

Endorsements: Re-elect Yu, Madsen, Wiggins to state Supreme Court

Yakima Herald-Republic Editorial Board
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All three state Supreme Court incumbents seeking re-election are facing opposition this year, unusual not just in the challenge but in its organized nature. Complaints about the justices focus on — but aren't limited to — two issues regarding education. One is the court's 2012 McCleary decision that the state isn't adequately funding K-12 education in line with action that the Legislature approved in 2009, and the other its 2015 ruling that charter schools violate the state's constitution.

The particulars vary depending on each race and the individuals involved. But overall, critics say the court has overreached in its enforcement of McCleary, especially in holding the state in contempt of court and by imposing a fine of \$100,000 a day. They also say the court has gone too far by retaining jurisdiction, which means the court maintains oversight of the case.

The opponents also criticize the charter school ruling, in which justices said the schools' oversight by non-elected boards means they are not "common schools" that are entitled to general-fund money. Critics say that draws too fine a constitutional line and reflects a judicial bias against charters; they also complain about the timing, coming just as the school year was beginning a year ago and creating uncertainty among the charter community.

Among the conservative critics of the court were former U.S. Sen. Slade Gorton and current 13th District state Rep. Matt Manweller, R-Ellensburg, who helped recruit a slate of candidates to challenge the three incumbents. All three bring strong legal backgrounds — one is an academic, the second a longtime prosecutor and the third a municipal court judge and former school board member.

Today, the Yakima Herald-Republic Editorial Board offers its recommendations for these positions based on face-to-face interviews that allowed a back-and-forth discussion and follow-up questions. These were meaty discussions that touched on many fine points of the law. In our view, the sitting justices effectively made their cases for retaining their seats. The board endorses Mary Yu, Barbara Madsen and Charles Wiggins for their Supreme Court positions.

STATE SUPREME COURT POSITION 1:

MARY YU

Yu was appointed to the court in 2014, ran unopposed in that year's general election, and now is seeking a complete six-year term. Her opponent is David DeWolf, who recently retired after teaching at Gonzaga University Law School for 28 years.

The McCleary decision came in 2012, before Yu was appointed to the court, but she generally endorses the court's approach as one that will prompt the Legislature to act without overstepping into crafting legislation. She says the \$100,000-a-day fine has succeeded in getting the Legislature's attention, an assertion backed up by Alan Copsey the state's deputy solicitor general in the state Attorney General's Office. DeWolf disputes that claim.

DeWolf's general argument was the court was telling the Legislature how to do its job, especially in requiring more money for schools; Yu rebuts by spelling out how the court has walked a balance between holding the Legislature accountable and overstepping into the legislative realm. She says the court is giving the Legislature room to craft a solution and is not defining education or dictating a dollar amount. Yu voted in the majority on the charter school ruling but agrees that the timing posed a problem.

Yu brings a nimble legal mind and impressive experience to the court, having served as a trial court judge for 14 years in King County. She has earned a full term on the court.

STATE SUPREME COURT POSITION 5:

BARBARA MADSEN

This race has a local connection, with longtime Kittitas County Prosecuting Attorney Greg Zempel challenging Madsen, whom colleagues twice have selected to be chief justice. Both bring longtime experience in their jobs, with Zempel having served 22 years as prosecutor and Madsen 24 years on the Supreme Court.

In general terms, Zempel argues that the court has inserted itself into legislative business that is "not respectful" of lawmakers, while Madsen responds that court rulings and legislative responses reflect a "natural tension" that was envisioned by both the federal and state founders of their respective constitutions.

Zempel criticizes the court for retaining jurisdiction of the McCleary case and says the court should let the voters decide through elections whether lawmakers are doing enough. Madsen responds that it is not unusual for federal and trial courts to retain jurisdiction in cases, and that the Supreme Court's move in the McCleary case helps assure that the Legislature can't repeal its previously approved law just to show it is in compliance.

On charter schools, Zempel maintains the court ruled them unconstitutional for political reasons, while Madsen is able to cite legal precedents and historical reasons for constitutional wording dating back to the state's founding in 1889.

Zempel would bring the viewpoint of a longtime county prosecutor to the court. Overall, Madsen displays an impressive depth and breadth of knowledge about judicial matters, and it is clear why her fellow justices twice have named her chief justice. She is the better choice here.

STATE SUPREME COURT POSITION 6:

CHARLES WIGGINS

This is the closest call for us. Wiggins, who is completing his first term, is matched up against Dave Larson, who is presiding judge of the Federal Way Municipal Court and the former president of the Federal Way school board.

Larson actually agrees with much of the McCleary ruling; as a school board member, he championed a McCleary-style lawsuit regarding Federal Way schools. His complaint is that in his view, the court has focused too much on making the Legislature come up with more money for schools. He also says the court's holding the state in contempt has polarized the issue.

Wiggins responds that the McCleary ruling picks up on a similar case from Seattle in the 1970s; that in the 1990s, state spending starting declining as a percentage of the budget. The incumbent argues the contempt ruling came only after that state went years without a plan, and that the \$100,000-a-day fine needed to be hefty enough to force compliance.

A discussion of the charter schools case finds Larson arguing that there is nothing in the constitution requiring an elected school board to have oversight, while Wiggins cites a case from early in the 20th century to justify the court's decision.

Larson is well-qualified to serve on the court. But Wiggins, a former appellate attorney who has served on the state Court of Appeals and as a part-time Superior Court judge, has brought of wide range of knowledge and experience to the court and has the slight edge in this race.

- Yakima Herald-Republic Editorial Board members participating in these discussions are Bob Crider, Frank Purdy and Karen Troianello.