

Take that, charter schools: Why a Washington court decision will force accountability to a movement that needs it badly

Charter schools will be accountable when they are just as transparent as public schools. Now it might happen

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Microsoft chairman Bill Gates (Credit: Michael Gottschalk/dapd)

The recent ruling by the Supreme Court of Washington state that charter schools are unconstitutional because they aren't really public schools has sent advocates for these schools into a fit. But their often over-the-top criticisms of the decision are reflective of what is most often misunderstood about the charter school sector and what that industry has come to represent in the political debate about public schools.

First, about the ruling: As Emma Brown of [the Washington Post](#) reports, "Washington state's Supreme Court has become the first in the nation to decide that taxpayer-funded charter schools are unconstitutional, reasoning that charters are not truly public schools because they aren't governed by elected boards and therefore not accountable to voters."

Brown explains how voters in the state previously rejected charter schools on two ballot initiatives only to see an initiative pass on the third attempt, in 2012, when a **who's who of billionaires** – including Bill Gates and members of the Walton (Walmart) and Bezos (Amazon) families – donated millions of dollars to ensure passage. Today, there are nine charter schools in Washington serving about 1,200 students.

The court's 6-to-3 ruling, Brown explains, relies "on a century-old precedent that defined 'common schools,' or public schools, as those that are 'common to all children of proper age and capacity, free, and subject to and under the control of the qualified voters of the school district.'"

The Washington court's ruling certainly didn't catch education historian Diane Ravitch by surprise. On her **personal blog**, she points to a **letter** from Parents Across America, a parent-led advocacy group supporting locally operated public schools, that explained to the state superintendent, over two years ago, "Charter schools would not meet the definition of 'common schools'" in the state constitution.

Nevertheless, charter school advocates seethed.

Early out of the gate to object to the ruling was the editorial board of **the Wall Street Journal** whose headline blared, "The Judges Who Stole School Choice." The editors' opprobrium continued, "The liberal majority's real concern is preserving the union monopoly ... Charter schools are public schools too."

At the blog site of the right-wing **Thomas B. Fordham Institute**, the director the University of Washington's Center on Reinventing Public Education called the ruling a "decision only the Kremlin could love."

But anyone with a clear understanding of the issues – rather than a **charter school advocacy job** bankrolled by billionaires – could see this ruling coming from a mile away.

Why Charter Schools Aren't Really "Public" Schools

As the Post's Brown reported, the Washington's court's ruling "highlights a question that has **spurred much debate in education** circles as charter schools – which are funded with taxpayer dollars, but run by independent organizations – have expanded rapidly during the past two decades: What makes a public school public?"

To critics of the charter school sector, the very idea of calling charter schools “public” schools makes about as much sense as calling defense contractors “public” companies. The fact these entities get taxpayer money does not mean they are “public.”

For years, education law and finance scholars have warned that the legal status of charter schools is on shaky ground. In 2012, Rutgers University professor **Bruce Baker** asked, on his personal blog, “Charter Schools Are... [Public? Private? Neither? Both?].”

Baker notes, first, that charter schools differ from public schools, in most statutory law, because they have limited public access. Unlike public schools, charter schools “can define the number of enrollment slots they wish to make available ... admit students only on an annual basis and do not have to take students mid-year, [and] set academic, behavior and cultural standards that promote exclusion of students.”

These points of difference between charter and public schools are glaringly obvious in the neighborhoods where charters are common. Those who **protest charter school expansions** in their communities note how charter schools use lotteries to limit the number of students in their schools while public schools are frequently overcrowded. Charter schools are often criticized for not **“back filling”** and taking in new students mid-year as empty seats become available. And charter schools are **notorious for enforcing student behavior codes** that lead to frequent discipline violations and increase suspension and expulsion rates.

Baker found that in their authorization, governance and operation, charter schools are frequently exempted from requirements public schools have, such as open meeting laws, disclosure of financial records, and employee rights.

In January 2015, Baker collaborated with two other scholars to publish a review, the “Legal Status of Charter Schools in State Statutory Law,” in the **University of Massachusetts Law Review**, which found that in most states the legal distinctions between charter schools and public schools are not at all clear due primarily to how legislation providing for charters is often drafted without including any “clear set of rules to follow” for governing the schools – a provision, by the way, the charter lobby often insists on.

The analysis examined whether charter schools, which are generally run by private boards or educational management organizations, are entitled to governmental immunity and whether they are subject to public accountability laws. The scholars

examined whether charter schools are subject to the same wage statutes and student expulsion requirements as public school.

Their conclusion was, “While charter schools are generally characterized as ‘public schools,’ courts have had a difficult time determining their legal status because charter schools contain both public and private characteristics.”

Education research experts at the [National Education Policy Center](#) also looked at the issue of whether charter schools are public or private and concluded, “Their operations are basically private.”

The NEPC analysis found that because most charter school board operate on “an advisory role,” they outsource their school’s operations to private education management organizations (EMOs).

“It is common practice,” NEPC noted, “for EMOs to write charter school proposals and determine how the school will be managed and operated long before a board is appointed. It is also common practice for the private EMO to provide a list of names for board members, which the authorizer then approves. In recent years, board members have been refused access to information about how money is being spent. Further, there are cases where EMOs have asked the authorizer to remove board members when they start asking uncomfortable questions about finance.”

A False Frame for “Accountability”

For years, charter school advocates have insisted on calling their schools “public” mostly because it is an effective rhetorical frame – and because it is a rationale for why they *de facto* deserve tax money, government grants and favorable lending rates.

“Charters are public schools, despite propaganda from unions and their supporters suggesting otherwise,” political analyst Jonathan Alter wrote recently for [the Daily Beast](#). His Op-Ed, “Why Liberals Should Learn to Love Charter Schools,” focused mostly on propping up the charter industry’s campaign to make the all-charter New Orleans school system a model for troubled urban school districts elsewhere.

This campaign makes the claim charter schools are the truest form of “accountability” because they are “freed from the bureaucracy” of elected school boards and other forms of democratic control – a truly bizarre contention in line with believing car drivers would be more “accountable” if we freed them of speed limits and other driving

“constraints.” Further, the supposed greater accountability of charter schools is contradicted every time one of these **closes unexpectedly, whenever they want to**, as they **so often do**.

Responding to Alter’s argument, public school teacher and popular blogger **Peter Greene** writes, “Charter schools will be accountable when they are just as transparent and just as accountable as public schools ... Financial records completely open to the public ... all meetings of governing bodies completely open to the public, and run by people who must answer to the public and whose first responsibility is not to the nominal owners of the school, but to the actual owners of the school – the people who pay the bills and fund the charter – the taxpayers.”

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Charter school advocates would do their cause a big favor if they were to define their schools to the public as exactly what they are and what the mission of their schools really is.

Indeed, the rhetoric driving charter school advocacy has changed dramatically over the years as proponents of charter schools condition public perceptions to accept the expansion of these schools.

That evolution has been documented extensively in the **recently published book** “A Smarter Charter: Finding What Works for Charter Schools and Public Education,” by Richard D. Kahlenberg and Halley Potter.

The original vision of charter schools, the book contends, was to provide “laboratory schools” to “experiment” with different approaches that could eventually be considered for adopting on a much larger scale. Two foundational tenets to these experimental schools, the authors maintain, were for teachers to have a stronger voice in determining the management of the school and for the student body to have higher degrees of economic and racial diversity than traditional public schools.

However, as states began enacting legislation to create and spread charter schools – beginning with Minnesota in 1991, then ramping up significantly under the presidential administration of Bill Clinton – there was a “more conservative vision” repeated again

and again that reinforced charter schools as “competitors” to the public school system – even to the extent of replacing public schools, some argued.

“The public policy rhetoric changed from an emphasis on how charters could best serve as laboratory partners to public schools to whether charters as a group are ‘better’ or ‘worse,’” the book argues. And “over time, the market metaphor came to replace the laboratory metaphor.”

The authors conclude, “The current thrust of the charter school sector ... is bad for kids.” They recommend “changes to federal, state, and local policy” and a greater degree of “neighborhood partnerships” among charters, public schools, foundations and universities if these schools are to “be a powerful vision for educational innovation in a new century.”

Those policy changes need to be accompanied by a completely different rhetoric for defining exactly what charter schools are and what purpose they have in the country’s education system. Operating under the mask of being purely “public,” charter schools haven’t faced the scrutiny they warrant. Now that the Washington Supreme Court ruling has stripped the mask away, charter school advocates are left grappling with the responsibility of redefining their cause. And it’s their own damn fault.