University of Richmond Law Review

Volume 43 | Issue 1 Article 6

11-1-2008

Marshall v. Northern Virginia Transportation Authority: The Supreme Court of Virginia Rules that Taxes Can Be Imposed by Elected Bodies Only

Patrick M. McSweeney
McSweeney, Crump, Childress & Temple, P.C., Richmond, Virginia

Wesley G. Russell Jr.
McSweeney, Crump, Childress & Temple, P.C., Richmond, Virginia

MARSHALL V. NORTHERN VIRGINIA TRANSPORTATION AUTHORITY: THE SUPREME COURT OF VIRGINIA RULES THAT TAXES CAN BE IMPOSED BY ELECTED BODIES ONLY

Patrick M. McSweeney *
Wesley G. Russell, Jr. **

On February 29, 2008, by a unanimous vote in *Marshall v. Northern Virginia Transportation Authority*, the Supreme Court of Virginia invalidated the provisions of the omnibus transportation legislation enacted by the General Assembly in 2007[1] that empowered the Northern Virginia Transportation Authority ("NVTA") to impose seven taxes and fees to fund transportation projects and programs in that region of the commonwealth.[2] The court's decision was more narrow than generally believed, but potentially far-reaching in its legal and political effect.

I. THE PROCEEDINGS IN THE TRIAL COURT

The litigation began in the Circuit Court of Arlington County in July 2007, shortly after Chapter 896 went into effect and immediately following the vote of the NVTA governing body to impose the regional taxes and fees and issue bonds.[3] NVTA filed a

---

* Partner, McSweeney, Crump, Childress & Temple, P.C., Richmond, Virginia. LL.B., 1968, University of Richmond School of Law; B.A., 1964, University of Virginia.

** Partner, McSweeney, Crump, Childress & Temple, P.C., Richmond, Virginia. J.D., 1995, George Mason University School of Law; B.A., 1992, University of Virginia.

1. Act of Apr. 4, 2007, ch. 896, 2007 Va. Acts 2437 (codified as amended in scattered sections of Titles 2, 10, 15, 33, 46 and 58 of the Virginia Code) [hereinafter "Chapter 896"].

2. *See* Marshall v. N. Va. Transp. Auth., 275 Va. 419, 426, 436, 657 S.E.2d 71, 74–75 (2008). Those seven taxes and fees were an operator's license fee, an automobile registration fee, an automobile inspection fee, a sales tax on automobile repairs, a transient occupancy tax, a regional congestion relief fee and a car rental tax. *Id.* at 426, 657 S.E.2d at 74. Although NVTA did not contend otherwise, the court concluded that all seven impositions were in fact taxes. *Id.* at 431–32, 657 S.E.2d at 74, 77–78.

3. *See id.* at 424, 657 S.E.2d at 73.

complaint under the provisions of Virginia Code sections 15.2-2650 through -2658, which establish an expedited method by which a locality or political subdivision may obtain a judicial determination of the validity of bonds it wishes to issue.[4] In such a proceeding, all taxpayers, property owners, and citizens of the jurisdiction in which the bond issuer is located, as well as "all other persons interested in or affected in any way by the issuance of the bonds," are made defendants[5] and are bound by the final order.[6]

Several days after the filing of the NVTA complaint, the Attorney General of Virginia moved to intervene as a plaintiff in the name of the Commonwealth to defend the validity of Chapter 896.[7] This motion also asked the circuit court to permit the Governor and the Speaker of the House of Delegates of Virginia (the "House") to intervene as plaintiffs.[8] All three were granted leave to participate as plaintiffs.[9]

The Board of Supervisors of Loudoun County ("Loudoun County"), which is located within the boundary of NVTA, filed an answer in the NVTA proceeding.[10] Nine individual residents of various Northern Virginia localities, who with eight other individuals residing elsewhere in Virginia had also filed a challenge to Chapter 896 in the Circuit Court of the City of Richmond, filed a separate answer and an eight-count counterclaim.[11] Loudoun County asserted that NVTA lacked the authority to impose the taxes which would pay the proposed bonds because its members were not directly elected and because NVTA was acting as a regional government that had not been approved by a majority of the voters in each locality in the region as required by article VII, section 2 of the Constitution of Virginia.[12] Loudoun

4. *Id.* at 424, 657 S.E.2d at 73; *see* VA. CODE ANN. §§ 15.2-2650 to -2658 (Repl. Vol. 2008).

5. VA. CODE ANN. § 15.2-2651 (Repl. Vol. 2008).

6. *Id.* § 15.2-2657 (Repl. Vol. 2008).

7. *See Marshall*, 275 Va. at 424, 657 S.E.2d at 73.

8. *Id.*

9. *See id.*

10. *See id.*

11. *See id.* at 424–25, 657 S.E.2d at 73–74; Memorandum of Marshall Defendants in Support of Their Answer and Counterclaim and in Response to Northern Virginia Transportation Authority's Memorandum in Support of Its Complaint and Brief of the Commonwealth, Marshall v. N. Va. Transp. Auth., 275 Va. 419, 657 S.E.2d 71 (2007) (No. 07-923) [hereinafter Counterclaim Memo].

12. *See Marshall*, 275 Va. at 431, 657 S.E.2d at 77; *see also* VA. CONST. art. VII, § 2.

County asked the circuit court to invalidate both the regional taxes and the proposed bonds as unconstitutional.[13]

The individual defendants, including one current and one former member of the House of Delegates, contended that: (1) NVTA lacked the legal authority to assure the payment of the bonds it proposed to issue; (2) Chapter 896 violated article IV, section 12 of the Constitution of Virginia, which prohibits the General Assembly from enacting legislation having more than one object and mandates that the object of the legislation be expressed in its title; (3) the issuance of NVTA bonds to be paid directly from tax revenues without voter approval at a referendum violated article VII, section 10 and article X, section 9 of the Constitution of Virginia; (4) the General Assembly's delegation of authority in Chapter 896 to NVTA to decide whether to impose the seven regional taxes and fees violated article IV, section 1 and article VII, sections 1, 2, 5, and 7 of the Constitution of Virginia; (5) the seven new taxes and fees authorized by Chapter 896 were state revenues that must be paid to the Treasury of Virginia pursuant to article X, section 7 of the Constitution of Virginia, rather than to a fund administered by NVTA; (6) the provisions of Chapter 896 empowering local governments to exact impact fees against new development to generate revenues to fund road improvements that would benefit the new development violated the Taking and Due Process Clauses of article I, section 11 of the Constitution of Virginia and of the Fifth and Fourteenth Amendments to the Constitution of the United States; (7) the provision of Chapter 896 directing that civil remedial fees be paid into the Highway Maintenance and Operating Fund instead of the Literary Fund violated article VIII, section 8 of the Constitution of Virginia; and (8) the provision of Chapter 896 authorizing the Commonwealth Transportation Board to issue $3 billion in tax-supported debt without voter approval violated article X, section 9 of the Constitution of Virginia.[14] Claims 4, 5, 6, and 7 were included in the counterclaim to avoid undermining the risk of an arguable waiver. The parties agreed to the entry of an order dismissing those four claims without prejudice, thus allowing the individual defendants and other individuals who filed a challenge to Chapter 896 in the Circuit Court of the City of Richmond to proceed with those

13. *See Marshall*, 275 Va. at 431, 657 S.E.2d at 77.

14. *See* Counterclaim Memo, *supra* note 11, at 2–4.

claims in that forum.[15] On NVTA's motion, the Arlington trial court consolidated the challenge filed in the Circuit Court of the City of Richmond with the NVTA bond validation proceeding.[16]

II. BACKGROUND OF H.B. 3202

The legislation that ultimately became Chapter 896 was House Bill No. 3202 ("H.B. 3202"), which was introduced by Speaker of the House William J. Howell on January 19, 2007.[17] H.B. 3202 was described by the Speaker's Office as an "omnibus bill" covering numerous subjects,[18] some of which had been addressed in legislation introduced at the 2006 regular and special sessions as separate bills that were not enacted.[19] In fact, several of the subjects were again separately addressed in bills introduced at the 2007 regular session, a number of which were incorporated in whole or in part in H.B. 3202.[20] Based on the demonstrated lack of support at the 2006 legislative sessions for the bills that were later incorporated in H.B. 3202, it is reasonable to conclude that some of these proposals would not have been enacted as separate bills at the 2007 session. By combining the separate pieces in a single omnibus bill, a classic logrolling situation was created.[21]

After H.B. 3202 passed the House and the Senate, the Governor amended it, as was his prerogative under article V, section 6

---

15. *See* Final Order at 4, N. Va. Transp. Auth. v. Statutory Defendants, *et al.*, No. 07-923 (Va. Cir. Ct. Aug. 31, 2007) (Arlington County) [hereinafter Final Order].

16. Final Order, *supra* note 15, at 4; Brief of Appellants at 2, Marshall v. N. Va. Transp. Auth., 275 Va. 419, 657 S.E.2d 71 (2008) (No. 07-1959) [hereinafter Brief of Appellants]; *see also* VA. CODE ANN. § 15.2-2655 (Repl. Vol. 2008).

17. H.B. 3202, Va. Gen. Assembly (Reg. Sess. 2007) (enacted as Act of Apr. 11, 2007, ch. 896, 2007 Va. Acts 2437) [hereinafter "H.B. 3202"].

18. *See* Press Release, Office of the Speaker of the House, House Republicans Detail Regional Transportation Plans (Jan. 22, 2007), *available at* http://www.baconsrebellion.com/Issues07/01-22/house.php.

19. *See* Brief of Appellants, *supra* note 16, at 4.

20. *E.g.*, S.B. 1417, Va. Gen. Assembly (Reg. Sess. 2007); H.B. 1940, Va. Gen. Assembly (Reg. Sess.2007); H.B. 2376, Va. Gen. Assembly (Reg. Sess.2007); H.B. 2434, Va. Gen. Assembly (Reg. Sess.2007); H.B. 2704, Va. Gen. Assembly (Reg. Sess.2007); H.B. 2813, Va. Gen. Assembly (Reg. Sess.2007); H.B. 2884, Va. Gen. Assembly (Reg. Sess.2007) and H.B. 3067, Va. Gen. Assembly (Reg. Sess. 2007).

21. *See* Bennett v. Napolitano, 81 P.3d 311, 319 (Ariz. 2003) ("A bill that deals with multiple subjects creates a serious 'logrolling' problem because an individual legislator 'is thus forced, in order to secure the enactment of the proposition which he considers the most important, to vote for others of which he disapproves.'" (quoting Kerby v. Luhrs, 36 P.2d 549, 552 (Ariz. 1934))).

of the Constitution of Virginia, and returned it to the House on March 26, 2007.[22] The principal amendment made by the Governor granted NVTA, instead of the governing bodies of the counties and cities within the region, the authority to impose the taxes and fees to fund a regional transportation program.[23] Both houses agreed to the Governor's amendments at the reconvened session on April 4, 2007.[24] The Governor signed the bill into law on April 11, 2007.[25]

III. RULES OF CONSTRUCTION OF AMBIGUOUS CONSTITUTIONAL PROVISIONS

The Supreme Court of Virginia has repeatedly stated that when a constitutional provision is unclear or ambiguous, the intent of the drafters and the people who ratified the provision ultimately determines the meaning and effect of that provision.[26] A reviewing court can decide whether legislation is consistent with the Constitution of Virginia only after it determines the intent of the constitutional provision at issue.[27] The meaning intended by the voters and drafters, therefore, trumps the meaning given to a constitutional provision by the General Assembly, the Governor, and the Attorney General.

Neither the Commonwealth nor NVTA acknowledged in their respective briefs the principle that the court should first determine what the people of Virginia intended when they ratified the present Constitution in 1970. Both urged the court to defer to the General Assembly and uphold Chapter 896 unless the constitu-

22. Va. Legis. Information Servs., http://leg1.state.va.us (follow "2007" hyperlink; then follow "Bills and Resolutions" hyperlink; then enter "hb3202") [hereinafter Bill Tracking]; *see* VA. CONST. art. V, § 6.

23. *See* Brief of Appellants, *supra* note 16, at 4–5.

24. *See* Bill Tracking, *supra* note 22.

25. *See id.*

26. *See, e.g.*, Dean v. Paolicelli, 194 Va. 219, 226, 72 S.E.2d 506, 511 (1952); City of Roanoke v. Michael's Bakery Corp., 180 Va. 132, 152-53, 21 S.E.2d 788, 797 (1942); Town of Galax v. Appalachian Elec. Power Co., 177 Va. 29, 34, 12 S.E.2d 798, 780 (1941); Burks v. Hinton, 77 Va. 1, 13 (1883).

27. *See* Strawberry Hill Land Corp. v. Starbuck, 124 Va. 71, 85, 97 S.E. 362, 367 (1918). The 1902 Constitution, which was at issue in *Starbuck*, was never submitted to the voters; consequently, the court did not inquire into the intent of the voters. *See, e.g.*, A HORNBOOK OF VIRGINIA HISTORY 70 (Emily J. Salmon ed., Virginia State Library 3d ed. 1983).

tion explicitly prohibited any aspect of that legislation.[28] NVTA insisted that the General Assembly was not constrained in delegating taxing authority.[29] The Arlington Circuit Court implicitly adopted the position of NVTA and the Commonwealth and declined to consider whether the people who ratified the constitution intended to prohibit unelected bodies from imposing taxes and bar the issuance of tax-supported debt by a regional authority without a referendum.[30]

IV. DECISION OF THE CIRCUIT COURT

After a hearing in which the trial court heard the individual defendants' motion for summary judgment on the issue of whether the bonds complied with the requirement that they be negotiable instruments under Virginia law and then on NVTA's complaint, the circuit court ruled from the bench that the General Assembly's enactment of Chapter 896 was within the legislative power vested in it by article IV and violated no provision of the Constitution of Virginia.[31] On August 31, 2007, the court entered an order denying the individual defendants' motion for summary judgment and a final order granting NVTA the relief it requested in its complaint.[32]

V. APPEAL TO THE SUPREME COURT OF VIRGINIA

The appeals by Loudoun County and the individual appellants were limited to four issues: (1) whether the General Assembly's delegation of taxing power violated article IV, section 1 of the Constitution of Virginia; (2) whether Chapter 896 violated article IV, section 12 of the Constitution of Virginia; (3) whether the bonds that NVTA proposed to issue violated article X, section 9

---

28. *See* Brief of Northern Virginia Transportation Authority as Appellee at 13–20, Marshall v. N. Va. Transp. Auth., 275 Va. 419, 657 S.E.2d 71 (2008) (No. 07-1959) [hereinafter Brief of NVTA I]; Brief of Commonwealth as Appellee at 11, Marshall v. N. Va. Transp. Auth., 275 Va. 419, 657 S.E.2d 71 (2008) (No. 07-1959) [hereinafter Brief of Commonwealth].

29. *See* Brief of NVTA I, *supra* note 28, at 13–24.

30. *See* Final Order, *supra* note 15, at 2–4.

31. *Id.* at 2, 4, 6–7; *see* Marshall v. N. Va. Transp. Auth., 275 Va. 419, 425, 657 S.E.2d 71, 71–74 (2008).

32. *See* Final Order, *supra* note 15, at 4.

because they would be a debt paid directly from tax revenues and, thus, a debt that the General Assembly itself could not incur; and (4) whether the NVTA bonds complied with the requirements of Virginia Code sections 15.2-4519(B)(1) and 15.2-4839.[33] As explained below, the Supreme Court of Virginia did not reach the last two issues.

The appellants contended that the General Assembly had unlawfully delegated its taxing power by granting the legislative prerogative to impose the seven taxes to a political subdivision that was not governed by individuals directly elected by the voters.[34] The Commonwealth countered by arguing that there was no delegation of the taxing authority because the General Assembly merely permitted NVTA to use the General Assembly's taxing power within prescribed limits.[35]

Similarly, NVTA argued that the General Assembly did not delegate the power to impose the regional taxes because Chapter 896 specified the subject and rate of each tax, as well as the manner in which the revenues derived would be spent.[36] According to NVTA, there was no true delegation of taxing power because the General Assembly had provided policies and standards to guide the exercise of the discretion granted to it by Chapter 896.[37]

NVTA's response to the appellants' unlawful delegation argument was more expansive than that of the Commonwealth. In addition to its contention that there was no true delegation of taxing power, NVTA argued that, in the absence of an express prohibition, the Constitution of Virginia does not constrain the General Assembly's authorization of the regional taxes.[38] The individual appellants argued that the constitution's careful circumscription of the exercise of taxing power by the General Assembly and elected governing bodies of counties, cities, and towns necessarily

33. *See* Brief of Appellants, *supra* note 16, at 3–4.

34. *See id.* at 8–15.

35. *See* Brief of Commonwealth, *supra* note 28, at 12 & n.15.

36. *See* Brief of Northern Virginia Transportation Authority as Appellee, Marshall v. N. Va. Transp. Auth. at 11, 275 Va. 419, 657 S.E.2d 71 (2008) (No. 07-1779) [hereinafter Brief of NVTA II].

37. *Id.* at 11. NVTA relied on *Ames v. Town of Painter*, 239 Va. 343, 349, 389 S.E.2d 702, 705 (1990); *Hamer v. Sch. Bd. of Chesapeake*, 240 Va. 66, 70, 393 S.E.2d 623, 626 (1990); and *Chapel v. Commonwealth*, 197 Va. 406, 411, 89 S.E.2d 337, 340 (1955).

38. *See* Brief of NVTA I, *supra* note 28, at 13–16.

implied that political subdivisions without directly elected governing bodies could not exercise such legislative power.[39]

The individual appellants relied heavily on *Town of Victoria v. Victoria Ice, Light & Power Co.*, where the Supreme Court of Virginia held that it would be illogical to conclude that cities and towns have implied power to regulate the rates of public service corporations when the Constitution of Virginia explicitly provided for rate-setting by the State Corporation Commission.[40] There, the court concluded that "the convention which adopted [the provision allowing the General Assembly to establish a rate regulation of public service corporations in the State Corporation Commission] could hardly have intended to be so inconsistent . . . ."[41]

The power to tax is unquestionably an element of the legislative power of the Commonwealth, which the Constitution of Virginia vests in the General Assembly.[42] Despite the absence of any explicit language in the Constitution of Virginia forbidding the General Assembly from surrendering, abridging, or delegating the legislative power vested in it, the implicit rule making such surrender, abridgement, or delegation unconstitutional has long been recognized in Virginia.[43] The implicit constitutional prohibition against delegation of legislative power has long been enforced by the Supreme Court of Virginia.[44]

The individual appellants argued on appeal that if the court declared Chapter 896 constitutional, the General Assembly could delegate all of its legislative powers to unelected bodies.[45] Indeed, if the court accepted the position of the Commonwealth and NVTA, the legislature could carve up the commonwealth into multiple, unelected, special-purpose authorities with the power to

---

39. *See* Brief of Appellants, *supra* note 16, at 14–15.

40. *See* Town of Victoria v. Victoria Ice, Light & Power Co., 134 Va. 134, 145, 114 S.E. 92, 95 (1922).

41. *Id.*

42. *See* VA. CONST. art. IV, § 1; Town of Danville v. Shelton, 76 Va. 325, 327–28 (1882).

43. *See, e.g.*, Mumpower v. Housing Auth., 176 Va. 426, 452, 11 S.E.2d 732, 742 (1940); Roanoke Gas Co. v. City of Roanoke, 88 Va. 810, 812, 14 S.E. 665, 666 (1892).

44. *E.g.*, County of Fairfax v. Fleet Indus. Park Ltd. P'ship, 242 Va. 426, 432–34, 410 S.E.2d 669, 672–74 (1991); Laird v. City of Danville, 225 Va. 256, 261–62, 302 S.E.2d 21, 24–25 (1983); Armstrong v. County of Henrico, 212 Va. 66, 77, 182 S.E.2d 35, 43 (1971); Taylor v. Commonwealth, 187 Va. 214, 220, 46 S.E.2d 384, 387 (1948); Thompson v. Smith, 155 Va. 367, 386, 154 S.E. 579, 586 (1930).

45. Brief of Appellants, *supra* note 16, at 6.

impose income, sales, and other taxes unconstrained by the procedural requirements imposed on elected local governing bodies.[46]

Central to the unlawful delegation argument of the individual appellants was the concept of political accountability embedded in the Constitution of Virginia through various provisions and by necessary implication.[47] This concept presupposes that legislative power can be exercised only by elected bodies, which cannot surrender, abridge, or delegate that power.[48] The procedural requirements established by the Constitution of Virginia for the actions of elected bodies, including the General Assembly and local governing bodies, are strictly enforced.[49]

The individual appellants also argued that the "taxing power is significantly different from other legislative powers, including the powers of eminent domain and regulation."[50] They noted the special place that the taxing power occupies in the history of the commonwealth.[51] The Constitution of Virginia also places greater restrictions on the exercise of taxing power than on other legislative powers.[52] While the government may take a person's property under the power of eminent domain, it must pay just compensation for such taking.[53] When regulation amounts to a taking, the government must pay just compensation to the injured person.[54] The power of taxation is inherently more threatening and destructive than other governmental powers because its exercise can result in the seizure of a person's entire assets without a requirement that the government compensate the injured person.[55] It is the strongest of governmental powers, being virtually unlimited.[56]

---

46. For example, article VII, section 7 requires a recorded affirmative vote of all members elected to the governing body. VA. CONST. art. VII, § 7.

47. *See* VA. CONST. art. IV, §§ 1, 11; art. VII, § 7.

48. *See County of Fairfax*, 242 Va. at 432, 410 S.E.2d at 672.

49. *See* Town of Madison, Inc. v. Ford, 255 Va. 429, 433–36, 498 S.E.2d 235, 236–39 (1998).

50. Brief of Appellants, *supra* note 16, at 9.

51. *Id.*

52. *See, e.g.*, VA. CONST., art. IV, §§ 11, 14; art. VII, § 7.

53. *See* VA. CONST., art. I, § 11.

54. *See id.*; Cochran v. Bd. of Zoning Appeals, 267 Va. 756, 764–65, 594 S.E.2d 571, 576 (2004).

55. *See* Loan Ass'n v. Topeka, 87 U.S. (20 Wall.) 655, 663 (1874) ("Of all the powers conferred upon government that of taxation is most liable to abuse.").

56. *See id.*; McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 431 (1819) ("the power to

The individual appellants argued that the scheme of the Constitution of Virginia reflects a careful circumscription of the legislature's exercise of the taxing power that is inconsistent with the position of NVTA and the Commonwealth—that the power to impose a tax can be delegated to unelected bodies free of any of the limitations or restrictions that apply to elected bodies, including the General Assembly itself and the governing bodies of counties, cities, and towns.[57] The fact that the Constitution of Virginia contains no explicit provision prohibiting the delegation of the power to impose taxes is not dispositive. The appellants contended that such a prohibition was necessarily implied and urged the court to reject NVTA's argument that "the General Assembly's ability and power to delegate taxation is not constrained."[58]

The individual appellants also assigned error to the trial court's ruling that the bonds were valid.[59] They contended that the bonds were not negotiable instruments as required by Virginia Code sections 15.2-4519(B)(1) and -4839 because the bonds contained no unconditional promise to pay, and there was no fixed amount to pay.[60] The court's disposition of the unlawful delegation issue obviated the need to reach the two issues related to the bonds themselves. The invalidation of the provisions of Chapter 896 enabling NVTA to impose regional taxes, which were the only source of payment, necessarily meant that the bonds could not be validated.[61]

In support of their claim that the General Assembly violated the single object rule established by article IV, section 12 of the Constitution of Virginia, the individual appellants argued that Chapter 896 was a classic example of omnibus legislation containing various, separate elements, not all of which would have been enacted if considered separately.[62] They also contended that Chapter 896 violated the provision of article IV, section 12 requir-

---

tax involves the power to destroy").

57. *See* Brief of Appellants, *supra* note 16, at 12–15.

58. *Id.* at 11–12.

59. Brief of Appellants, *supra* note 16, at 3.

60. *Id.* at 18–17; *see* VA. CODE ANN. § 15.2-4519(B)(1) (Repl. Vol. 2008); VA. CODE ANN. § 15.2-4839 (Repl. Vol. 2008 & Cum. Supp. 2007).

61. *See Marshall*, 275 Va. at 436 & n.4, 657 S.E.2d at 80 & n.41 (2008).

62. *See* Brief of Appellants, *supra* note 16, at 29–35.

ing the title of a law to fully express the object of that law so that legislators and citizens would not be misled as to its contents.[63]

Article IV, section 12 of the Constitution of Virginia provides: "No law shall embrace more than one object, which shall be expressed in its title. Nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length."[64]

The word "object" in the provision is not defined and, in theory, "can be stretched to include an abstraction so expansive that it could literally include all subjects."[65] NVTA and the Commonwealth contended that all elements of Chapter 896 related to a single object—transportation.[66] However, the individual appellants noted, "[v]irtually every aspect of human activity somehow relates to transportation."[67] The individual appellants argued that the test suggested by NVTA would render article IV, section 12 a nullity because it would allow, for example, "all legislation introduced at a session of the General Assembly to be combined into a single law under a title declaring as its object 'the improvement of the condition of the Commonwealth's citizenry' or 'providing solutions to peoples' everyday problems.'"[68] The individual appellants argued that simply adding the phrase "relating to transportation" to the title of the Act when the Governor submitted his amendment in the nature of a substitute for H.B. 3202 to the General Assembly on March 27, 2007, did not cure the constitutional defect of including multiple objects.[69] In theory, an abstract object is conceivable for virtually any combination of subjects lumped together in one bill. Such a hypothetical exercise

63. *See id.* at 35–37.

64. VA. CONST. art. IV, § 12.

65. Brief of Appellants, *supra* note 16, at 29. An "object" is "a person or thing to which thought, feeling, or action is directed." BLACK'S LAW DICTIONARY 1102 (8th ed. 2004).

66. Brief of Commonwealth, *supra* note 28, at 18–19; Brief of NVTA I, *supra* note 28, at 31–33.

67. Brief of Appellants, *supra* note 16, at 29.

68. Brief of Appellants, *supra* note 16, at 29–30. In describing the objects of his bill, H.B. 3202, Speaker Howell said: "Although the process that brought us here today has been at times challenging and derided by those seeking to derail progress, the ultimate outcome of tireless negotiations forms a true compromise and makes tremendous strides in relieving congestion, combating sprawl and providing solutions to people's everyday problems." *Id.* at 30 n.11 (quoting Press Release, Office of the Speaker of the House, Negotiators for House and Senate Announce Over $2.5 Billion Compromise Transportation Plan (Feb. 23, 2007)).

69. *See id.* at 34–35.

does not satisfy the single object rule. The test of whether a law has more than one object should be based on the evil that the voters intended to prevent when they ratified the constitutional provision.[70] In other words, article IV, section 12 "must be construed in the light of the purposes for which it was ordained . . . ."[71] According to the individual appellants, the principal purpose was to prevent logrolling.[72]

The single object rule first appeared in Virginia in the constitution of 1851.[73] The purpose of the rule was described in the Report of the Commission on Constitutional Revision in 1969:

> Historically, provisions like that set out in this section [Section 12 of Article IV] were designed to prevent several abuses in the legislative process: (1) log-rolling, whereby two or more blocs (which might separately be minorities in the legislative body) combine forces on a bill containing several unrelated features, no one of which by itself could command a majority; (2) lack of notice to legislators who, but for the one object requirement, might be unaware of the real contents of a bill; (3) lack of notice to the public of what measures are being considered by the Legislature; (4) lack of notice to those likely to be affected by enacted bills; (5) careless amending and reenacting, and therefore problems of construction, meant to be cured by requiring publication at length of a law revived or amended. Most state constitutions agree with Virginia's section 52 [now Section 12 of Article IV] in requiring that bills be confined to one subject or object.[74]

Most state constitutions contain a single object provision.[75]

---

70. *See* Commonwealth v. City of Newport News, 158 Va. 521, 544, 164 S.E. 689, 696 (1932).

71. 4C MICHIE'S JURISPRUDENCE, CONSTITUTIONAL LAW, § 7 (2006) (citing Commonwealth v. City of Newport News, 158 Va. 521, 164 S.E. 689 (1932)).

72. Brief of Appellants, *supra* note 16, at 31–32.

73. *See* A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 527–28 (1974).

74. THE COMMISSION ON CONSTITUTIONAL REVISION, THE CONSTITUTION OF VIRGINIA 148 (1969). The precise origin of the single object rule appears to be the State of Georgia, in a provision of that state's constitution of 1798 prompted by the infamous Yazoo land fraud in 1795. *See* James L. McDowell, Constitutional Restraints on State Legislative Procedure: The Application of Single Subject Rules 5 (May 24, 2002) (unpublished manuscript, *available at* http://www.unc.edu/depts/polisci/statepol/conferences/2002/papers/MCDOWELL.PDF).

75. *See* HOWARD, *supra* note 73, at 528 ("The great majority of States constitutionally require that bills be confined to one subject or object, to be expressed in the title."); *see also* Millard H. Ruud, "*No Law Shall Embrace More Than One Subject*," 42 MINN. L. REV. 389, 389 (1958) ("A one-subject rule for laws has found its way, in one form or another, into the constitutions of forty-one of our states.").

The principal impetus for the adoption of the single object rule was the widespread mischief of logrolling in the nineteenth century.[76] As the Pennsylvania Supreme Court noted:

> [B]ills, popularly called "omnibus bills," became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits. So common was this practice that it got a popular name, universally understood, as "logrolling." A still more objectionable practice grew up, of putting what is known as a "rider" (that is, a new and unrelated enactment or provision) on the appropriation bills, and thus coercing the executive to approve obnoxious legislation, or bring the wheels of the government to a stop for want of funds.[77]

The mischief that prompted the inclusion of the single object rule in the Constitution of Virginia and the constitutions of forty other states continues.[78] That mischief "reflect[s] temptations which, being inherent to the law-making process, are present in every era."[79]

The individual appellants contended that "[t]he various separate bills brought together in Chapter 896 must have a 'necessary' and 'natural' connection."[80] The appellants further argued that:

> There is no necessary or natural connection between funding salaries of Virginia Tech professors and the imposition of a regional tax in Northern Virginia and Hampton Roads on automobile repairs, between funding the Virginia Truck and Ornamentals Research Station and the creation of the Joint Commission on Transportation Accountability, between mandating civil remedial fees and mandating urban development areas in local comprehensive plans, between impact fees on new development and dedicating revenues from a statewide tax increase to the Virginia Agricultural Foundation, between the acquisition of open space by localities and the authorization of $3

---

76. *See* HOWARD, *supra* note 73, at 528 (discussing the prevention of logrolling and the lack of notice as dims of the single object provision); Ruud, *supra* note 75, at 391 (discussing logrolling and riders in the development of the one-subject rule); McDowell, *supra* note 74, at 1 (discussing the prevention of log rolling as a goal of the single subject provision).

77. Commonwealth v. Barnett, 48 A. 976, 977 (Pa. 1901).

78. *See, e.g.*, McDowell, *supra* note 74, at 1–2, 5.

79. City of Philadelphia v. Commonwealth, 838 A.2d 566, 588 (Pa. 2003).

80. Brief of Appellants, *supra* note 16, at 32 (citing Commonwealth v. Dodson, 176 Va. 281, 305–06, 11 S.E.2d at 131–32 (1940)).

> billion in state debt for the construction of transportation projects, and between requiring the Washington Metropolitan Transit Authority to submit audit reports to the Auditor of Public Accounts and providing that state formulas for funding localities, particularly for public education, will not be affected by the new revenue streams created by the Act.[81]

In *Board of Supervisors v. American Trailer Co.*,[82] the court invalidated a state statute for contravening the single object rule because it both authorized a local tax on trailer parks to raise general revenues and regulated trailer parks. The court said, "It is wholly inconsistent with the language of the title [of the statute] and *of the act itself* to say that in addition to its expressed object to regulate, it was intended also to provide a revenue measure for general county purposes."[83]

The individual appellants argued that *American Trailer* cannot be distinguished "on the grounds that the title of the statute in that case identified regulatory measures for trailer parks, but not the taxation of trailer parks."[84] If all parts of the body of a law are *naturally* related to each other, not every part of the statute must be mentioned in the title.[85] Under that test, the result in *American Trailer* would not have been different and the statute would have violated article IV, section 12 even if taxation of trailer parks was mentioned in the title. What *American Trailer* teaches is that regulation and revenue generation are different objects, even when they relate to the same subject.

In 1978, the Supreme Court of Virginia declared another state statute to be in violation of article IV, section 12 in *State Board of Health v. Chippenham Hospital, Inc.*[86] There, the title of legislation dealing with the construction and modification of medical care facilities was held to contravene that constitutional provision because the title did not suggest that the legislation included a provision concerning the internal operation of medical care facilities, staff privileges at those facilities, or the suspension or revo-

---

81. *Id.* at 32–33.

82. Bd. of Supervisors v. Am. Trailer Co., 193 Va. 72, 74–76, 68 S.E.2d 115, 117–18 (1951).

83. *Id.* at 75, 68 S.E.2d at 118 (emphasis added).

84. Brief of Appellants, *supra* note 16, at 33.

85. *See Dodson*, 176 Va. at 305, 11 S.E.2d at 131.

86. 219 Va. 65, 75, 245 S.E.2d 430, 436 (1978).

cation of a facility's license for failure to grant staff privileges.[87] The court concluded that legislators and citizens would not be alerted by the legislation's title that the legislation included provisions related to staff privileges. The court also concluded that the regulation of staff privileges had no necessary connection with construction of medical care facilities.[88]

As the individual appellants in *Marshall* argued:

> Even if "transportation" in the abstract is an "object" for purposes of Article IV, Section 12, Chapter 896 violates that section because it includes matters that do not relate to transportation and brings so many diverse matters together in a single piece of legislation that legislators and the public were likely to be misled by the title. Chapter 896 affects twelve titles of the Code of Virginia (*i.e.*, Titles 2.2, 10.1, 15.2, 18.2, 28.2, 29.1, 30, 33.1, 46.2, 56, 58.1 and 62.1) and contains twenty-three enactment clauses. The title of Chapter 896 does not refer at all to five of those affected titles of the Code: Titles 18.2, 28.2, 29.1, 56 and 62.1.[89]

The title of Chapter 896 identified or described only the first, second and ninth enactment clauses and makes no reference to the other twenty enactment clauses.[90] In those twenty clauses, the General Assembly, among other things, provided that formulas for funding local governments, particularly for public education, would not be affected by new revenue streams created by Chapter 896; required that the Washington Metropolitan Transit Authority submit an annual audit report to the Auditor of Public Accounts; mandated that Hampton Roads Transportation Authority ("HRTA") develop goals and quantifiable measures for safety, job-to-housing ratios, and air quality; provided special majority rules for the imposition of regional taxes and fees by HRTA; required VDOT to prepare a plan to reassign highways "and other facilities comprising the state primary, secondary, and urban highway systems . . . "; required VDOT to submit a report on "opportunities to enhance mobility and free-flowing traffic on [its] toll facilities . . . "; established a 2011 deadline for counties to amend their comprehensive plans; provided that civil remedial fee collections be paid into the Highway Maintenance and Operat-

87. *Id.* at 73, 245 S.E.2d at 435.

88. *Id.* at 74, 245 S.E.2d at 435.

89. Brief of Appellants, *supra* note 16, at 33–34 (citations omitted).

90. *See* Act of Apr. 4, 2007, ch. 896, 2007 Va. Acts 2437 (codified as amended in scattered sections of Titles 2, 10, 15, 33, 46 and 58 of the Virginia Code).

ing Fund; required that sound walls be constructed on portions of the Dulles Access/Toll Road Connector if required by the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; required that NVTA, HRTA, the counties and cities in those regions, the Department of Taxation, Department of Motor Vehicles ("DMV"), "and other appropriate entities shall develop guidelines, policies, and procedures for the efficient and effective collection and administration of the fees and taxes" that Chapter 896 empowers NVTA and HRTA to impose, exempted the development of those guidelines, policies and procedures from the Administrative Process Act, and empowered the Secretary of Finance to authorize an anticipation loan for such purpose; required the Hampton Roads Planning District Commission to cooperate with VDOT to assist in organizing HRTA and to provide staff, office space, and support to HRTA; limited the authority to impose a tax under Virginia Code section 58.1-3221.2 to counties and cities within the HRTA and NVTA service areas; required the DMV to "work with the appropriate state agencies to develop guidelines, policies, and procedures for the efficient and effective collection and administration" of civil remedial fees and exempted that activity from the Administrative Process Act; prohibited the imposition by counties and cities in the HRTA and NVTA service areas from imposing the tax authorized by Virginia Code section 58.1-540 if the respective authority is imposing any of the taxes or fees authorized in the first enactment clause; required NVTA and the counties and cities embraced by NVTA to work cooperatively with the towns in the region for purposes of implementing the Act; limited the use of revenues generated by the Act solely to transportation purposes[91] (which conflicts with the provision of the first enactment clause amending Virginia Code section 58.1-2289(C) that dedicates a portion of the tax increase on gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel used for agricultural purposes to the Virginia Agricultural Foundation Fund);[92] and provided that any authorization in Chapter 896 for imposition of taxes and/or fees paid to the Transportation Trust Fund or the Highway Maintenance and Operating Fund would expire at the end of any calendar year in which a future General Assembly ap-

91. *Id.* at 2472–74 (codified as amended in scattered sections of Titles 2.2, 10.1, 15.2, 18.2, 29.1, 30, 33.1, 46.2, 56, 58.1, and 62.1 of the Virginia Code).

92. *See id.* at 2466 (codified as amended at VA. CODE ANN. § 58.1-2289(c) (Cum. Supp. 2008)).

propriates any of the revenue from such taxes or fees for any non-transportation related purpose. [93]

The individual appellants argued that "[e]ither Chapter 896 had multiple titles, each relating to separate enactment clauses, or twenty of the twenty-three enactment clauses are not referred to at all in the title of the Act."[94] Under either construction, the individual appellants argued that Chapter 896 offended article IV, section 12.[95]

VI. THE SUPREME COURT OF VIRGINIA'S DECISION

The opinion of the unanimous court plainly speaks for itself, but it is useful to analyze how the court responded to the arguments of the parties and to evaluate the opinion in light of the court's prior decisions. From the perspective of precedent, the *Marshall* decision hardly announced a novel rule or marked a dramatic change in the court's jurisprudence. The opinion was noteworthy for its clarity and the unanimity of the justices. The court held that Chapter 896 did not violate article IV, section 12 of the Constitution of Virginia, but did violate the constitutional prohibition against the delegation of legislative power implicit in article IV, section 1, which vests the Commonwealth's legislative power in the General Assembly, as well as other constitutional provisions, which the court described in detail.[96]

The question of whether the impositions labeled "fees" in Chapter 896 were in fact taxes was never disputed by NVTA or the Commonwealth.[97] The court concluded that all seven levies were in fact taxes, regardless of name.[98] Each was "designed to produce revenue to be used for the purpose of financing bonds and supplying revenue for transportation purposes in the Northern Virginia localities."[99]

---

93. *Id.* at 2474 (codified as amended at VA. CODE ANN. § 33.1-23.03:1).

94. Brief of Appellants, *supra* note 16, at 37.

95. *Id.*

96. Marshall v. N. Va. Transp. Auth., 275 Va. 419, 431–36, 657 S.E.2d 71, 77–80; *see* VA. CONST. art. 1, § 6; art. IV, §§ 1, 11, 14(5); art. VII, §§ 2, 7.

97. *Marshall*, 275 Va. at 431, 657 S.E.2d at 77.

98. *Id.* at 431, 657 S.E.2d at 77–78.

99. *Id.* at 431–32, 657 S.E.2d at 78 (citing VA. CODE ANN. §§ 15.2-4838.1(c)(3), -4840 (12)).

The court specifically rejected the argument of NVTA and the Commonwealth that, because the taxes and fees were established by Chapter 896 and because NVTA exercised limited discretion in light of the policies and standards set by that statute, the General Assembly had not actually delegated the taxing power to NVTA.[100] The court concluded that when the entity to which the General Assembly has granted the power and prerogative has the sole discretion to determine whether a tax will be imposed at all, a delegation of taxing authority has occurred, even though the General Assembly has specified its form, substance, and the use of its revenues and retains the power to repeal that grant of power.[101]

The court did not inquire into the intent of the drafters and the voters regarding article IV, section 12, presumably because it concluded that the jurisprudence with respect to that provision was well established.[102] In analyzing the unconstitutional delegation challenge, however, the court reviewed the explicit language of the Constitution, particularly article I, section 6; article IV, sections 1, 11, and 14(5); and article VII, sections 2 and 7, in light of the "special regard for the detailed and explicit oversight that the framers provided regarding the General Assembly's exercise and delegation of its legislative power of taxation."[103] The court then observed that the people of Virginia approved a constitution that places greater restrictions on the taxing power than those placed on the exercise of most other legislative powers.[104] This led the court to conclude that, by "necessary implication," the constitution prohibits the General Assembly from delegating its taxing power to a non-elected body.[105]

The court added another justification for its holding on the unconstitutional delegation challenge, stating: "The General Assembly also may not accomplish through Chapter 896, indirectly, that which it is not empowered to do directly . . . ."[106] When a tax is imposed or authorized by the General Assembly, therefore, it must strictly comply with the requirements of article IV, section

100. *See id.* at 431–32, 657 S.E.2d at 77–78.
101. *Id.* at 432, 657 S.E.2d at 78.
102. *See id.* at 429, 657 S.E.2d at 76.
103. *Id.* at 434, 657 S.E.2d at 79.
104. *Id.* at 434, 657 S.E.2d at 79.
105. *Id.* at 435, 657 S.E.2d at 79–80.
106. *Id.*, 657 S.E.2d at 80.

11.[107] In including this additional justification, the court reinforced the principles of accountability and transparency that it has said in previous opinions are necessarily implied in the Constitution.[108]

In addressing the challenge to Chapter 896 based on article IV, section 12, the court concluded that the legislation did not violate the single object rule because the diverse subjects of the legislation were nevertheless "congruous and [had] a natural connection with the subject of transportation expressed in the title."[109] The court rejected the individual defendants' invitation to adopt a test similar to that adopted by the Supreme Court of the United States in cases involving the proper reach of the Commerce Clause.[110] The word "commerce" arguably covers such an expansive range of activities that it could justify virtually any congressional enactment.[111] The Court has restricted the meaning of "commerce" by refusing "to pile inference upon inference" in determining when an activity involves interstate commerce, thus maintaining the Federal Constitution's underlying system of limited and enumerated powers.[112]

Applying Virginia section 1-243, along with the language of Chapter 896 regarding severability, the court declined to invalidate the entirety of Chapter 896, only invalidating the provisions empowering NVTA to impose the seven regional taxes and fees.[113] The claim that Chapter 896 violated article X, section 9 of the Constitution of Virginia by authorizing the Commonwealth of Virginia to incur $3 billion in tax-supported debt without first obtaining the approval of a majority of the voters participating in a referendum conducted for that purpose, as well as other constitutional challenges not addressed by the *Marshall* decision, remain to be litigated in separate proceedings.

---

107. *Id.* at 435–36, 657 S.E.2d at 80.

108. *See, e.g.*, Town of Madison v. Ford, 255 Va. 429, 433–36, 498 S.E.2d 235, 236–39 (1998).

109. *Marshall*, 275 Va. at 430, 657 S.E.2d at 77.

110. *Compare* Reply Brief of Marshall Defendants/Appellants at 15, Marshall v. N. Va. Transp. Auth., 275 Va. 419, 657 S.E.2d 71 (2008) (No. 071959) [hereinafter Reply Brief of Appellants] (citing United States v. Lopez, 514 U.S. 549 (1995)), *with Marshall*, 275 Va. at 429–30, 657 S.E.2d at 76–77.

111. Reply Brief of Appellants, *supra* note 110, at 15 (citing *Lopez*, 514 U.S. at 566).

112. *Lopez*, 514 U.S. at 567.

113. *Marshall*, 275 Va. at 428, 436, 657 S.E.2d at 76, 80.

VII. THE CONSEQUENCES OF *MARSHALL V. NORTHERN VIRGINIA TRANSPORTATION AUTHORITY*

While it is possible that a challenge to the validity of an unelected body's imposition of true user charges, such as rent, tolls, or fares, may be challenged in the future under the unlawful delegation of legislative power theory, it is highly unlikely that the court would consider the fixing and collecting of legitimate user charges as a legislative function. The Virginia decisions distinguishing tolls from taxes supply an adequate standard for deciding when a delegation of power to raise revenues constitutes a grant of taxing power.[114]

A number of public authorities have expressed concern that the *Marshall* decision has put their future actions in constitutional limbo. Unless these authorities are exercising taxing authority, their fears are unwarranted. The court's decision provides guidance. This does not mean that the publication of the *Marshall* opinion has not heightened concern on the part of some Virginians that public authorities are too numerous, too secretive, and insufficiently accountable to the voters and taxpayers. The decision prompted calls for the elimination of both NVTA and HRTA. Legislative proposals to repeal the provision of Chapter 896 establishing HRTA were offered at the 2008 legislative session but were not enacted.[115]

In two past decisions invalidating legislation for violations of article IV, section 12, the Supreme Court of Virginia recognized that the limiting language of that provision is not merely hortatory.[116] It has also said that every challenge based on article IV, section 12 must be judged on its peculiar facts.[117] What the *Mar-*

---

114. *See, e.g.*, Eagle Harbor, L.L.C. v. Isle of Wight County, 271 Va. 603, 612–15, 628 S.E.2d 298, 303–04 (2006) (user fee is only a fee if it is reasonably correlated to the benefit conferred on payor); Mountain View Ltd. P'ship v. City of Clifton Forge, 256 Va. 304, 312, 504 S.E.2d 371, 376 (1998) (user fee is a valid revenue generating device only when "there is a reasonable correlation between the benefit conferred and the cost exacted by the ordinance"); City of Charlottesville v. Marks' Shows, Inc., 179 Va. 321, 329, 18 S.E.2d 890, 894–95 (1942) ("exacted charge must bear some reasonable relation to the additional burdens imposed").

115. *See, e.g.*, H.B. 1444, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 724, Va. Gen. Assembly (Reg. Sess. 2008).

116. *See* State Bd. of Health v. Chippenham Hosp., Inc., 219 Va. 65, 74–75, 245 S.E.2d 430, 435–36 (1978); Bd. of Supervisors v. Am. Trailer Co., Inc., 193 Va. 72, 75, 68 S.E.2d 119, 118.

117. *See Chippenham Hosp., Inc.*, 219 Va. at 72, 245 S.E.2d at 434.

shall decision plainly signals is that this court is certain to be very deferential to the General Assembly when it applies the single object rule, which is imprecise by its nature. Where there can be no doubt that the combination of subjects in a single bill was carefully deliberated by the leadership and the members of both chambers of the General Assembly, and where it is clear that the combination was not inadvertent or done in haste during a busy legislative session, the court cannot be expected to invalidate that combination if there is a plausible connection between the object stated in the legislation's title and the various elements contained in the body. The *Marshall* decision suggests that the linkage can be attenuated and yet sufficient to overcome a challenge based on article IV, section 12.

The court's holding on the challenge under article IV, section 12 will undoubtedly make it more difficult for future challenges under that provision to succeed. Although the court did not change the substantive test or add a new gloss to the test applied in previous opinions regarding article IV, section 12, it upheld a law that contained a wider diversity of subjects than any case previously decided by the court. This may well encourage legislators to resort more frequently to omnibus legislation similar to Chapter 896 that combines numerous, separate proposals in a single bill when one or more elements are unlikely to be enacted on their own merit. The absence of such omnibus legislation in Virginia stands in marked contrast to the practice in the Congress of the United States, where such legislation is common.

This does not mean that every future challenge to legislation based on article IV, section 12 is doomed to fail. For example, any appropriation act that includes a tax increase raises an issue not addressed in *Marshall*. The Constitution of Virginia limits the force and effect of an appropriation act to a period of two years and six months.[118] Legislation enacting a tax increase continues theoretically in perpetuity. Engrafting the general legislation on an appropriation act might, therefore, be subject to a successful constitutional challenge under the single object rule of article IV, section 12.

118. VA. CONST. art. X, § 7.

VIII. CONCLUSION

The Supreme Court of Virginia's holding in *Marshall v. Northern Virginia Transportation Authority* was that the General Assembly's delegation of taxing power to NVTA, an unelected body, was unconstitutional and invalid, but that Chapter 896 did not violate the requirements of article IV, section 12 of the Constitution of Virginia that legislation be limited to a single object and that the object be expressed in its title.[119] The court did not reach the other questions raised on appeal concerning the validity of the proposed bonds once it held that the only source of revenue for the payment of the bonds was based on an unconstitutional exercise of the taxing power by an unelected body. The court did not invalidate the establishment of NVTA, as some have assumed. Nor did it directly invalidate the delegation of taxing power to HRTA, even though an order invalidating HRTA's taxing authority would appear to be a mere formality given the holding in *Marshall*.

The most telling effect of *Marshall* may be its effect on the legislative process. Before February 29, 2008, many legislators assumed that the presumption of constitutionality that attaches to legislation meant, as a practical matter, that the Supreme Court of Virginia would almost invariably defer to the General Assembly. The *Marshall* decision is sure to cause legislators to examine the constitution with greater care before they vote on legislation.

119. Marshall v. N. Va. Transp. Auth., 275 Va. 419, 431, 435, 657 S.E.2d 71, 77, 79–80.