

Faceoff: State Supreme Court

Yakima Herald

Updated Sep 24, 2016

The issue: The state Supreme Court, a nonpartisan body charged with interpreting statutes — and the state constitution — and making rulings based on the law and legal precedent, is seen by its critics as overly liberal and political. Its rulings, particularly on issues such as school funding in the McCleary vs. State case, in which the court held the Legislature in contempt and levied fines of \$100,000 per day, are seen by those critics as the court overreaching and using its rulings to make policy, a function reserved for the state Legislature.

Question: How do you reconcile the court's role as legal interpreter with the Legislature's policy-making role, particularly as it applies to cases such as McCleary?

Barbara Madsen: "I know that my opponent likes to say that the court is becoming too political. I think it's important for people to remember that the Supreme Court and the trial courts — none of the courts reach out into the community to try to take issues that they think somehow need the touch of the court. Every single issue that comes to the court comes because a plaintiff brought the issue to a court. ... Necessarily, these cases will touch on issues that have a political aspect to them. The three branches of the government, none of us work in a vacuum. Our drafters designed a system of governance that includes the three branches. And governance is all about politics, right? ... And at the end of the day, with a case like McCleary, if people cannot come to court to get redress against their government, which is guaranteed under the constitution, then where do they go?"

Greg Zempel: "One legislative body does not have the ability to bind future legislative bodies. ... In this particular case, the court said, 'We're going to retain jurisdiction. You have until 2018 to cure your contempt for not doing what you're supposed to do. And because we as a body don't believe you're going to do the job, we're going to keep checking in on you, and we're going to keep imposing sanctions, we're going to keep holding hearings.' ... They have basically told the Legislature, 'You adopted this plan and we're not going to let you change this plan unless there's an educational basis to do so.' But then they're the ones who decide whether there's an educational basis put forward by the Legislature or not. So in essence they're being told, 'You can't change your legislation.'"

The issue: Last September, after deliberating for more than a year, the state Supreme Court ruled 6-3 that voter-approved charter schools are unconstitutional because they use public money but are privately operated. Madsen wrote the majority opinion, basing much of it on a 1909 case, School District No. 20 v. Bryan, that strictly defined "common schools." The timing of the ruling forced charter schools that had just begun classes to shut down and left parents and students scrambling. The issue, like McCleary, is inherently political with school-choice conservatives facing off against teachers' unions and liberal public school supporters. The state Legislature responded this year by changing the funding source for charter schools from the state general fund to dedicated lottery proceeds. The issue is expected to be back before the court.

Question: How do you view the charter schools case decided in 2015? Did the court misuse its authority in ruling charter schools unconstitutional after voters had approved them?

Madsen: “Always in constitutional analysis, and in statutory analysis for that matter, always you’re looking for the drafter’s intent. So when you are looking for the meaning of the words in the Constitution you are best served if you can find early court cases interpreting the language, which in the charter school cases there was. ... That was a place the court went for precedent. ... Really after that the case was pretty straightforward.”

Zempel: “It came out the Friday before those charter schools were supposed to open up and get running. So if you look at it from that perspective, and this is an argument put forward by some people that were very upset about this decision, you can clearly look at that and feel the sense of their anger and frustration about the timing aspect. ... The underlying case that is utilized for the definition of common school, if you go back and look at what they actually put into the opinion to reach their decision and look at the actual quote I think you can come up with a completely different opinion based on that case.”

The issue: Of the nine justices on the state Supreme Court, only one, Justice Debra Stephens of Spokane, was elected while living in Eastern Washington. Both candidates for this seat on the court believe diversity among justices is important, but they differ on whether place of residence is an important factor in reaching that diversity.

Question: Is it important to have increased Eastern Washington representation on the state Supreme Court? Why or why not?

Madsen: “Diversity of experience is really important to any appellate court, because we do collaborate. That’s the whole purpose of an appellate court is that it’s made up of multi-members who bring something to the table that the others perhaps don’t have in their experience either as lawyers or in life experience. ... But do I think we need a representative from Eastern Washington? No. ... Representation is not the point of a court. It’s experiences, both life and legal that bring richness to the fabric of a court.”

Zempel: “Right now we have eight of nine justices who are basically from the greater Seattle area. ... If you all agree at the outset of your conversation, based upon the fact that you have all lived a common, similar life, then your discussion points are much different than if you broaden that up and bring in people who have different perspectives on the same issue. ... They have a much different perspective on the interaction of state agencies with local government. ... So I think when you talk about diversity, there’s also a need for diversity of thought, which comes from geographic representation.”