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Wash. Court Ruling Could Be Roadmap to Charter Opponents in Other States

By **Arianna Prothero**

For an education movement that's **grown exponentially over the past two decades** and scored legislative and legal victories in more than 40 states, the Washington State Supreme Court's ruling in September **that charter schools are unconstitutional** came as a major blow.

Since then, national advocates have been weighing what impact that decision could have on charter schools in other states. Although the Washington Supreme Court doesn't have jurisdiction beyond its state, its ruling could provide a roadmap for charter school opponents elsewhere, they say.

"As you look at the ruling and the decision, some of the questions that the court examined are tenets that are similar in state constitutions elsewhere," said Eric Paisner, the chief of staff at the National Alliance for Public Charter Schools. "Until there's a specific lawsuit that's filed, there's no specific action we can take. We can do research to have a sense of where risk is."

In Washington, however, local advocates and parents are scrambling to find ways to keep charter schools open.

"I'm up to my eyeballs," said Jessica Garcia, a self-described "angry mom" whose daughter is attending one of the eight charter schools that opened up weeks before the state supreme court ruling came down. "We've been nonstop emailing representatives, making plans to host school tours and to dispel misinformation, but also going to their offices, being part of rallies at the capitol."

Seeking Legislative Fix

In its original decision, the state's high court ruled that charter schools do not qualify as "common" schools—basically, public schools—in part because they are not governed by voter-elected school boards, but rather by appointed boards. Without that designation, charter schools weren't eligible for the funding they expected to get, and the court reasoned that voters would never have approved the creation of charter schools in a 2012 ballot initiative if there was no money to pay for them.

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Then in November, **the court refused to reconsider its decision** after several groups, including Attorney General Bob Ferguson, asked the court to re-examine its ruling. The court did, however, strike out a footnote in its earlier ruling that the **state's attorney general flagged** as inadvertently putting other types of publicly funded educational programs at risk, such as tribal compact schools.

Washington's nine charter schools continued to receive state funding pending an appeal, but with a final rejection from the high court's justices, the flow of money was expected to be shut off by mid-December.

With the judicial path exhausted, advocates are now looking to the Washington legislature for a permanent fix and other stop-gap measures to keep charter schools open in the interim.

"Internally, we've referred to it [tweaking the law] as a plumbing fix," said Thomas Franta, the chief executive officer of the Washington Charter Schools Association. "The root of the court's concern deals with the means by which money flows to public charter schools. We have a number of legislative champions that are putting forward a number of different options that we believe would... accomplish the plumbing fix and... meet constitutional scrutiny if there is ever a case down the road."

Although there's no bill yet, Franta says there's support from a number of lawmakers in both chambers and parties.

But reworking the state's charter law isn't the only high-profile education issue facing lawmakers.

Washington's Supreme Court ruled in 2012 in **McCleary v. Washington** that lawmakers were failing to adequately fund public education in the state, and went so far as to declare the legislature in contempt of court last August, **levying a daily \$100,000 fine on the state**.

In that context, fighting for a legislative fix to the charter school issue is a harmful distraction, said Rich Wood, a spokesman for the Washington Education Association, which was a party to the court case.

"I would hope, and we all hope, the legislature will focus on [funding schools under the McCleary ruling] rather than trying to resurrect an unconstitutional charter school law that has been thrown out by the supreme court," he said. "Diverting money away from an already underfunded public school system makes no sense."

'Alternative Learning Experience'

However things play out for charter school supporters, Washington's legislative session doesn't start until January, state funding is expected to stop by the end of December, and charter school leaders are trying to figure out ways to keep schools open through the end of this school year.

One way—and the approach that most charter schools are pursuing, said Franta—to keep the dollars flowing and charters open is to contract with a district as "alternative learning experience" programs. That designation allows districts to sign contracts with outside groups to provide services such as online classes or programs for incarcerated youths.

If all else fails, schools could be propped up by private dollars through the remainder of school year, said Franta.

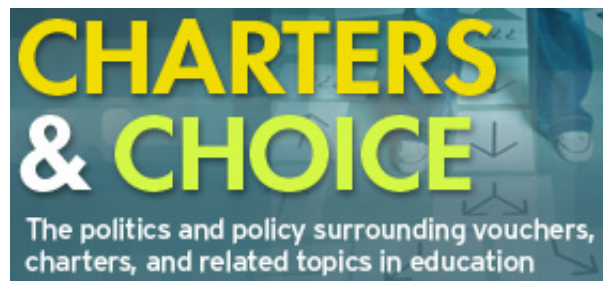
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"The private funding option is still on the table, but we see it as the last-stop backstop," he said.

This legal limbo has been taking its toll on charter school families like Garcia's. Her 11-year-old daughter, Isadora, attends Destiny Charter Middle School—**part of the Los Angeles-based Green Dot network.**

"Absolutely frustrating," is how Garcia describes their situation. "We're just wanting to keep an air of cohesiveness to our children's lives and education. But in the back of our mind as parents we're like, 'Do we need to have a plan B?' For a lot of us, we don't have a backup plan."

Garcia says she refuses to return Isadora to her neighborhood district school because she was not being challenged academically. Years before, Garcia had pulled her now-19-year-old son, who has autism, out of the same school because she said he was bullied.



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