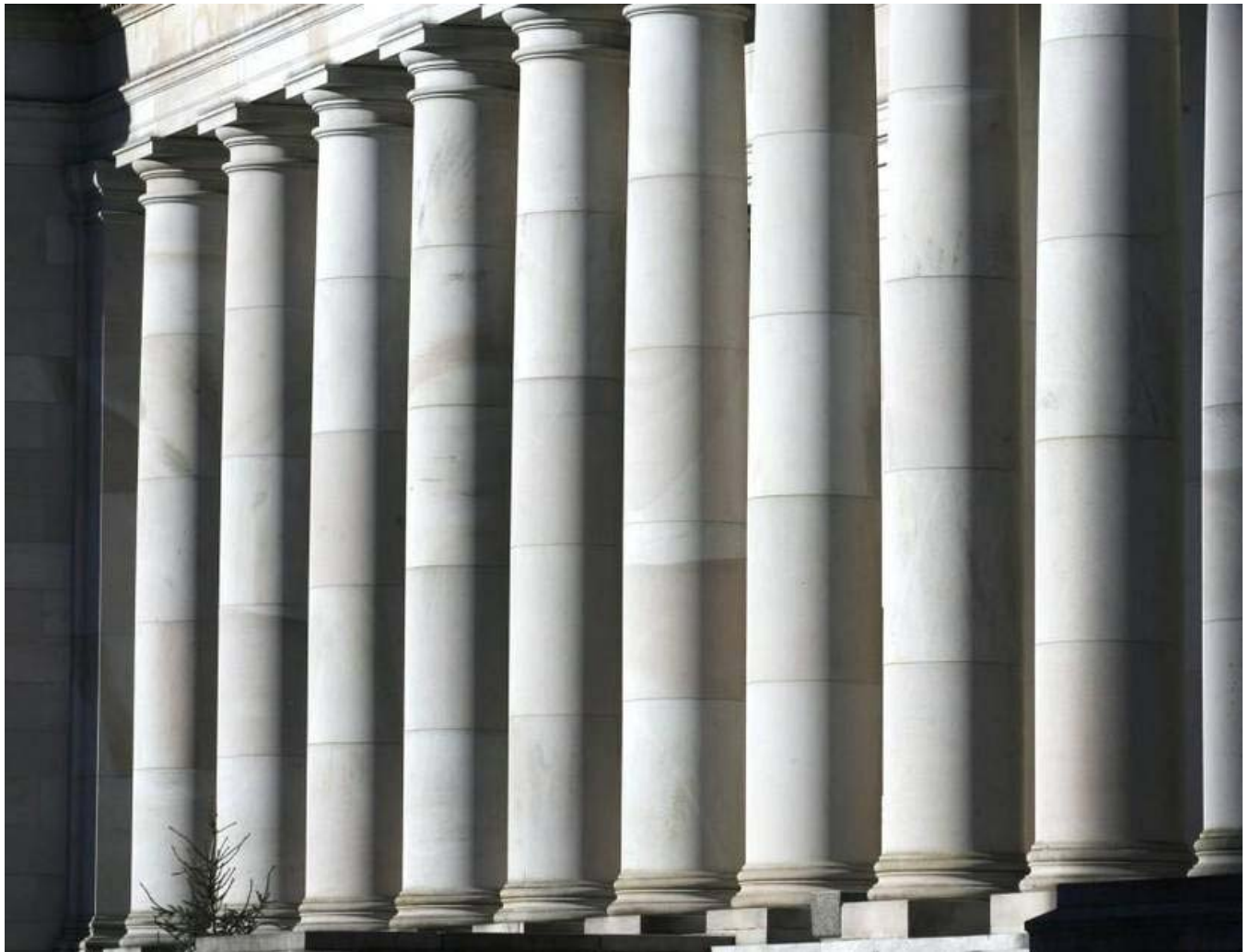
Controversial school-funding rulings prompt crowded Supreme Court races

HIGHLIGHTS

First time since at least 1990s that 3 justices face opponents

All disagree with court's rulings on McCleary case, charter schools

Recruitment effort helped encourage like-minded challengers



BY MELISSA SANTOS

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Law professor David DeWolf hasn't been shy in declaring that Washington's high court has veered into dangerous territory.

The Gonzaga University professor has testified to that effect three times before a legislative committee, at the invitation of a Republican state senator who agrees the state Supreme Court has gone too far in the 2012 school-funding case known as McCleary.

Now, DeWolf is one of three candidates looking to unseat sitting justices on the court, encouraged by a conservative-led coalition that thinks the judiciary needs to take a step back.

A coordinated recruitment effort has helped make 2016 the first year in recent memory that all three justices up for re-election are facing challengers. In every state Supreme Court election since at least the 1990s, at least one of the justices facing re-election has run unopposed.

Not this year. In addition to DeWolf challenging Supreme Court Justice Mary Yu, Kittitas County Prosecutor Greg Zempel is looking to replace Chief Justice Barbara Madsen.

Meanwhile, David Larson — a Federal Way Municipal Court judge — is challenging incumbent Justice Charlie Wiggins.

The races are nonpartisan, but all three challengers share the view that the court has failed to respect the autonomy of the Legislature by holding the state in contempt in the McCleary case — a criticism frequently lobbed by Republican lawmakers over the past two years.

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I THINK ONE OF THE REASONS THE COURT WENT SIDEWAYS IS BECAUSE THEY WERE ACCOUNTABLE TO NO ONE AND THEY WERE NEVER GETTING CHALLENGED.

State Rep. Matt Manweller, R-Ellensburg, who helped recruit challengers to some of the state Supreme Court justices

The three judicial candidates also take issue with the court's 2015 decision striking

down the state's voter-approved charter school law.

Some hope the crowded election could influence the court's actions even before November.

State Rep. Matt Manweller, R-Ellensburg, said he thinks the mere threat of unseating a justice will make the court think twice about piling on more sanctions in the McCleary case. Last year, the court began fining the state \$100,000 a day over the Legislature's failure to produce a detailed plan to fully fund public schools by 2018.

An outspoken critic of the court, Manweller was active in recruiting DeWolf and Zempel to run, and also reached out to Larson.

Others who Manweller said worked to recruit judicial candidates included former Republican U.S. Sen. Slade Gorton and former Democratic state Sen. Rodney Tom, who until recently led a Senate coalition of mostly Republicans.

"I think one of the reasons the court went sideways is because they were accountable to no one and they were never getting challenged," Manweller said.

"My hope is at a minimum it causes them to pause and reflect."

'WE'VE DONE THIS BEFORE'

Madsen, the chief justice, said it is unusual for Washington's court to retain jurisdiction, as it did in the McCleary case to monitor the Legislature's progress on school funding. The court did so, she said, because a similar ruling in a school-funding case in the 1970s didn't prompt the Legislature to fix the unconstitutional way it pays for schools.

"In a sense, it was the idea that we've done this before, and we did not retain jurisdiction at that time, and we find ourselves 30 years later, 40 years later, with a noncompliant school system," Madsen said.

Zempel, the Kittitas County prosecutor who is challenging Madsen, said he "doesn't have a real ax to grind" on either McCleary or the charter schools case. Many of his concerns about the court relate to the justices overturning legal precedents in criminal cases, which he said makes it hard for prosecutors and law enforcement officers to do their jobs.

Still, Zempel said the court's reasoning in the two high-profile education cases

“made me a little perplexed.”

“It was just another example of where it seems this court is just unpredictable, and they’re willing to not really be bound by the constitution and the statutes that are in place,” he said.

A third candidate challenging Madsen, disbarred lawyer John “Zamboni” Scannell, has run for the court before and wasn’t part of this year’s recruitment effort. A phone call to the number Scannell provided on his campaign filing form reached a voice mailbox that was not yet set up.

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THE BASIC CONCEPT THAT THE COURT CAN ALMOST DECLARE WAR ON THE OTHER BRANCHES OF GOVERNMENT ... THIS IS NOT THE WAY THE BRANCHES OF GOVERNMENT CHECK AND BALANCE EACH OTHER.

David DeWolf, longtime Gonzaga University law professor who is running for the state Supreme Court

DeWolf, who has taught law at Gonzaga for 28 years, said the entire chain of events in the McCleary case shows that the state Supreme Court is venturing into policymaking in ways that are inappropriate. Budget-writing is the responsibility of the Legislature, not the court, he said, as the elected lawmakers are the ones who must balance competing demands for state resources.

“The basic concept that the court can almost declare war on the other branches of government and force them to either violate the court’s order, or do these really destructive things like shut down the schools — this is not the way the branches of government check and balance each other,” said DeWolf, who is retiring from Gonzaga this year. “It’s not healthy.”

Yu, who became a justice in 2014, dismissed concerns about the court usurping the role of the Legislature as “fabricated.” She said the court has given lawmakers plenty of leeway to decide how they’re going to solve education funding problems.

“If we were really telling them how to fund it, we wouldn’t be where we are,” Yu said. “Stepping over the bounds would be us saying, ‘Here’s where you should take \$10 million.’ We haven’t done that.”

In Larson's case, he decided to run against Wiggins primarily because he thinks the Supreme Court misinterpreted legal precedent when striking down charter schools last year.

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State Supreme Court Justice Mary Yu

But the Federal Way judge also worries the court is violating the separation of powers in government. He said the court's overreach in the McCleary case has actually made it more difficult for lawmakers to solve school-funding problems.

“If all of a sudden another party comes and says, ‘Do it or else,’ it skews the debate,” Larson said.

Yet Wiggins, who was elected to the court in 2010, said he's proud of what the court has done in McCleary. He said it's the court's job “to look out for those who can't look out for themselves.”

“One of those groups is children,” Wiggins said. “As a matter of justice, I think we had to act in this case.”

LEGAL MINDS AT ODDS

Whether the court has “gone sideways” in McCleary is a matter of debate among legal experts. Andrew Siegel, a professor who teaches constitutional law at Seattle University, said it's common for courts in other states to retain jurisdiction and monitor the progress of government agencies to ensure they follow court orders.

Even after Washington's court justices found the state in contempt in 2014, they waited a year to impose any sanctions, something Siegel said shows restraint and respect for the legislative process.

Other state courts have imposed more severe sanctions in school-funding cases. In New Jersey, for instance, the court temporarily shut down the state's school system in the summer of 1976, leading to the state eventually adopting an income tax.

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COEQUAL BRANCHES OF GOVERNMENT, GIVING THEM LOTS OF TIME AND SPACE.**

Andrew Siegel, professor who teaches constitutional law at Seattle University

In Washington, by contrast, “The court has been extremely deferential, understanding they’re dealing with coequal branches of government, giving them lots of time and space,” Siegel said.

Yet Scott Bauries, an associate professor of law at the University of Kentucky who studies state constitutions, said there’s “at least a strong argument that the court has gone too far” in Washington.

Enforcing an order that guarantees a right to something — like a uniformly funded statewide education system — is more difficult than intervening to halt policies that could do harm, and can result in courts meddling in areas that typically are the province of the legislative branch, he said.

That can result in an escalating standoff where a court is either unable to enforce its orders or is faced with the choice of having to back down — something that would damage the court’s ability to have its orders carry weight in the future, he said.

“It’s almost inevitable to create a constitutional crisis when those orders are issued,” he said.

SOME DEMOCRATS FRUSTRATED, TOO

While Manweller said it’s mostly a conservative group that has taken the lead in recruiting and encouraging Supreme Court challengers, he said plenty of Democrats are frustrated over the court’s rulings — they’re just less vocal about it, he said.

State Rep. Steve Kirby, D-Tacoma, counts himself in that camp. “I would love more than anything to kind of spank the Supreme Court justices for what they’re doing,” he said.

One of the frustrations on the Democratic side, he said, is that the court's education funding orders are preventing the Legislature from investing in other human services, including prisons, homelessness programs and mental health, Kirby said.

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At the same time, Kirby said, he's not sure he'd support any of the judicial challengers right now, partly because he's unfamiliar with where they stand on many other issues.

“... You could be cutting off your nose to spite your face,” Kirby said. “There are worse things than the McCleary decision that could happen.”

State Sen. David Frockt, D-Seattle, said he thinks the court has been fairly restrained so far, but he thinks the justices would step over a line if they took more drastic steps like closing schools.

He questioned whether the election of three new Supreme Court justices would change how the court proceeds in the McCleary case, however. Recent orders sanctioning lawmakers and holding them in contempt were unanimous, 9-0 decisions, he noted.

“It's not clear to me that the election of these new individuals would change the results and cause reversals of these rulings,” Frockt said. “I don't really see these things happening.”

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COMMENTS

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Jim Malone

Charter (for profit) schools is the biggest hoax perpetuated on the citizens of Washington ever. The hedge fund managers are having their way with the tax payers in this incidence and the court is right, funding is for public schools.

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David Cooke

Please stop calling it a "court".

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Celinda Manweller · Boise, Idaho

I share these Washington stories in Idaho as i am confident these injustices could happen to charter schools and budgets anywhere.

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Suzanne Dudziak

Thank you to the opponents who are taking on these incumbents! I don't usually track State Supreme court issues, but when I heard that these justices denied the will of the people of Washington by determining 2 days before school was supposed to start that Charter Schools were according to them illegal, I thought to myself, "Excuse Me??" How dare you overturn our votes? It was that event that made me decide to vote out these overreaching judges. PLEASE vote to replace Madsen, Yu, and Wiggings with judges that will not override the will of the voters of Washington.

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