



MEMORANDUM OF OPPOSITION

S.8411 (Skoufis) / A.8869 (Romero)

Relates to certain powers of the attorney general

Our organizations *strongly oppose* the above referenced legislation.

The bill would greatly expand the authority of the attorney general to investigate alleged instances of discrimination in the school setting, among other provisions.

Our groups have no issue with the authority of the attorney general to investigate violations of law leading to discrimination or harassment, nor with the other provisions of this bill. We welcome accountability for bad actors and acknowledge the important role the attorney general plays in this process. However, as drafted, the bill lacks important definition and clarifications, is overly broad and represents a significant expansion of authority.

Throughout the bill, the phrase “repeated or persistent discrimination” is used. However, in all of the non-school district sections containing such language, both “repeated” and “persistent” are defined. For the section pertaining to educational settings, the attorney general would be provided with near-unrestricted authority to determine what qualifies as “repeated or persistent.” This would include scenarios that “foreseeably” would result in repeated or persistent discrimination, determined solely by the attorney general’s judgment.

In addition, other sections of the bill outline the specific manner in which such investigations or litigation can be instigated by the attorney general’s office. For the section pertaining to school districts, the attorney general is empowered to “investigate and bring any civil action or proceeding *in a manner consistent with*” the authority granted in a separate provision of law; that provision has a definition of “repeated and persistent” that actually allows for action to be taken after one instance of misconduct. This reference is also especially opaque, as that provision relates to business fraud. It is unclear why this seemingly unrelated provision of law is referenced.

In previous discussions with the attorney general’s office, many of these questions and concerns were raised by our groups. They remain unaddressed and unanswered. We further asked how the bill’s provisions would be enforced in a school-specific setting, such as weight being included as a protected characteristic. School sports are routinely, and appropriately, segmented based on weight class. Under the language of the bill, this could reasonably be a civil offense. While we were assured that this was not the aim of the legislation, no language has been amended to address this, and other, complications.

The statutory powers of the attorney general are meaningful and serve as a powerful tool. It is important that potential broad expansion of that authority is viewed through a long-term lens, and not simply as a change applicable to the here and now. Such expansion of power could have long-lasting impacts and lead to unfortunate and unintended consequences.

For these reasons, our organizations *strongly oppose* the above referenced legislation and urge your rejection of the bill.