



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  
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RICHMOND, VIRGINIA 23218

May 14, 2025

The Honorable Glenn A. Youngkin  
Governor of Virginia  
Patrick Henry Building  
1111 East Broad Street  
Richmond, Virginia 23219

Dear Governor Youngkin:

In your communication of May 2, 2025, regarding amendments to the Chapter 2<sup>1</sup> state budget, you objected to 37 portions of HB 1600 (2025). I write to you in my capacity as Keeper of the Rolls of the Commonwealth regarding three of these gubernatorial actions: the purported vetoes of paragraph J of Item 75; paragraph TTTT of Item 288; and paragraph VVVVV of Item 288. Based upon legal advice, it is my opinion that the purported vetoes are not properly made upon items as required by Article V, Section 6 of the Constitution of Virginia. Therefore, it is my duty not to publish these purported vetoes for the reasons set forth herein.

Every veto of an item in an appropriation bill must conform to the requirements of Article V, Section 6 of the Constitution of Virginia.<sup>2</sup> The Supreme Court of Virginia in *Commonwealth v. Dodson* defined an item in an appropriation bill, for constitutional purposes, as an indivisible sum of money dedicated to a stated purpose which may be eliminated from the bill without affecting the enactment's other purposes or provisions.<sup>3</sup> The subsequent refining of that constitutional interpretation by the Supreme Court of Virginia in *Brault v. Holleman*<sup>4</sup> is dispositive in assessing the constitutionality of the aforementioned purported vetoes:

*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.*

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<sup>1</sup> Chapter 2 of the Acts of Assembly of 2024, Special Session I.

<sup>2</sup> "(d) The Governor shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner provided in this section for a bill vetoed by the Governor." Art. V, Sec. 6, Constitution of Virginia.

<sup>3</sup> *Commonwealth v. Dodson*, 176 Va. 281, 296 (1940).

<sup>4</sup> *Brault v. Holleman*, 217 Va. 441, 447 (1976).

Paragraph J of Item 75<sup>5</sup> provides that no expenditure of funds appropriated for purposes of the administration of the State Health Plan shall be made for any payments to a vendor under the terms of any contingency fee-based contracts. Beginning the paragraph with "No expenditure of funds out of this item....," expresses a clear condition upon an appropriation to the Department of Human Resource Management. The purported veto of this language only, however, did not address the appropriation conditioned by such language. If allowed, this purported veto would permit spending for a purpose beyond what the legislature has authorized. Accordingly, pursuant to *Brault*, the veto is constitutionally invalid because a Governor "*cannot veto the condition without also disapproving the appropriation.*"<sup>6</sup>

The purported vetoes of Paragraphs TTTT of Item 288 and Paragraph VVVVV of Item 288 suffer from the same constitutional defect.

Item 288 in the budget provides an appropriation for the Department of Medical Assistance Services (DMAS) along with various directives, policies, guidelines, and conditions regarding the expenditure of that funding for Medicaid program services. You attempted to veto all of paragraph TTTT of Item 288, which was amended by the General Assembly during the 2025 Session to (i) provide Medicaid program coverage for weight loss medications under certain circumstances and (ii) strike conflicting language from Chapter 2. This purported veto of paragraph TTTT of Item 288 only addresses a condition on funds appropriated for Medicaid program services – that such funds be used, in part, for purposes of covering certain weight-loss medication under certain circumstances pursuant to the State Health Plan that shall be amended to account for such coverage effective July 1, 2025. Accordingly, by failing to capture the sum of money appropriated for Medicaid program services that is conditioned, at least in part, by the language in paragraph TTTT of Item 288, pursuant to *Brault*, the purported veto is constitutionally invalid because a Governor "*cannot veto the condition without also disapproving the appropriation.*"

That analysis also is instructive for reviewing the purported veto of paragraph VVVVV of Item 288, which directs DMAS to modify nursing facility direct care base rates by reference to a specific methodology. The language of paragraph VVVVV is not an item in the constitutional sense, but rather conditions DMAS funding for Medicaid program services on modifications to nursing facility direct care base rates using a methodology the legislature deems appropriate. Once again, by failing to capture the sum of money appropriated for Medicaid program services that is conditioned by the language in paragraph VVVVV of Item 288, pursuant to *Brault*, the purported veto is constitutionally invalid because a Governor "*cannot veto the condition without also disapproving the appropriation.*"

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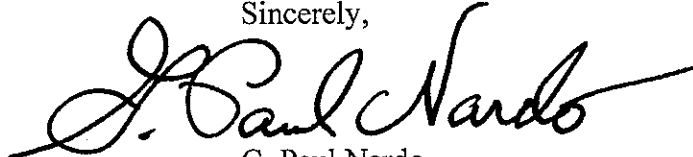
<sup>5</sup> Paragraph J of Item 75 states: "J. No expenditure of funds out of this item shall be made to make any payments to a vendor pursuant to any contingency fee contract. The Department of Human Resource Management shall not contract with any vendor using a contingency fee payment model."

<sup>6</sup> See *Brault* at 447.

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For these reasons, each of these three purported vetoes are not in conformity with the requirements of Article V, Section 6 which restricts a Governor's veto authority within an appropriation bill to an entire item. Accordingly, I am duty-bound not to publish them.

Sincerely,



G. Paul Nardo

cc: Members, Virginia General Assembly