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Justices should reconsider charter school decision

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Contributing writer

The Washington Supreme Court must reconsider its recent ruling that declared public charter schools unconstitutional. The governor, Legislature and Washington's citizens should urge the court to do so.

Why? Because the decision could not only effectively destroy public charter schools, taking away public school options for 1,300 enrolled students and thousands in the future, but also many other innovative programs like Running Start, which allows high school students to take community college classes.

I disagree with the court's majority opinion. It relies on an antiquated 1909 definition of public education and ignores recent, binding legal precedent that allows for flexibility in our public education system.

In its majority opinion, the court seems to conclude that public charter schools are not "common schools," relying upon a 1909 case that defined common schools as "under the control of the qualified voters of the school district."

At that point in history, kindergarten often did not exist, nor did specialized educational programs. Many school districts did not have high schools! The court confuses public charter schools with the public school *system*.

The court ignores precedent from a case decided just 15 years ago, Tunstall v. Bergeson.

This case challenged an education program for incarcerated youth run by contractors. The court rejected an argument that only the local school district could provide education services, stating that it is not the role of the courts to "micromanage education in Washington" and specifically noting that the Legislature, exercising its principal constitutional role in organizing and funding Washington's schools, "has found entities other than school districts qualified to educate our youth." I know this case well, because I helped to decide it.

A closer look at Article IX, Section 2 of our state constitution says that the "public school system shall include common schools *and* such high schools, normal schools, and technical schools as may hereafter be established."

By that plain language and its legislative history, the term “common schools” referred to the typical primary school serving Washington's children when our state was founded in 1889: a school serving grades 1 through 8. Technical, normal and high schools were not universally “common schools” in 1889. But all were part of the public school system to be developed by the legislature.

In addition, the same section of the constitution used the word “includes” instead of the words “consists of.” That language suggests that the founders did not want to limit or restrict what the Legislature could add to the “public school system” in the future.

The only way to reconcile Article IX, section 2 with the language used in the 1909 case is that the Legislature has broadened public education over the years to include a variety of programs, including kindergarten, high schools, bilingual education, special education, remedial education, gifted education and Running Start.

The effect of the court's opinion is to confuse school *programs* with a common school *system*. Each of the *programs* I mentioned previously, like public charter schools, has eligibility criteria and none is open to "all" in a technical sense (for example, many have space limitations).

Some, like Running Start, are not operated by local school districts. Our constitution requires the Legislature to provide a *system* open to all, but nowhere restricts its ability to fund specialized programs within that system. Thus, the court’s opinion on public charter schools raises serious constitutional questions about whether these other public school programs meet the court's restrictive definition of a "common school" and can receive public funding.

The court's conception of the funding sources for K-12 education in Washington also contradicts budgetary realities, as the dissenting opinion rightly points out.

Fortunately, the court’s procedures allow for a motion to reconsider. When such a motion is filed, as it surely will be, the court should pause, step back and rethink its analysis and the unintended implications of its initial ruling.

Public charter schools are as constitutional in Washington as in the other 41 states that approved them in the prior 20 years. It would be a shame if the 1,300 students and their families (mostly low-income and communities of color) have this public education option taken away from them because the court imposed a restrictive

definition upon an educational program. It would also be unfortunate if, as a result of the court's decision, other important educational programs lose support or funding.

Philip Talmadge is a former justice of the Washington Supreme Court and former state senator (D-Seattle).

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