

What makes a public school public? Washington state court finds charter schools unconstitutional.

By **Emma Brown** September 9

Washington state's Supreme Court has become the first in the nation to decide that taxpayer-funded charter schools are unconstitutional, reasoning that charters are not truly public schools because they aren't governed by elected boards and therefore not accountable to voters.

The [opinion](#), released Friday, weeks after the school year began, breaks with high courts in several other states that had faced similar cases challenging charter schools' legality. It means the future is uncertain for the state's nine charter schools and the 1,200 students who attend them.

But the ruling also highlights a question that has [spurred much debate in education](#) circles as charter schools — which are funded with taxpayer dollars, but run by independent organizations — have expanded rapidly during the past two decades: What makes a public school public?

Opponents of charter schools have long argued that the schools are private because they do not have to answer to the public and in some states are not subject to key rules that apply to government agencies, such as open meetings and public records laws. They can be operated by for-profit companies; can use taxpayer dollars to buy buildings that are then owned privately; and in many states are considered private employers.

“The public has no voice in management or oversight of charter schools; they are private with private boards,” Diane Ravitch, an education historian and prominent critic of charter schools, wrote in an e-mail. “Where public money is involved, public oversight is necessary.”

Charter school advocates say that the definition of public schools has to be more expansive to include those that are trying to make good on the democratic ideal of equal access to a good education. Enormous achievement gaps between the nation's poor and affluent children are proof, they say, that elected school board members, distracted by politics, have largely failed to serve the country's most disadvantaged children.

Charter schools are run, in most cases, by nonprofit boards of directors. They are free from many of the regulations that apply to traditional public schools, and in return they must meet academic achievement targets or risk closure.

“To us, the difference between traditional public schools and public charter schools is the notion that you're bringing

in outside entities to run schools free of the political process that often hampers school districts' ability to make decisions that are good for children," said Nina Rees, president and chief executive of the National Alliance for Public Charter Schools.

Rees said the Washington court ruling came as a shock to charter-school advocates. "They're schools of choice. Parents are picking and choosing them, and in my opinion, nothing speaks more to the needs of the community than families making the decisions" to enroll their children in charter schools, she said.

The 25-year-old charter school movement has grown quickly in recent years with the help of strong bipartisan support in the nation's capital and in many statehouses: All but eight states have passed laws allowing for charter schools, which [enroll 2.9 million U.S. children](#).

Washington state voters rejected charter schools three times before narrowly approving them in a 2012 ballot initiative backed by philanthropies including the Bill and Melinda Gates and Bezos Family foundations. (The latter is run by the parents of Jeffrey P. Bezos, who owns The Washington Post.) The Washington Education Association and a coalition of other groups immediately challenged the law; one charter school opened last year, and eight more are opening this fall.

In its 6-to-3 decision last week, the state's Supreme Court struck down the law in its entirety, relying on a century-old precedent that defined "common schools," or public schools, as those that are "common to all children of proper age and capacity, free, and subject to and under the control of the qualified voters of the school district."

"Charter schools are devoid of local control from their inception to their daily operation," Chief Justice Barbara Madsen wrote in the majority opinion.

Melissa Westbrook, a Seattle education activist and blogger who led a campaign against the charter school initiative in 2012, called the ruling a relief and a vindication: "We were being told, 'This is the strongest charter law in the country.' It may be a strong law, but it's not constitutional."

Charter school advocates and parents of new charter school students decried the timing of the decision, released more than a year after oral arguments in the case and weeks after some charter schools began classes.

"It was devastating," said Jessica Garcia, who said her daughter had bonded with her fellow students and teachers at Destiny Charter Middle School in Tacoma.

Garcia said she chose Destiny because the traditional public schools had failed to act when her older son, who has autism, faced ongoing bullying. She said she doesn't much care how her daughter's new school is governed, as long as it is allowed to stay open.

“We finally felt hopeful that our kids would have the kind of education that us as voters had voted for, that we believe they deserve,” Garcia said. “To have that taken away is stressful.”

Charter advocates are exploring the possibility of running the schools with private donations; they also have asked Gov. Jay Inslee (D) to call the legislature into special session to find a way of keeping the schools open. But that could be politically difficult: The state’s Supreme Court is fining the legislature \$100,000 a day for failing to comply with a court order to fund public education adequately.

“We would hope that the legislature would now focus on what it should be focused on, which is fully funding K-12 basic education,” said Rich Wood, a spokesman for the Washington Education Association. “It makes no sense to drain money away from those underfunded public schools into privately operated charter schools that are not accountable to the voters.”

A spokesman for Inslee said that the court’s ruling does not become final for 20 days, adding that the administration is still analyzing the decision.

Even as charter-school proponents criticized the Washington state decision as anachronistic, some said they agree that local voters should have more say over public education in cities such as New Orleans, Detroit and the District, where a significant proportion of children attend charters. One reason: Without local say-so, communities may someday toss out charter schools and other education reforms that they think have been foisted upon them.

“Even if a policy produces good outcomes, it will always be viewed as suspect (and therefore be susceptible to overturn) if it wasn’t locally driven,” Andy Smarick, a pro-charter policy expert at Bellwether Education, a nonprofit group, wrote in an e-mail.

Smarick, who also is a member of the Maryland State Board of Education, said he would oppose any effort to restore

locally elected boards that run all schools. But he said he favors giving voters some measure of power to shape public education through public entities that would make decisions about public schools as a whole.

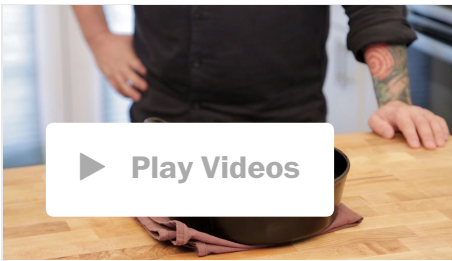
In Detroit, for example, a proposed Detroit Education Commission would oversee school transportation and enrollment and make decisions about whether and where schools (including charter and traditional schools) should open and close. But under Republican Michigan Gov. Rick Snyder's proposal, commission members would be appointed, not elected. Is that really local control?

"There is a way to do local democratic control without doing education in the same way we've done it for 100 years," Smarick said. "But no one's figured this out yet."

Emma Brown writes about national education and about people with a stake in schools, including teachers, parents and kids.

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