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Courts resist changes in education



By Doug Tuthill

While the Florida Constitution says public education is "a paramount duty of the state," an appellate court in Tallahassee has just told state government to ignore that obligation and butt out.

The ruling, issued by a First District Court of Appeal panel last week, invalidated a statewide commission that was established to strengthen public education by reviewing and approving charter schools.

Unfortunately, the court went beyond narrowly finding that this commission usurps the authority of county school boards and asserted that the 2006 law "encourages the creation of a parallel system of free education escaping the operation and control of local elected school boards." This logic, if applied throughout public education, would create a disaster.

Using the court's logic, many state-managed public education programs are unconstitutional, including the state's five university laboratory schools, the Florida Virtual School, the Florida School for the Deaf and the Blind, the Arthur Dozier School for Boys, and all of the state schools for juvenile offenders.

Three years ago, the Florida Supreme Court used similar rationale to invalidate a school voucher program. The high court invoked the same claim of a "parallel system" and argued that the constitutional requirement for "uniform" schools means all schools must operate the same.

It even cited, as one example, the absence of a legal requirement that

voucher teachers be state-certified. But on community college and university campuses across Florida today, high-school students earn graduation credits from courses taught by noncertified professors. Are these dual-enrollment programs unconstitutional? Given the diverse needs of Florida's K-12 students, this uniformity clause has to mean uniformity of opportunity, not of delivery.

These rulings travel down a treacherous and highly selective constitutional path. The 14 school boards that filed the charter lawsuit were not seeking constitutional consistency. Rather, they wanted to eliminate state-sponsored charter schools, which some school boards see as troublesome competition. So they asked a court to use a constitutional provision that has its origins in the 19th century to block state government from meeting its 21st-century education obligations.

Local educators and school boards are understandably frustrated. For years, the Legislature and Congress have underfunded and over-regulated public schools and then blamed them for not being more effective and efficient. But in Florida, K-12 education is the joint responsibility of county school districts and state government. They are constitutional partners, despite the court's assertions to the contrary.

The same constitution that empowers school boards to "operate, control and supervise all free public schools within the school district" also says that education is "a paramount duty of the state" and that "adequate provision shall be made by law for a uniform,

efficient, safe, secure, and high quality system of free public schools."

This charter school ruling will be appealed, but it is significant because this fight goes to the heart of the changing nature of publicly funded education. Customization and education entrepreneurs are transforming where and how children learn, and the trend is accelerating at a rapid pace. The first charter school in Florida opened only a dozen years ago, and now one in every 25 students attends one.

Students today are choosing from an array of options that were nonexistent a generation ago — online classes, fundamental schools, magnet programs, career academies, dual enrollment, advanced placement, private scholarships for disabled students, private scholarships for low-income students. These choices are not "parallel systems" but a single continuum of publicly funded learning options.

The legal battles between school districts and state government are menacing obstacles for those of us working to create a more vibrant future for public education. What makes them even more aggravating is the extent to which they are about political power and not the needs of schoolchildren. There is nothing "parallel" about new and improved learning options for students, and maybe this is the time for the courts to butt out.

Doug Tuthill is president of the Florida School Choice Fund, a nonprofit organization that supports scholarships for low-income students and education options for all students.