



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

G. PAUL NARDO
CLERK OF THE HOUSE OF DELEGATES AND
KEEPER OF THE ROLLS OF THE COMMONWEALTH

STATE CAPITOL
POST OFFICE BOX 406
RICHMOND, VIRGINIA 23218

May 3, 2017

The Honorable Terence R. McAuliffe
Governor of Virginia
Patrick Henry Building
1111 East Broad Street
Richmond, Virginia 23219

Dear Governor McAuliffe:

In your communication of April 28, 2017 regarding amendments to the state budget, you objected to six¹ portions of House Bill 1500 (2017). I write to you, in my capacity as Keeper of the Rolls of the Commonwealth, regarding two of these gubernatorial actions: your purported vetoes of paragraph JJJ 4 of Item 306 and of Item 436. Based on legal advice, it is my opinion that the purported vetoes do not constitute items as required by Article V, Section 6 of the Constitution of Virginia. As a result, it is my duty not to publish the purported vetoes for the reasons set forth in this letter.

All item vetoes of an appropriation bill must conform to the requirements of Article V, Section 6 of the Constitution of Virginia. The interpretation of Article V, Section 6 by the Supreme Court of Virginia in Brault v. Holleman 217 Va. 441 (1976) is dispositive of the constitutionality of the purported vetoes in question:

While the Governor is empowered to veto any particular item or items of an appropriation bill, he must, for his veto to be valid, strike down the whole of an item; he cannot disapprove part of an item and approve the remainder Where a condition is attached to an appropriation, the condition must be observed. The Governor cannot veto the appropriation without also disapproving the condition; correspondingly, he cannot veto the condition without also disapproving the appropriation.

¹ You purportedly vetoed five of these six, and expressed your view of the unconstitutionality of one, paragraph R 3 of Item 125.

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Paragraph JJJ 4 of Item 306² provides that no general or nongeneral funds shall be used for costs incurred to implement coverage for newly eligible individuals under a provision of the federal Patient Protection and Affordable Care Act, and explicitly conditions the appropriations in House Bill 1500 on this prohibition. Your purported veto did not, however, veto the appropriations covered by the conditions. Accordingly, pursuant to Brault, the veto is constitutionally invalid because it attempts to "veto the condition without also disapproving the appropriation."

Item 436 provides funding for the Office of the Secretary of Transportation, and sets out various directives, policies, and guidelines regarding the expenditure of funds for transportation purposes in general. Although you purport to veto the entirety of Item 436, you state that your objection is to Paragraph Q which modifies a condition placed on projects undertaken pursuant to the Public Private Transportation Act of 1995.³ As such, paragraph Q constitutes a condition on all funds that potentially could be used on such transportation projects. After consultation with budget analysts, it is clear that the vast majority, if not all, of such funds are in appropriations made in portions of HB 1500 other than Item 436 and thus not captured by your purported veto. Accordingly, pursuant to Brault, the veto is constitutionally invalid because it attempts to "veto the condition without also disapproving the appropriation."⁴

² Paragraph JJJ 4 of Item 306 states:

As a condition on all appropriations in this act and notwithstanding any other provision of this act, or any other law, no general or nongeneral funds shall be appropriated or expended for such costs as may be incurred to implement coverage for newly eligible individuals pursuant to 42 U.S.C. § 1396d(y)(1)[2010] of the Patient Protection and Affordable Care Act, unless included in an appropriation bill adopted by the General Assembly on or after July 1, 2016.

³ Paragraph Q states:

Notwithstanding any provision of law to the contrary, the provisions of § 2.2-4321.2, Code of Virginia, shall be applicable to transportation infrastructure projects or facilities to be developed pursuant to the Public Private Transportation Act of 1995, as amended. However, § 2.2-4321.2 shall not apply to any projects or facilities to be developed pursuant to the Public Private Transportation Act of 1995, as amended, that (i) improve or construct a limited access roadway that crosses state borders, and (ii) include construction of a new bridge or expansion of an existing bridge.

⁴ Because your purported veto of Item 436 is unconstitutional, it is unnecessary for me to address your assertion that this item would have "returned to its original enactment in Chapter 780 of the 2016 Acts of Assembly."

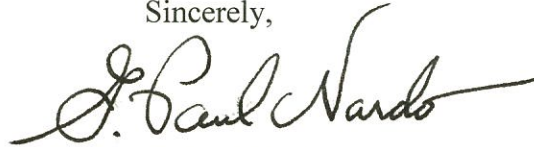
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Accordingly, for these reasons, each of these purported vetoes constitutes less than an item in contravention of Article V, Section 6, and I am duty-bound not to publish them.

Sincerely,

A handwritten signature in black ink, reading "G. Paul Nardo". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

G. Paul Nardo

cc: Members, Virginia General Assembly