

The Center for Constitutionality

July 27, 2006

BY HAND DELIVERY

Governor Jon S. Corzine
Statehouse
Office of the Governor
Trenton, NJ 08625

Dear Governor Corzine:

I write regarding this year's budget and the hundreds of millions of dollars in unconstitutional appropriations to specific corporations and specific municipalities, i.e., the line-item appropriations derisively referred to as "Christmas tree" items. These appropriations constitute special legislation in violation of the New Jersey State Constitution. As such, any monies so appropriated must not be allowed to exit the public treasury. It is your obligation to ensure that they do not.

The New Jersey State Constitution provides: "No general law shall embrace any provision of a private, special or local character." N.J. State. Const. Art. IV, § VII, ¶7.¹ The principle that legislation should favor a select few, however, predates the New Jersey State Constitution by more than a century. Thomas Jefferson wrote, "to special legislation we are generally averse lest a principle of favoritism should creep in and pervert that of equal rights." Thomas Jefferson to George Flower 1817, ME 15:139.² One hundred sixty-five years later, the New Jersey Supreme Court re-affirmed this aversion to special legislation when it wrote: "the prohibitions [against special legislation] eliminate the invidious threat of unfair preferences and restrict the legislative power to grant favors to some at the expense of others." Jordan v. Horseman's Benevolent and Protective Ass'n, 90 N.J. 422, 432 (1982). This year's budget and its Christmas tree items are, regrettably, shining examples of special legislation and favoritism.

"Legislation is deemed special when, by force of an inherent limitation, it arbitrarily separates some persons, places or things from others upon which, but for such limitation, it would operate." N.J. State Fireman's Mutual Benevolent Assoc. v. North Hudson Reg. Fire & Rescue,

¹ The budget is not exempt from the constitutional limitation on special legislation. See Karcher v. Kean, 97 N.J. 483, 508-09 (1984) (acknowledging that line items and portions of line items can be unconstitutional while construing Governor's power to exercise line-item-veto).

² Jefferson on Politics & Government (etext.virginia.edu).

340 N.J. Super. 577, 588 (App. Div. 2001) (internal quotations omitted). As the court explained, “[t]he test of a special law is the appropriateness of its provisions to the objects that it excludes....In other words, it is not who the classification includes, but whether it excludes some who should be included.” *Id.* (citations omitted). The Christmas tree items in this year’s budget arbitrarily separate their recipients from all other entities that should be included without providing a rational basis for that exclusion. For instance, if the State is determined to make appropriations for municipal sidewalk repairs; why are Logan Township and Wood-Ridge favored while other towns in need of sidewalk repair are excluded? Why are Cherry Hill and Tinton Falls entitled to State aid for their libraries but other towns’ libraries receive no such funds? If the governmental interest is to address youth issues, why is the Boys and Girls Club of New Jersey selected to receive money over nearly all other organizations providing similar programs?³ If the State’s goal is to preserve community theatres, why is the Community Theater of Morristown the sole community theater to receive a line-item appropriation? These questions and dozens of others deserve answers.

Unfortunately, all too often the answer to these questions is a tie between a legislator and the favored entity. In essence, line-item appropriations (Christmas tree items) have become part of the patronage system -- a system that threatens New Jersey’s fiscal well-being. You, yourself, have acknowledged this problem and its threat to our State. Yet, you indicated that you were essentially forced to accede to the Legislature’s unquenchable thirst for these items because of a potential intra-party war that would have continued the shutdown of State services. In the end, perhaps the only way to avoid a repeat of this year’s spectacle is to acknowledge that these appropriations are unconstitutional. Such action appears to be the only means of breaking the Legislature’s addiction to their annual Christmas in July.

While the unconstitutional practice of picking favorites and rewarding them through line-item appropriations in the budget may have been allowed to persist for years, I am calling upon you to bring that practice to an end. In the event you do not act, I will seek redress in the courts. You have spoken about the need to end gimmicks and restore integrity to the budget process. These unconstitutional appropriations are a fitting place to start. You have the power to impound State funds, and have done so as recently as April 2006. I ask that you exercise that

³ Notably, at least one statute treating “boys and girls clubs” differently than other entities providing similar services has already been declared unconstitutional. See *Scott v. Town of Bloomfield*, 94 N.J. Super. 592 (Law. Div. 1967).

power now before it is too late. New Jersey needs a statesman. Will you act or will you allow party politics to continue to guide you?

I will contact your office in the near future to discuss these matters. If you would like to have your representatives contact me before then, my email address is robinson@constitutionality.org and other contact information is listed above. My counsel on this matter currently is Philip J. Morin III, Esq., 123 North Union Avenue, Suite 202B, Cranford, NJ 07016 (tel: 908-709-1450).

Sincerely



David W. Robinson
President, The Center for Constitutionality

Cc: Senator Richard J. Codey (by hand delivery)
Senator Leonard Lance (by hand delivery)
Assemblyman Joseph J. Roberts, Jr. (by hand delivery)
Assemblyman Alex DeCroce (by hand delivery)