



September 20, 2016

## Appeal puts poor students under FEA's boot

By Tom Jackson

Now that the Florida Education Association has chosen to appeal its legal double-dribbling over the state's scholarship program for students from low-income families, the question that leaps immediately to mind is this:

Why does the teachers' union hate poor kids?

Seriously. About 92,000 students from modest circumstances are attending private schools through the 15-year-old Florida Tax Credit Scholarship Program, but the FEA wants to cut them off and haul them back into a system that, for far too many, is an abject failure.

Think about that. Ninety-two-thousand kids. Meanwhile, Florida public schools are responsible for nearly 2.8 million students. In short, the FEA is losing its mind — and spending a bunch of its membership's dues in legal fees — over a population that amounts to barely 3 percent of its existing audience. A rounding error.

This is like Wal-Mart going nuts over a local farmers market, or the NFL trying to squeeze websites that stream Division II games. Gnat, meet sledgehammer.

Here's another raw figure to chew on: In the most recent year, the program spread out just over \$490 million, an average of roughly \$5,300 per scholarship. That might sound like a bunch of money, but, as in most cases, context is everything.

Know how much K-12 education scored? Round numbers, a state-record \$20.2 billion, or \$7,178 per pupil. Note the per-pupil differential. That's not unimportant.

Here's the irony: If the FEA got exactly what it wanted — the scholarship program killed; all 92,000 beneficiaries sucked back into public schools; and every dime of the scholarship money funneled into the education monopoly — per-pupil spending actually would sink, to \$7,158.

I know. This isn't about the money. (Wink.) It's about the principle of the thing. (Wink, wink.)

As someone who was once president of a small homeowners' association, I appreciate the thought. Once you establish a willingness to overlook small infractions, you've sacrificed your legal authority to crack down on the big ones.

So, there's another way of thinking about the FEA:

Your friendly neighborhood deed-restriction committee.

Now that we're feeling all warm and fuzzy, the larger problem for the union bosses and their lawyers is, in its relentless pursuit of education reform — a pursuit that must, necessarily, weaken the FEA's stranglehold — what the Legislature crafted does not violate, even a little bit, the state constitution.

Oh, sure, lawmakers bungled their first attempt to craft a scholarship/voucher scheme in 1999, the first year of the **Jeb Bush** administration. In its genesis iteration, money did, indeed, flow from the state budget to pay for scholarships. The state Supreme Court found the arrangement repugnant to the state constitution's provisions protecting public schools from budgetary intrusions, and it wasn't even close.

The Legislature anticipated a bad outcome. Even before the justices ruled, lawmakers tackled the project again in 2001 to fix the funding bug. Businesses that donated to certain nonprofit groups would receive a tax credit equal to their contribution; meanwhile, the nonprofits would fund scholarships for students from low-income families.

Just now, the FEA's problem is standing. That is, it's been ruled unable to sue. The trial judge ruled, and the 1st District Court of Appeal enthusiastically affirmed, the plaintiffs have demonstrated neither "special injury" nor that the Legislature acted beyond its constitutional powers to tax and spend.

Undaunted — not to mention just a wee bit desperate — the union appealed to the state Supreme Court last week. Give us standing, its lawyers said, and we'll prove the case against the scholarship plan.

Except they won't. They can't. Too many tenuous assumptions are built into their complaint. They can't prove the Legislature would maintain current tax rates on businesses or, if they did, that the presumed additional revenue would go to schools.

Their other complaint — scholarships set up a competing class of public schools, in violation of the constitution — fails the sniff test.

So why don't the program's opponents shift their focus, and instead lobby the Legislature to hold

participating private schools to the same standards as public schools?

Simple. Monopolies do as monopolies are. And any monopoly worth its massive, soul-crushing boots knows the path to ruin is hacked out by consumers making informed choices among alternative, disruptive market options.

That's also why the FEA won't simply butt out. Never

mind that we're talking about a subset of a subset of a subset, that minuscule portion of kids from families of limited means whose parents care enough about education to go through the application rigmarole.

Any threat, no matter how small, must be squashed. With prejudice.

If it means stomping on 92,000 poor kids. Well, in every war there's bound to be some collateral damage.