

League of Women Voters of Wash. V State (Supreme Court of Washington; 2015)

Case at a glance

Full citation

[League of Women Voters of Wash. v. State, 355 P.3d 1131 \(Wash. 2015\);](#)
[Order changing opinion](#)

Forum

Supreme Court of Washington, United States

Date of decision

4 September 2015, amended 19 November 2015

Summary of decision

The Washington Supreme Court ruled that an Act establishing and funding charter schools as common schools was unconstitutional. The Court held that charter schools are not ‘common schools’ under Article IX of Washington’s Constitution. Thus, the use of funds restricted by the Washington Constitution to support common schools under the Act was unconstitutional. Also, because the funding provisions were integral to, and not severable from, the Act, the Court held the Act to be unconstitutional in its entirety.

Significance to the right to education

This decision reinforces the constitutional duty of Washington State to fund a general and uniform system of public schools by ensuring dedicated funding for the ‘common school’ system. The Washington Constitution restricts the State’s power to divert funds committed to common schools for other purposes, even if those purposes are also related to education.

Issues & keywords

Education financing; Educational funding; Charter schools; Common schools; Uniformity; Article 9; Non-State actors; Privatisation

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Context

Article 9 of the Washington Constitution requires the legislature to provide for a public system of ‘common schools’ and restricts the revenue derived from taxation for common schools to be exclusively applied to the support of common schools.

Community organisations, parents, and educators filed suit challenging the constitutionality of Initiative I-240 (the ‘Act’), passed by the legislature in November, 2012, which provided for the establishment of 40 charter schools to be classified and funded as ‘common schools.’

Facts

Under the Act establishing charter schools in Washington, charter schools are tasked with providing a basic education similar to traditional public schools. However, unlike public schools, the Act frees charter schools from many of the state regulations imposed upon public schools. Additionally, the operation of charter schools is not governed by a locally elected school board. Instead, an appointed charter school board manages and operates the charter school.

By defining charter schools as ‘common schools’, the Act allowed charter schools to access the funds allocated for support of common schools, requiring the apportionment of funds to charter schools on the same basis applied to public school districts.

The trial court held that funding provisions of the Act were unconstitutional for designating charter schools as common schools despite the fact that there is no local control over charter schools. The trial court held that the funding provisions could be severed, leaving the rest of the Act in effect.

Relevant legal instruments:

Article 9 of the Washington Constitution

§2: The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

Issue

The primary questions before the Washington Supreme Court were, in relevant part:

2. Whether charter schools are common schools under the Washington Constitution?
3. Whether the funding provisions of the Act render it unconstitutional?
4. Whether the funding provisions of the Act are severable?

Decision

The Washington Supreme Court held that charter schools established under the Act are not common schools under the Washington Constitution. In reaching this conclusion, the Court relied upon its decision from 1909 in *School District No. 20 v. Bryan*, which defines a common school under the Washington Constitution as one that is common to all children of proper age and capacity, free, and under the control of the qualified voters of the school district. Focusing on this latter criteria, the Court held that charter schools under the Act are not common schools because they are governed by an appointed charter school board not subject to voter control.

Having determined that charter schools cannot qualify as common schools under the Washington Constitution, the Court held that the funding provisions of the Act were unconstitutional for diverting common school funds to charter schools. The Court reversed the trial court's conclusion that the funding provisions could be severed, reasoning that the Act is expressly reliant upon common school funding to support the charter schools, which are thus not viable absent the funding provisions. The Washington Supreme Court held the entire Act to be unconstitutional.

Impact

The Washington Supreme Court's ruling that the Act was unconstitutional removed state funding from charter schools. In response, some charter schools reorganised as alternative learning experience programmes under a school district to receive a reduced amount of state funding. Private donations gathered by the Washington State Charter Schools Association also financially assisted charter schools.

In April 2016, a new bill funding charter schools from state lottery revenues was passed in Washington State.

Commentary

The Court's initial written opinion (Slip Op.) included a discussion regarding the uniformity requirement of the Washington Constitution (in footnote 10). This discussion was deleted from the Court's final published opinion. As a matter of Washington Supreme Court law, this removed footnote is of no precedential effect, but the addition and later removal of this discussion from the Court's opinion may raise questions regarding the potential conflict between the requirement for Washington State to provide a 'uniform system of public schools' and state funding for charter schools. In particular, opponents to the newly passed law funding charter schools through revenue not tied to common schools may seek a constitutional challenge based upon the language in Article 9 of the Washington Constitution requiring that the state legislature provide a 'uniform system of public schools.'

Additional Resources

www.thenewstribune.com/news/local/education/article79949727.html

harvardlawreview.org/2016/04/league-of-women-voters-of-washington-v-state/

Right to Education Project's page on the privatisation of education.

Related cases

[*School District No. 20 v. Bryan*, 51 Wash. 498, 99 P. 28 \(1909\)](#)

The Washington Supreme Court relied upon the definition of 'common school' set forth in the 1909 Bryan decision interpreting the Washington Constitution.

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