

Editorials SEPTEMBER 9, 2015

Charter school law needs reworking



The Olympian

The Washington Supreme Court has done it again. It threw a legal curve at the state Legislature, this time by declaring that a charter schools initiative is unconstitutional. A key flaw: state funding goes to schools that are not subject to local control.

But the nine affected charter schools, including three in Tacoma, apparently won't go out of business right away. The ruling doesn't take effect for almost 30 days, a lower court still has action to take, and charter advocates expect to ask the court to reconsider its split decision.

Perhaps more important, the Washington State Charter Schools Association revealed this week that it has private funding — from unidentified donors — to keep the innovative schools operating through June at a cost of about \$14 million.

Charters, which promise better academic achievement for some, have been a darling of rich reformers from the beginning — with \$3 million from Microsoft co-founder Bill Gates and mega-contributions from other wealthy people helping to put Initiative 1240 on the ballot in 2012. After rejecting other charter proposals three times, state voters narrowly passed I-1240. The lawsuit to overturn it was brought by the League of Women Voters, El Centro de la Raza, Washington Association of School Administrators and the Washington Education Association representing teachers.

I-1240 allowed up to 40 such privately run schools to run under state-sanctioned charters in a phase-in over several years, but that law is now toast.

The latest donations may buy time for the schools to operate privately while the state Legislature tries to clarify the law. About 1,200 students are affected statewide.

But the 6-to-3 opinion handed down on the eve of a new school year Sept. 4 went further than a lower court in King County that also found the ballot measure was flawed.

Hugh Spitzer, who teaches state constitutional law at the University of Washington's law school, said the surest way to fix state law in response to the new court ruling is to redefine charter schools so they are under the control of school boards. This would mean the hiring of a principal must be approved by the local superintendent, and rules applying to common schools still would apply to charters. This would, in effect, make charters more like traditional alternative schools but "on steroids," Spitzer said.

A legally riskier legislative solution, Spitzer said, would be a new state budget allocation that comes from outside the general fund that pays for common schools.

Some groups such as the Charter Schools Commission and a few lawmakers from both the Republican and Democratic sides want Gov. Jay Inslee to call a special session to fix the law. That seems premature.

The court's ruling follows the landmark 2012 ruling in the McCleary school funding case, which said the state was failing to meet its paramount duty under the state Constitution to amply fund basic education. Some observers have speculated that the charter schools ruling puts at risk funding for other non-basic education programs too – such as Running Start, which lets high school students attend community college, vocational skills centers and tribal compact schools – at least until the state's full funding of basic education in grades K-12 is met.

In a follow-up on McCleary, the nine justices agreed unanimously in July to fine the state \$100,000 a day for its failure to outline a plan for full funding and to end public schools' over-reliance on local, voter-approved school levies. Levies give richer districts and their students a leg up on those from poorer districts.

Perhaps the charter ruling can help drive lawmakers back to face this bigger dragon that the court wants them to slay: full and equitable funding for K-12 schools.

If so, the charters ruling – and the apparent reprieve for charters that is provided by the private donations – can be a good thing.

– By Brad Shannon for the editorial board.



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