

# School Board Filing litigation against the Florida Legislature:

*It won't work and it's bad for students.*

**Scott Shine – 8/27/2017**

The Florida Legislature passed bill 7069 in its most recent session, a bill that has significant funding implications for public schools. Of most concern, it channels a portion of local property tax dollars to privately run charter schools. This sweeping legislation has both positive and negative impacts to local schools. But clearly, the most concerning is the reduction in funding for mainstream public schools like those I represent in the Jacksonville Beaches area. School Boards across the state are considering filing litigation against the State of Florida alleging the new law created by the bill is unconstitutional. The problem with litigation as a remedy is that it simply will not work and will exacerbate the animosity that currently exists between public education and the Florida Legislature. I do not support litigation against the state, as I believe it is potentially injurious for students and will not provide the remedy to funding shortfalls that we now face in delivering public education.

## **The best predictor of the future is the past**

We have been down the litigation road before. And, the result was failure. Several years ago, the legislature approved a law allowing parents to receive a tax payer funded financial “voucher” to be used in paying for tuition at a private school of their choice. Public school collectives and related industry groups sued the state on the basis that vouchers violated that state constitution. And, they won. But, the victory was short. Choice advocates redesigned the voucher program to, essentially, make it “litigation proof.” The Florida Legislature passed a new law creating the Florida Tax Scholarship program; it too was challenged in the courts, but litigation failed.

From time-to-time, the legislature creates new laws that have constitutional defects. Litigation invariably results, and the legislature returns to the issue and repairs the law to meet constitutional standards. While this may be routine, public education advocates’ legal challenges to the state further exacerbated the already strained relationship between those in control of the House and Senate. Clearly, there is an air of hostility between the education community and lawmakers in Tallahassee. While speaking truth to power may be a noble endeavor, it is foolhardy when it expands the divide between elected representatives: the result will bring more harm to local school board authority and public school students.

## **Public schools need funding now**

The results of shortcomings in funding public education, compounded by the effects of HB 7069 have forced cuts in programs proven to advance academic achievement. When public school funding is adjusted for inflation, per student funding is down significantly. As I see it, the urgent issue is to restore school funding. By my estimate, an increase in state funding by 7% next year is needed, just for our school district to “hold its ground” in delivering services. What’s more,

leadership in the Florida Legislature are coming together now to create bills for the next legislative session with committee meetings starting in just a few months. Dropping the lawsuit bomb in the middle of this will do nothing but further damage the perception of public school leadership and dampen any appetite for cooperation and expanding school funding. While a lawsuit may be a noble and righteous action, public school funding will be jeopardized and students will pay the price. Simply, it is the wrong solution at the wrong time.

### **The concern of retaliation**

It is important to know that nearly all the instructional funding for students in my district is allocated by the elected members of the Florida Legislature. In each yearly legislative session, Tallahassee lawmakers vote into law a state budget. This determines educational funding levels for each county in the state. This shows the critical nature of having a positive relationship with our state representatives.

People will ask why the Florida Legislature moved to affirm 7069? It is because of a commonly held view in Tallahassee that public school leadership and methods are largely responsible for lower performance in inner city schools. There is a further belief that migrating from public schools to privately run charter schools will remedy the problem. This belief system is built, in part, on the antagonistic relationship between state school boards and the legislature. A key action expanding this divide was the failed litigation between the Florida School Board Association (FSBA) and the state over the Florida Tax Scholarship program. In addition, some prominent school boards around the state have taken an anti-charter school posture with districts like Palm Beach uniformly voting against all charter school contracts. Understanding the legislature is supportive of expanding charter schools and sees groups like the FSBA as adversarial, 7069 is statutory a remedy through lawmaking designed to accelerate the proliferation of charter schools and disempower local school boards. This is happening while legitimate research points to other causes of lower performance.

*(note, school board decisions to approve/deny a charter application are not discretionary functions and are akin to quasi-judicial decision. Applications are approved/denied strictly on statutory compliance and are subject to appeal.)*

### **Litigation as an option**

Litigation as an option is problematic. It can take years to resolve and you may lose. Once you play the lawsuit card, there is little hope of returning to the table for meaningful negotiation and diplomacy. Not to mention, litigation is by definition “adversarial review” and further opens the gap of distrust and hostility that is the causal factor of the dysfunctional relationship between education and the legislature.

Is there a legal defect in 7069? I can tell you firsthand what it is like to have a sponsored bill in the Florida Legislature. Among the largest hurdles to get across: getting your bill past the legislative staff lawyers. Their score card is graded by judicial appeals and they err on the side of caution when drafting and recommending bills. The litigation option needs to be framed by the fact that legislative branch lawyers are the best at what they do and there is rigorous due diligence before a bill is recommend as legally consistent with all the superior law that affects it. Litigation is not cheap. Joining a lawsuit will likely cost in the tens of thousands of dollars and that money will come from the classroom. Filing a direct lawsuit will likely take hundreds of

thousands of dollars out of the classroom. Statistically, the odds of prevailing in litigation of this type and achieving the desired results are remote, at best.

### **The conflict of democracy**

Bill 7069 was enacted into law because the people you voted for went to Tallahassee and voted for it. As an elected official, it is very difficult for me to say “yes” to litigation against the state when all the members of the Florida House and Senate that represent my district voted in support of 7069. I believe in representative democracy. To disempower the elected officials that were elected by a majority of my constituents is inconsistent with the system of government I believe in. Most importantly, it disempowers and overrides the will of the voters I represent. This is a very important reason not to support litigation.

### **What needs to happen.**

We need funding now to bring public schools back to the levels seen in the past: that funding comes by way of legislation that can only be passed by the state legislature. I am working with our elected representatives right now in the Florida Legislature to restore funding in the next session. It is critical that we “cease fire” with Tallahassee lawmakers and put an end to finger pointing and talk of litigation. Our public-school students are not benefiting from this hostility and we need to put emotions aside and deal with the realities and challenges that are present every day in our school system.

If it's really about students, it's not about a lawsuit. It's about putting our differences behind us and moving forward for our children. Let's support restoring funding levels for all students in the upcoming legislative session.