

State's chief justice won't contest moving on to general election with opponent

Madsen Steve Bloom Staff photographer

By Walker Orenstein
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For a time, Washington State Supreme Court Chief Justice Barbara Madsen thought her runaway lead over two opponents in the August primary election might send her unopposed into the general election.

She was [unsure in early August](#) whether old election rules for judges — which said candidates who got more than 50 percent of vote in the primary didn't have to face a challenger in the general election — still applied in this year's election.

Now Madsen says she's accepting the opinion of the Secretary of State's Office that, yes, she will face second-place primary finisher Greg Zempel in November.

"I'm not prepared to dispute that with the secretary of state, so that looks like what's going to happen," she said last week.

The confusion arose because the Legislature twice amended the old judicial election law in the 2013 legislative session.

One amendment tweaked the statute while keeping it valid. The other got rid of the provision, making candidates for the high court subject to the top-two primary system used by other elected offices.

The two amendments seemingly disagree, which creates a situation Madsen, in August, called confusing, "at a minimum."

"It's kind of odd because both are in the books — you know?" Madsen said last week. "What do you do with that?"

A state law for such a conflict states that the amendment last filed with the Secretary of State's Office trumps the other.

In August, Secretary of State officials told The News Tribune the top-two system applies to Madsen, and that Zempel would go on to the general election.

But Madsen said she wanted to hear directly from the office before giving her opinion on the conflicting amendments.

Zempel, on the other hand, “was never in doubt about the fact we were moving on” after checking on the election law with the Secretary of State’s Office before primary election night.

Madsen’s legal questions following the primary, he said, were “fairly interesting for the person who’s the chief of the court who’s supposed to know the rules.”

Political action committees, including charter school proponents, spent heavily to buoy Zempel in the primary.

Madsen authored last year’s state Supreme Court decision to declare the charter school system unconstitutional, a ruling Zempel has been critical of.

One PAC in support of charter schools, Stand For Children, dropped about \$130,000 on independent expenditures such as digital advertisements in favor of Zempel in August and early September, according to the state’s Public Disclosure Commission. The PDC tracks election spending.

The PAC Judicial Integrity, funded by [Camas billionaire Ken Fisher](#), pitched in \$100,000 on independent expenditures to help Zempel, too.

Despite that, Madsen, first elected to the high court in 1992, picked up 63.9 percent of the primary vote compared to Zempel’s 29.7 percent. A third candidate, John “Zamboni” Scannell, tallied about 6.4 percent of the vote.

Zempel said that when facing an incumbent “you know that you have an uphill battle to begin with, but we’ve been really encouraged with what’s happened so far.”

With the confusion over the primary results cleared up, Madsen said she’s looking ahead to the general election and doing the normal campaign work of a judicial candidate.

But had the old rules applied?

“I would have had a party weeks ago,” Madsen said.

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