



## State of North Carolina

ROY COOPER  
ATTORNEY GENERAL

Department of Justice  
PO Box 629  
Raleigh, North Carolina  
27602

REPLY TO: Grayson G. Kelley  
(919) 716-6400  
FAX: (919) 716-0135

March 31, 2014

### VIA HAND DELIVERY

The Honorable Thom Tillis  
Speaker of the House  
North Carolina House of Representatives  
16 W. Jones Street, Room 2304  
Raleigh, North Carolina 27601-1096

The Honorable Phil Berger  
President Pro Tempore  
North Carolina Senate  
16 W. Jones Street, Room 2008  
Raleigh, North Carolina 27601-2808

Re: *Richardson, et al. v. North Carolina*  
*Hart, et al. v. North Carolina*

Dear Speaker Tillis and President Pro Tempore Berger:

The Attorney General has asked me to respond to your letter dated March 28, 2014 expressing your views that an appeal should be taken from the preliminary injunctions entered in the above referenced cases. We are mindful of the General Assembly's interests and the importance of our duty to defend the constitutionality of enacted legislation. For these reasons, litigation decisions in these cases have been made only after careful consideration.

As you are aware, the Opportunity Scholarships established by Section 18.29(a) of Session Law 2013-360 are required to be administered by the State Educational Assistance Authority which is authorized to spend up to \$400,000 annually for administrative costs. The Authority is directed to award \$10 million in scholarships for the 2014-15 fiscal year through an application and lottery process. Rules and regulations are required to be established for the lottery and for verification of applicant information. There are reporting and information exchange requirements that impose responsibilities on the Authority, the Department of Public Instruction and schools accepting students receiving scholarship grants. These are substantial responsibilities involving personnel time and

Honorable Thom Tillis  
Honorable Phil Berger  
March 31, 2014  
Page 2

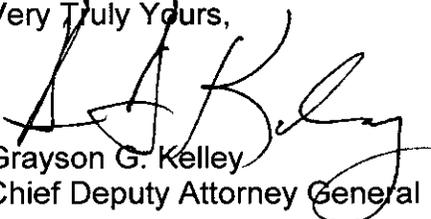
costs that may be wasted should the courts ultimately determine the legislation to be unconstitutional.

We are also concerned about the potential ramifications for parents, students and schools if the legislation is struck down. \$10 million expended through an unconstitutional program could raise significant issues, including whether scholarship funds should be repaid.

For these reasons, we concluded the more prudent course to follow in this litigation would be to forgo challenging the preliminary injunctions and move forward to defend the lawsuits on the merits. If the courts ultimately uphold the legislation the program can move forward. While your concern about delay is understandable, we believe the consequences if the law is not upheld should be considered.

Our attorneys will continue to defend these lawsuits to the best of their ability through our Special Litigation Division and will keep you advised as the cases move through the courts.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'G. Kelley', is written over the typed name and title.

Grayson G. Kelley  
Chief Deputy Attorney General