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Big money fuels contentious Washington Supreme Court races

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State Supreme Court candidates

Position 1

DAVID DEWOLF

Age: 67

Residence: Spokane

Education: Earned bachelor's at Stanford University, teaching credential from the University of California at Santa Barbara and law degree from Yale Law School.

Experience: Professor at Gonzaga Law School for 28 years. Former attorney at Lukins & Annis. Clerked for the Idaho Supreme Court.

Family: Married. Has three children

MARY YU

Age: 59

Residence: Seattle

Education: Earned bachelor's at Dominican University, master's in theology at Mundelein of Loyola University and law degree from University of Notre Dame.

Experience: Incumbent Supreme Court justice since 2014. Spent 14 years as trial judge. Worked for seven years in the King County Prosecutor's Office.

Family: Single

Position 5

BARBARA MADSEN

Age: 64

Residence: Olympia

Education: Earned bachelor's from the University of Washington and law degree from Gonzaga University.

Experience: Member of the state Supreme Court since 1992, chief justice since 2009. Seattle Municipal Court Judge from 1988-92. Also has worked as an attorney in the Seattle City Attorney's office and Snohomish Public Defender's Office.

Family: Married. Has four children.

GREG ZEMPEL

Age: 53

Residence: Ellensburg

Education: Earned bachelor's at University of Washington and law degree from University of Puget Sound.

Experience: Serving sixth term as Kittitas County Prosecutor. Past president of the Washington Association of County Officials.

Family: Married. Has five children.

Position 6

DAVE LARSON

Age: 58

Residence: Federal Way

Education: Earned bachelor's in public administration at the University of Puget Sound and law degree from Seattle University.

Experience: Presiding Judge of the Federal Way Municipal Court. Former president of the Federal Way School Board.

Family: Married. Has two children.

CHARLES WIGGINS

Age: 69

City: Bainbridge Island

Education: Earned bachelor's degree from Princeton University and law degree from Duke Law School.

Experience: Has served on state Supreme Court since 2010. Worked in private practice for more than 30 years. Served in U.S. Army.

Family: Married. Has two children.

Many election years, the races for the state Supreme Court are relatively tame affairs, not much more than a comparison of resumes and some lofty talk about equal justice under the law. Like so many things about the 2016 election, this is not one of those years.

An influx of independent expenditure money from groups angry or happy about some of the state's most controversial decisions, as well as a 2013 change in state election law, has set up three contentious and high-spending campaigns.

Washington has never had a general election in which all the incumbent justices up for re-election faced challengers.

Chief Justice Barbara Madsen, first elected in 1992, faces Greg Zempel, who has spent 22 years as Kittitas County prosecutor.

Justice Charles Wiggins, elected to the court in 2010, faces Federal Way Municipal Court Judge Dave Larson.

Justice Mary Yu, who was appointed to a vacancy in 2014 and elected to what was left of that term later that year, faces retired Gonzaga Law School professor David DeWolf.

Although candidates in judicial races often tiptoe around criticism of past rulings, the court's landmark McCleary decision requiring the state to live up to its constitutional mandates on public schools is front and center in the campaign, and one motivation of the independent money being spent.

On his website, DeWolf has a four-part video series that castigates the court for the 2012 decision. With the Temple of Justice as a backdrop, DeWolf embarks on what seems like a lecture he might give GU students on constitutional law.

The court misread the state's constitution and "led our state to the brink of a constitutional crisis," he said. Some of the options mentioned to force the Legislature into paying for education could result in taxation without representation, he said.

"We're in desperate need of a course correction," he said.

Yu was not on the court when it ruled in 2012 the state must live up to laws the Legislature passed that define basic education, but she has said she agrees with it "100

percent.” She did sign the unanimous decision that ordered the lawmakers to set aside \$100,000 per day as a penalty for failing to comply with earlier rulings.

At a forum in Port Orchard, she said the court was not mandating how public education should be funded, but only that it ought to be funded.

In the Legislature, McCleary has become a strongly partisan issue, with some Republicans criticizing the court for overstepping the separation of powers and introducing bills to cut the number of Supreme Court justices or divide the state in districts to force more geographic diversity. Although the judicial races in the state are nominally nonpartisan, the Washington Republican Party is spending about \$36,500 for independent campaigns to support each of the three challengers.

Zempel is more circumspect in his criticism of McCleary, but he contends the state is nearing a “crisis point” from fights between the court and other government entities.

“This is a court that is throwing its weight around,” Zempel said. “It is not the role of courts to be policymakers.”

He also criticized the timing of the court’s ruling that charter schools, approved by a voter’s initiative, didn’t have a constitutional source of state money. The decision was announced just days before the 2015 school year started.

Zempel is getting a boost of about \$130,000 from Stand for Children, a political action committee that supports charter schools, and another \$100,000 from Judicial Integrity Washington, a PAC run by former state Sen. Rodney Tom of Medina, who served as a Republican and a Democrat. He also has collected some \$350,000 from Ken Fisher, chief executive officer of an investment firm and major donor to state Republican committees, and \$50,000 each from Kemper Freeman, a Bellevue developer, and John Stanton, CEO of the Seattle Mariners.

Judicial Integrity is spending \$350,000 against Wiggins, part of it on commercials criticizing him for a ruling in May that overturned the conviction of a pedophile because police investigators had not followed the rules for informing him of his rights surrounding a consensual search. Wiggins wrote the decision that upheld an appeals court finding that Michael Budd wasn’t properly informed before officers entered his home without a warrant that he could end the search at any time. The appeals opinions indicate it was a close call based on a 1998 court ruling about consensual searches. The appeals court in Spokane split 2-1 and the Supreme Court 5-4, with Madsen and Yu voting no.

Budd recently was charged with soliciting sex from a minor after being arrested in a Yakima park where he thought he was meeting a 14-year-old girl he’d corresponded with online. In fact he was contacting a detective as part of a police sting.

In a recent interview with the Seattle Times, Wiggins said the right to privacy is “one of our most cherished liberties” and focusing on one case is a distortion of his record.

He doesn't shy away from McCleary and has said he was proud to have signed that decision.

Larson, his opponent, is more generalized in his criticism of the court than the other challengers. But he does say some recent decisions are "driven by personal or political agendas" and people are worried the court has "lost the public trust. He also cites his stint as a former school board president as giving him unique insight on issues before the court.

The incumbents have independent backers of their own. Each has received about \$9,300 from the Know Your Ballot PAC, which is funneling money from the Washington Education Association, which is a big fan of the court's McCleary decision, and groups that support raising the minimum wage. They also are getting about \$2,500 from Planned Parenthood Votes, the political arm of the women's health provider.

This is the first time since 2006 that significant amounts of money were dumped into independent campaigns against sitting Supreme Court justices. In that year, the Building Industry Association of Washington and some of its allies, along with a group calling itself the Committee for Religious Freedom, tried to unseat Justice Gerry Alexander and Justice Susan Owens. The incumbents got independent support from a PAC that collected money from Native American tribes, unions and some law firms.

Alexander and Owens were re-elected, and the Supreme Court elections since had been lightly contested until this year. That's not unusual, said Calder Burgam, a researcher for the National Institution for Money in State Politics who has studied judicial races across the country and says most are "pretty sleepy."

"In specific races, when the interest is there (independent expenditures) can have an effect," Burgam said. Donors "will dump money one year and disappear the next."

One difference for the Washington Supreme Court, however, is a change the Legislature made in 2013 to the way justices are elected. In 2006, the law said justices who have a challenger must run in the primary, and if any candidate got a majority of the vote, he or she advanced to the general election ballot alone. Incumbents often came out on top in such primary contests.

Under the new law, a Supreme Court spot is only on the primary ballot if it has at least three candidates, and even if one of them gets a majority in that election – as Madsen did in August – the top two vote-getters advance to the general election. If there are only two candidates for a position, they fight it out in the general election, when far more voters are likely to cast ballots.