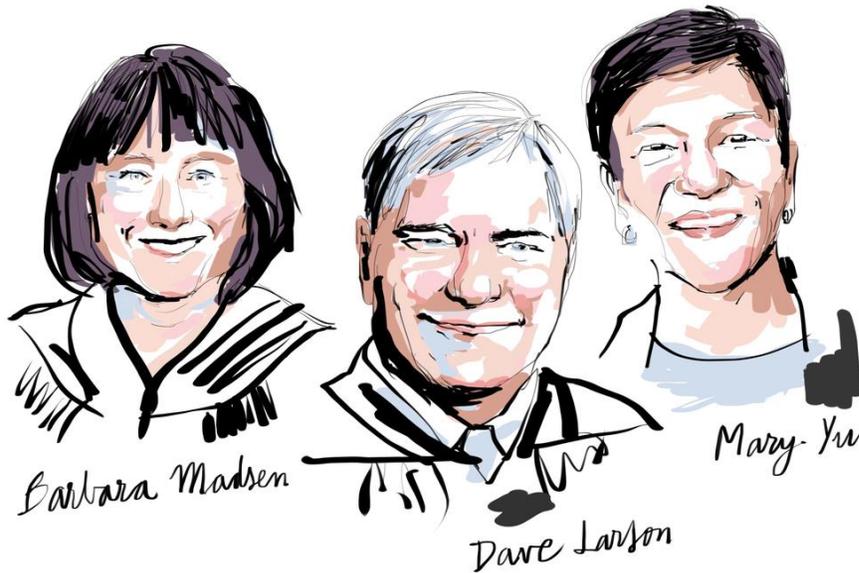


The Times recommends Barbara Madsen for Supreme Court Position 5

Originally published August 19, 2016 at 3:48 pm Updated August 19, 2016 at 5:11 pm



Gabriel Campanario / The Seattle Times

Chief Justice Barbara Madsen faces a strong, qualified challenger who falls short of making a case for voters to turn Madsen out of the Supreme Court seat she's held since 1993.

By [Seattle Times editorial board](#)

The Seattle Times

BARBARA Madsen, chief justice of the Washington State Supreme Court, faces a vigorous challenge from an elected prosecutor with his own long, respected, public-service record.

But Kittitas County Prosecutor Greg Zempel does not present a strong enough case to turn Madsen out of the seat she's held since 1993. Voters should re-elect her for a fifth, six-year term.

Zempel makes a good point that the court could benefit from the presence of an elected prosecutor on a bench that sometimes has made impractical rulings. Yet while prosecutors on both sides of the state agreed with Zempel's criticism of the court generally, they told the editorial board Madsen is not the justice they would replace on that score.

Supreme court picks reflect paramount duties

The state Supreme Court is front and center in one of Washington's most important issues arguably since the state's founding in 1889: the state's persistent underfunding of basic education over decades. That's why voters should pay attention to the three races they will find languishing near the bottom of their general-election ballot in November. The Seattle Times editorial board interviewed the incumbents and their challengers, as well as dozens of others, including judges, lawyers, prosecutors, professors and state officials from around the state. Today, we offer these recommendations.

The Times recommends:

Barbara Madsen



Supreme Court Position 5

Strengths: Led the court on education-funding rulings

“ *Madsen is the better candidate for a term in which the McCleary case and its potential remedies — both judicial and legislative — will dominate. Voters should re-elect her. ...*”

[Read the full endorsement —>](#)

The Times recommends:

Dave Larson



Supreme Court Position 6

Strengths: Trial, bench and civic experience; a strong, credible challenge to the court

“ *Larson presents a strong, credible challenge to a court that has at times veered off course. He deserves a six-year term to the state Supreme Court. ...* ”

[Read the full endorsement →](#)

The Times recommends:

Mary Yu



Supreme Court Position 1

Strengths: Bipartisan support; supports racial-justice causes

“ *Yu contends McCleary is not an example of judicial activism. She said the court was presented with a legal question — to interpret what it means to amply provide for education and whether it’s the state’s paramount duty. ...* ”

[Read the full endorsement —>](#)

As a justice, Madsen has both strengths and delivered disappointments.

As chief justice, she has rightly led the court in increasing the pressure on the state Legislature and governor to finish the important work demanded by the court's 2012 McCleary ruling. The court faulted the state for decades of underfunding the state's paramount duty of providing basic K-12 education to the state's youth.

This editorial board supports the McCleary ruling and efforts to spur the Legislature and governor to action.

However, the court might be approaching the limit of its power to induce government action — and there's legitimate criticism of whether the \$100,000-a-day fine the court imposed on the state a year ago was an impotent order that fell flat. Lawmakers on both sides of the aisle ignored the fine, appropriating no money for it. Much is riding on a Sept. 7 hearing called by the court to discuss the status of the funding task with representatives of the governor and the Legislature.

A major disappointment was the 2015 court's ruling that overturned the voter-approved charter-schools law, deeming it unconstitutional. For one, these public servants, led by Chief Justice Madsen who wrote the ruling, ignored the urgency of their decision. After October 2014 oral arguments, the court took 11 months to consider the case and announced the ruling days after several of the fledgling charter schools opened their doors.

The stunningly tone-deaf timing caused severe anxiety for students and their families. Madsen, in an interview, said she wondered why the parties didn't ask for an expedited ruling. Good question, chief justice. This was an occasion to exercise discretion, as the court has done on other pressing matters.

Additionally, several prominent legal experts, including Madsen supporters, have criticized her opinion for quoting without attribution from a brief written by plaintiff lawyers for the state teachers union. In a KIRO radio interview in March, former state Attorney General Rob McKenna said the ruling contained as much as a quarter of the content in the brief filed by the Washington Education Association. Copying arguments or wording from a brief for a court ruling is not illegal, but it is unusual to quote without attribution. It gives the decision a patina of ideological bias because the union is a lightning rod on education issues.

Zempel, in addition to his experience as an elected public official, would bring an Eastern Washington point of view to the state court, whose members are based in the Puget Sound area. Although he can cite chapter and verse on rulings he thinks make prosecutors' jobs more difficult, his critique of the court's major undertaking — the McCleary case — was so vague in an interview, editorial board members called him back to get more clarity. To apply for this job in 2016, he should be able to offer a much

more sophisticated and nuanced critique of the 2012 decision and the court's action since then.

In this field of two, Madsen is the better candidate for a term in which the McCleary case and its potential remedies — both judicial and legislative — will dominate. Voters should re-elect her.

Editorial board members are editorial page editor Kate Riley, Frank A. Blethen, Ryan Blethen, Donna Gordon Blankinship, Brier Dudley, Mark Higgins, Jonathan Martin, William K. Blethen (emeritus) and Robert C. Blethen (emeritus).