

March 26, 2013

The Honorable Paul Sarlo, Chair
Senate Budget and Appropriations Committee
496 Columbia Blvd, 1st Floor
Wood-Ridge, NJ 07075

The Honorable Brian P. Stack, Vice Chair
Senate Budget and Appropriations Committee
301 45th St. 1st floor
Union City, NJ 07087

The Honorable Vincent Prieto, Chair
Assembly Budget Committee
1249 Paterson Plank Road
Secaucus, NJ 07094

The Honorable Gary S. Schaer, Vice Chair
Assembly Budget Committee
1 Howe Ave. Suite 302
Passaic, NJ 07055

RE: Opportunity Scholarship Voucher Program

Dear Senator Sarlo, Senator Stack, Assemblyman Prieto and
Assemblyman Schaer:

I write to bring to your immediate attention a serious constitutional and Separation of Powers issue resulting from Governor Christie's proposal to roll the Opportunity Scholarship Act (OSA), separately pending in the Legislature, into the FY14 Appropriations Act in order to facilitate enactment of a pilot program of publicly funded vouchers for private and religious schools. As we explain, the Governor's attempt to enact the OSA voucher program through the Annual Appropriations Act is a clear violation of the Single Object Clause of the New Jersey Constitution, N.J. Const. (1947), Art. IV, Sec. VII, par. 4, and would, if not removed prior to the adoption of the FY14 State Budget, render the Appropriations Act unconstitutional.

In his proposed FY14 State Budget, the Governor seeks to enact a pilot program of publicly funded vouchers for private and religious schools -- entitled the "Opportunity Scholarship Demonstration Program" -- and appropriate \$2 million for the program. FY14 Proposed Budget in Full, D-99 (February 26, 2013). Specifically, the Governor's voucher proposal directs the Commissioner of Education to:

....establish, implement and oversee a pilot program to provide expanded educational opportunities for a limited number of pupils from families with limited financial resources who are enrolled in selected chronically failing schools by providing scholarships not to exceed \$10,000 per student to enable them to enroll in a different school selected by their parents or guardians....

Proposed FY14 Budget in Full, D-101. The Governor also delineates the purpose, eligibility criteria and other substantive standards for the OSA voucher program, as follows:

...in order to be eligible to receive a scholarship...a student shall be from a household with an income that does not exceed 1.85 times the official federal poverty level for the school year and be enrolled in a chronically failing school as selected and determined by the Commissioner of Education. The Commissioner...shall be responsible for establishing written eligibility criteria for scholarships and selecting one or more public or nonpublic schools located in this State to provide an approved program of instruction to students receiving scholarships under this program. Such written eligibility criteria and other relevant information concerning the utilization of the scholarship funds shall be publicly available and published on the Department's internet website.

Proposed Budget in Full, D-101.

It is important to underscore that the Governor's proposed \$2 million appropriation is to implement a pilot voucher program for private and religious schools that has not been authorized by the Legislature in separate enabling legislation. Further, the substantive provisions of the pilot voucher program in the Governor's proposed Budget, as set forth above, closely mirror the OSA legislation presently pending in the Senate and Assembly. See Assembly Bill No. 2830 (May 10, 2012); Senate Bill

No. 1779 (March 8, 2012). The Governor's proposed OSA program and the pending OSA enabling legislation have the same stated purpose of providing a "limited number" of families with "limited financial resources" who are enrolled in "chronically failing" public schools with "expanded educational opportunities" by providing public funds that will "enable" those families to "enroll in different schools." The Governor's proposal also contains many of the same substantive features as the OSA legislation, from the designation of certain public schools as "chronically failing" whose students are eligible for a voucher, to income eligibility limits to qualify for a voucher. Compare Proposed Budget in Full, D-101 to Senate Bill No. 1779 and Assembly Bill No. 2830.

Indeed, the Governor, in presenting his FY14 State Budget, has made it clear that he is using the Annual Appropriations Act to enact a voucher program precisely because he has been unable to secure the Legislature's support for the pending OSA bills. See Budget Message, available at <http://www.state.nj.us/governor/news/addresses/2010s/approved/20130226.html> (stating that is using the FY14 Budget to "make good" on his support for the OSA voucher program which he has been "fighting for three years" to get enacted).

The New Jersey Constitution specifically provides that "every law shall embrace but one object" in order to "avoid improper influences" resulting from "the intermixing in one and the same act such things as have no proper relation to each other." N.J. Const., Art. IV, Sec. VII, para. 4. This clause, known as the "single object" requirement, is intended to prevent the inclusion of unrelated matters in one act or "logrolling," the "pernicious" practice of including a "weak or unpopular measure" in an "unrelated popular one in order to facilitate its passage." New Jersey Association on Correction v. Lan, 80 N.J. 209 (1979); Office of Legislative Services, Counsel's Opinion, Poison Pill Provisions, (April 22, 2009).

It is also well established that the "single object" of the Annual Appropriations Act is the "statutory authorization to expend specified sums for specified purposes" to "govern the state's spending program for the given fiscal year." Karcher v. Kean, 97 N.J. 483, 488-89 (1984); N.J. Attorney General Opinion No. 15-1975.

There can be no doubt that inclusion of the OSA voucher program in the Annual Appropriations Act, as proposed by the Governor, is prohibited by the single object requirement of the Constitution. The Governor is not requesting an appropriation

to fund a program authorized by the Legislature in duly enacted enabling legislation, which would be consistent with the object of the Annual Appropriations Act. Rather, the Governor is attempting to facilitate enactment of a substantive voucher program for which no underlying statutory authorization presently exists. Even more egregious, bills to authorize the OSA voucher program have been duly introduced and are pending in both the Assembly and Senate, but this enabling legislation has not garnered the support necessary for enactment into law. Indeed, versions of OSA voucher legislation have been introduced in past legislative sessions without success.

As is plainly evident, the Governor's proposal to use the Annual Appropriations Act to enact the OSA voucher program constitutes unconstitutional "logrolling" in its most "pernicious" form. If this proposal is included in the Appropriations Act, numerous legislators who remain opposed to vouchers will be faced with no alternative but to vote against the entire Appropriations Act -- with all of its spending allocations across the vast spectrum of State governmental programs -- in order to continue their opposition to the use of public funding for private and religious schooling. The Governor's bald attempt, therefore, to use a popular measure -- the Appropriations Act -- to facilitate enactment of a heretofore unpopular measure -- the OSA voucher program -- is in clear violation of the Constitution's single object requirement.

Accordingly, to ensure that the FY14 Appropriations Act is constitutionally compliant with the single object requirement, the Governor's OSA voucher proposal cannot be included within that Act. Thank you for your consideration and we are ready to work with your respective Committees to address this matter.

Respectfully,



David G. Sciarra, Esq.
Executive Director

Cc: Honorable Jeffrey S. Chiesa, Attorney General
Charles McKenna, Chief Counsel
David Rosen, Office of Legislative Services