

Editorials SEPTEMBER 11, 2015

Charter school ruling detours into Wonderland

The News Tribune

The state Supreme Court's recent mugging of Washington's charter school law is so dead, flat wrong that it cries out for reversal – by the court if it comes to its senses, by the Legislature if it doesn't.

Almost 1,300 students and their parents – real flesh-and-blood people – have had their academic years disrupted by this ruling, which threatens the existence of their schools and kills an initiative approved by the voters in 2012. The court released the decision late Friday afternoon just before the Labor Day weekend – timing normally associated with embarrassing announcements from politicians about to duck out of sight.

The court ought to be embarrassed by its majority opinion, signed by an embarrassing six justices.

Start with the fact that, with only the partial exception of Georgia, other appeals courts have rejected the argument our high court swallowed: that charter schools are forbidden public funding. Judges elsewhere have noted that charter schools, while managed by nonprofits, are free and open to all children, part of the public educational system and thus eligible for state school money.

In most of the country, charters are a normal part of the scenery. Many specialize in educating disadvantaged children.

Why does Washington so often have to be the hidebound holdout against educational reforms?

The union-backed lawsuit that challenged Washington's charter schools partly turned on the definition of an arcane term of the 19th century: "common schools." After blowing the dust off its ancient law books, the court found a 1909 definition that required control by local voters – a school board as opposed to a nonprofit charter board.

OK. The key precedents the court relied on hark from eras in which educational systems were vastly different from our own, but so be it: Charter schools are not common schools.

The court's next step is what tips the opinion into logical Wonderland.

Washington has three accounts whose proceeds are dedicated to common schools. Most important is a property tax that raises about \$2 billion a year. By the court's reasoning, charter schools aren't common schools and thus aren't eligible for this money.

Yet the majority couldn't leave it at that. It also decided that *no* money from the entire general fund could be used to sustain a charter school, even though the \$2 billion from the common school tax is much less than the total \$7 billion earmarked for public schools.

Why? Because the common school tax gets commingled with other revenues in the general fund. Applying a one-drop rule, the court essentially decided that the restrictions on the common school tax apply to the whole operating budget. All those dollar bills getting mixed up together, or something.

The three dissenters eviscerated this notion.

"Not only does this directly contradict established case law," wrote Mary Fairhurst, "but taken to its full logical extent, it would mean that *any* expenditure from the general fund would be unconstitutional unless it was for the support of common schools."

Taking the majority's reasoning at face value, lawmakers couldn't appropriate money for higher education, Running Start, financial aid – anything, really, except conventional K-12 schools.

The six justices can't mean this. We won't suggest that they ginned up the principle solely to eradicate charter schools, but they certainly bought the Narrows Bridge from the state teachers union.

The court appears to have left an opening, though: Lawmakers can adopt an accounting scheme that segregates the common school funds, so that the dollar bills flow through different pipes. Dollars in the unrestricted pipe presumably could then flow to charters.

That's an opening for the court, too. If the Legislature finds a way to keep those kids in their schools, six justices may be able to pretend this decision never happened.



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