
Record Nos. 071959 & 071979

IN THE SUPREME COURT OF VIRGINIA

**ROBERT G. MARSHALL, JOHN BERTHOUD, RICHARD H. BLACK,
CATHERINE ANN MARSHALL, EDMUND CHARLES MILLER, MARCIA S. MILLER,
KRISTINA RASMUSSEN, PHILLIP A. RODOKANAKIS, and FRANK W. SMERBECK,**

Appellants,

v.

**NORTHERN VIRGINIA TRANSPORTATION AUTHORITY, COMMONWEALTH OF
VIRGINIA, EX REL. ROBERT F. McDONNELL**, in his official capacity as Attorney General
of the Commonwealth, **TIMOTHY M. KAINE**, in his official capacity as Governor of the
Commonwealth, and **WILLIAM H. HOWELL**, in his official capacity as Speaker of the House
of Delegates,

Appellees.

BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA,

Appellant,

v.

**NORTHERN VIRGINIA TRANSPORTATION AUTHORITY, COMMONWEALTH OF
VIRGINIA, EX REL. ROBERT F. McDONNELL**, in his official capacity as Attorney General
of the Commonwealth, **TIMOTHY M. KAINE**, in his official capacity as Governor of the
Commonwealth, and **WILLIAM H. HOWELL**, in his official capacity as Speaker of the House
of Delegates,

Appellees.

**ON APPEAL FROM THE CIRCUIT COURT
OF THE COUNTY OF ARLINGTON**

BRIEF OF THE COMMONWEALTH

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BRIEF OF THE COMMONWEALTH OF VIRGINIA

Virginia Attorney General Robert F. McDonnell, on behalf of the Commonwealth of Virginia *ex rel.* Robert F. McDonnell in his official capacity as Attorney General of the Commonwealth, Timothy M. Kaine, in his official capacity as Governor of the Commonwealth, and William H. Howell, in his official capacity as Speaker of the House of Delegates, (collectively “Commonwealth”), submits this Brief.

INTRODUCTION

As Tocqueville observed almost two hundred years ago, every political question eventually becomes a judicial one. Alexis de Tocqueville, *DEMOCRACY IN AMERICA* 310 (Arthur Goldhammer, trans., The Library of America ed. 2004) (1835). Those who lose in the legislative process challenge the constitutionality of the resulting statute. *See, e.g. Richmond Med. Ctr. for Women v. Hicks*, 409 F.3d 619 (4th Cir.), *rehearing denied*, 422 F.3d 160 (4th Cir. 2005), *cert. granted, judgment vacated, and remanded sub nom. Herring v. Richmond Med. Ctr. for Women*, 127 S. Ct. 2094 (2007), *on remand* (4th Cir.) (constitutional challenge to Virginia’s ban on partial birth infanticide). This Appeal is a classic illustration of Tocqueville’s point.¹

Recognizing that Virginia faces a severe transportation crisis, particularly in the Hampton Roads and Northern Virginia regions, a bipartisan coalition of legislators and the Governor passed a comprehensive Transportation Bill in 2007. The Appellants disagree with the policy choices

¹ Because the statute allowing bond validation proceedings, *Virginia Code* § 15.2-2651, functions as a limited waiver of sovereign immunity, there is no sovereign immunity issue present. Moreover, because the statute also expands standing, there is no question that the Appellants have standing.

embodied in the Bill. Having lost in the political process, the Appellants now resort to the judicial process in an attempt to transform their political defeat into a constitutional victory.

While “judicial power includes the duty ‘to say what the law is,’” *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669, 2684 (2006), judicial power must not “frustrate the expressed will of Congress or that of the state legislatures,” *Barrows v. Jackson*, 346 U.S. 249, 256-57 (1953). Under this Court’s long established precedents, the General Assembly has the authority to create a special purpose political subdivision and allow that special purpose political subdivision to impose taxes and issue debt. Similarly, this Court’s decisions leave no doubt that debt issued by a political subdivision is not considered debt of the Commonwealth. “Long acquiescence in such an announced construction so strengthens it that it should not be changed unless plainly wrong.” *Dean v. Paolicelli*, 194 Va. 219, 227, 72 S.E.2d 506, 511 (1952). Unless this Court wishes to revisit the fundamentals of its state constitutional jurisprudence, the Appellants cannot prevail. The judgment of the circuit court should be affirmed.

STATEMENT OF THE CASE

After voting to issue bonds, the Northern Virginia Transportation Authority (“NVTA”) initiated a proceeding under *Virginia Code* § 15.2-2651 to have its bonds declared valid. J.A. 1-98. Because the NVTA asked the circuit court to consider the constitutionality of the statutes creating the NVTA and authorizing it to issue bonds and because neither the Commonwealth, its agency, nor any official is a party to this action, the Commonwealth intervened as a Plaintiff. J.A. 121-51 (Brief of the Commonwealth); J.A. 640-41 (granting Commonwealth’s Motion to Intervene).

A group of citizens who live in the region covered by the NVTA (collectively “Marshall”) filed objections to the bond validation proceeding. Specifically, Marshall contended that NVTA was unconstitutional, that the debt incurred by NVTA was unconstitutional, and that the bonds were invalid. J.A. 104-119. The Board of Supervisors of Loudoun County (“Loudoun”) also objected. J.A. 99-103.

After extensive briefing and a daylong hearing, J.A. 674-936, the circuit court determined that the statutes were constitutional in all respects and that the bonds were valid. J.A. 576-84 (final order). Marshall and Loudoun filed separate Petitions for Appeal. J.A. 585-88 (Marshall); J.A. 589-91 (Loudoun). This Court granted both Petitions and ordered consolidation.

ASSIGNMENTS OF ERROR

In the Marshall Appeal, No. 071959, this Court granted an appeal on the following assignments of error:

1. The Circuit Court erred as a matter of law in ruling that Chapter 896 does not violate Article IV, § 1 of the Virginia Constitution by delegating taxing authority to an unelected body.
2. The Circuit Court erred as a matter of law in ruling that Chapter 896 does not violate Article X, § 9 [of the Virginia Constitution] by authorizing debt to be incurred that is to be repaid exclusively from revenues derived from taxes and fees imposed by NVTAs.
3. The Circuit Court erred as a matter of law in overruling Marshall's motion for summary judgment that the bonds do not comply with the requirements of applicable statutes, namely *Virginia Code* §§ 15.2-4519(B)(1) and 15.2-4839.
4. The Circuit Court erred as a matter of law in ruling that Chapter 896 does not violate Article IV, § 12 of the Virginia Constitution.

In the Loudoun Appeal, No. 071979, this Court granted an appeal on the following assignments of error:

1. The trial court erred in declaring that General Assembly has the authority under Article IV of the Virginia Constitution to authorize NVTAs to impose taxes within the Northern Virginia localities.
2. The trial court erred in declaring that Article VII, § 7 of the Virginia Constitution does not apply to the imposition of taxes by the NVTAs within the Northern Virginia localities.
3. The trial court erred in declaring that Article VII, § 2 of the Virginia Constitution does not apply to the establishment of a regional taxing authority such as NVTAs.

QUESTIONS PRESENTED

When reduced to their essentials, the Marshall Appeal and the Loudoun Appeal present the following questions:

1. May the General Assembly create a special purpose political subdivision and authorize it to impose taxes and fees? (Marshall Appeal Assignment of Error 1; Loudoun Appeal Assignments of Error 1-3).
 - a. Does the Virginia Constitution function as a delegation of legislative power or as a limitation on legislative power? (Marshall Appeal Assignment of Error 1; Loudoun Appeal Assignments of Error 1-3).
 - b. May the General Assembly authorize the Northern Virginia Transportation Authority to impose fees and taxes? (Marshall Appeal Assignment of Error 1; Loudoun Appeal Assignments of Error 1-3).
 - c. Is the Northern Virginia Transportation Authority a regional government? (Loudoun Appeal Assignment of Error 3).
2. If a special purpose political subdivision issues bonds and the full faith and credit of the Commonwealth is not pledged in support of the bonds, are those bonds considered constitutional debt of the Commonwealth? (Marshall Appeal Assignment of Error 2).
3. Are the bonds issued by a special purpose political subdivision considered negotiable instruments? (Marshall Appeal Assignment of Error 3).
4. Does the Transportation Act of 2007 violate the Virginia Constitution's single object requirement? (Marshall Assignment of Error 4)

STATEMENT OF FACTS

The legislation establishing the NVTa was originally enacted to plan and develop a transportation system in Northern Virginia. *See Virginia Code* §§ 15.2-4829 through 15.2-4840 (superseding *Virginia Code* §§ 15.2-4816 through 15.2-4828). In 2007, the General Assembly passed and Governor Kaine signed the House Transportation Act of 2007, 2007 Virginia Acts of Assembly, ch. 896, that, among other things, empowered the NVTa to impose certain taxes and fees. *See Virginia Code* §§ 46.2-755.1, 46.2-755.2, 46.2-1167.1, 58.1-605, 58.1-606, 58.1-802.1, 58.1-2402.1, 58.1-3825.1.² After imposing the taxes and fees authorized by the statute, NVTa, exercising its power under *Virginia Code* § 15.2-4839,³ intends to issue bonds, payable only from revenue set aside for NVTa, as a means of financing long-term projects.

This Appeal arises out of a proceeding concerning the validity of those bonds. J.A. 1-98. In determining the validity of those bonds, the circuit court explicitly ruled on the constitutionality of both the NVTa and the statutes authorizing the NVTa to impose taxes and fees. J.A. 572-84.

² These Regional Taxes and Fees include (i) the additional annual regional vehicle registration fee under *Virginia Code* § 46.2-755.1, (ii) the initial vehicle registration fee under *Virginia Code* § 46.2-755.2, (iii) the additional safety inspection fee under *Virginia Code* § 46.2-1167.1, (iv) the retail sales and use tax on auto repairs under *Virginia Code* §§ 58.1-605 and 58.1-606, (v) the regional congestion relief fee under *Virginia Code* § 58.1-802.1, (vi) the local rental car transportation fee under *Virginia Code* § 58.1-2402.1 and (vii) the additional transient occupancy tax under *Virginia Code* § 58.1-3825.1.

³ That statute provides:

The Authority may issue bonds and other evidences of debt as may be authorized by this section or other law. The provisions of Article 5 (§ 15.2-4519 et seq.) of Chapter 45 of this title shall apply, mutatis mutandis, to the issuance of such bonds or other debt. The Authority may issue bonds or other debt in such amounts as it deems appropriate. The bonds may be supported by any funds available except that funds from tolls collected pursuant to subdivision 7 of § 15.2-4840 shall be used only as provided in that subdivision.

STANDARD OF REVIEW

Interpretation of a statute is a pure question of law subject to de novo review by this Court. *Virginia Polytechnic Inst. v. Interactive Return Serv., Inc.*, 271 Va. 304, 309, 626 S.E.2d 436, 438 (2006). Because the determination of the constitutionality of a legislative act is “the gravest and most delicate duty that [the judiciary] is called upon to perform,” *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981), certain principles must be applied.

First, “[e]very law enacted by the General Assembly carries a strong presumption of validity. Unless a statute clearly violates a provision of the United States or Virginia Constitutions, we will not invalidate it.” *City Council v. Newsome*, 226 Va. 518, 523, 311 S.E.2d 761, 764 (1984).⁴ Moreover, the construction of a constitutional provision by the General Assembly “is entitled to consideration, and if the construction be contemporaneous with adoption of the constitutional provision, it is entitled to great weight.” *Dean*, 194 Va. at 227, 72 S.E.2d at 511.⁵ “The wisdom and propriety of the statute come within the province of the legislature.” *City of Newport News v. Elizabeth City County*, 189 Va. 825, 831, 55 S.E.2d 56, 60 (1949). “Undoubtedly, there are two sides to the question as to the wisdom or expediency of the legislative Act.” *Id.* at 836, 55 S.E.2d at 62. “In a determination of the constitutional validity of a general statute, political, economic and geographical situations have no place. Such situations bring up questions of public welfare and conveniences which invoke the wisdom and

⁴ See also *In re Phillips*, 265 Va. 81, 85-86, 574 S.E.2d 270, 272 (2003); *Bosang v. Iron Belt Bldg. & Loan Ass’n*, 96 Va. 119, 123, 30 S.E. 440, 441 (1898). Cf. *Vance v. Bradley*, 440 U.S. 93, 97 (1979) (“The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process . . . and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted.”) (footnote omitted).

⁵ See also *City of Roanoke v. James W. Michael’s Bakery Corp.*, 180 Va. 132, 142-43, 21 S.E.2d 788, 792-93 (1942) (noting that contemporaneous construction of constitutional provision by General Assembly is entitled to great weight).

policy of the legislature in their determination, within reasonable limits.” *Id.* at 839, 55 S.E.2d at 64. Rather, “courts are concerned only as to whether the determination of the legislature has been reached according to, and within, constitutional requirements.” *Id.*

Second, under the doctrine of constitutional avoidance, “constitutional questions should not be decided if the record permits final disposition of a cause on non-constitutional grounds. One of the most firmly established doctrines in the field of constitutional law is that a court will pass upon the constitutionality of a statute only when it is necessary to the determination of the merits of the case.” *Keller v. Denny*, 232 Va. 512, 516, 352 S.E.2d 327, 329 (1987) (internal quotation omitted).⁶ The Constitution is to be given a liberal construction so as to sustain the enactment in question, if practicable. *Virginia Soc’y of Human Life, Inc. v. Caldwell*, 256 Va. 151, 156-57, 500 S.E.2d 814, 816 (1998).⁷ Statutes must be interpreted “in such a manner as to avoid a constitutional question wherever this is possible.” *Yamaha Motor Corp. v. Quillian*, 264 Va. 656, 665, 571 S.E.2d 122, 126 (2002) (citations and quotation omitted).⁸

Third, under the doctrine of constitutional doubt, any “reasonable doubt as to the constitutionality of a legislative enactment must be resolved in favor of its validity. The courts will declare the legislative judgment null and void only when the statute is plainly repugnant to some provision of the state or federal constitution.” *Blue Cross of Virginia v. Commonwealth*,

⁶ See also *Vermont Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 787 (2000); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988).

⁷ See also *Hess v. Snyder Hunt Corp.*, 240 Va. 49, 52-53, 392 S.E.2d 817, 820 (1990); *Eaton v. Davis*, 176 Va. 330, 339, 10 S.E.2d 893, 897 (1940); *Johnson v. Commonwealth*, 40 Va. App. 605, 612, 580 S.E.2d 486, 490 (2003).

⁸ See also *Stephens v. Commonwealth*, ___ Va. ___, ___, 645 S.E.2d 276, 276-77 (2007).

221 Va. 349, 358, 269 S.E.2d 827, 832 (1980).⁹ Indeed, “if an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is ‘fairly possible,’” this Court is “obligated to construe the statute to avoid such problems.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 300 (2001). “To doubt is to affirm.” *Peery v. Virginia Bd. of Funeral Dirs.*, 203 Va. 161, 165, 123 S.E.2d 94, 97 (1961).¹⁰

Fourth, in the event that this Court concludes that one or more statutory provisions are unconstitutional, then it must consider the issue of severability. The General Assembly, in enacting *Virginia Code* § 1-243, expressly provided for severability, unless the provisions must operate in accord with one another. The General Assembly “has stated clearly that courts are now to apply a presumption of severability unless two provisions of a statutory section *must* operate together.” *Sons of Confederate Veterans, Inc. v. Comm’r*, 288 F.3d 610, 627 (4th Cir. 2002) (emphasis in original). Thus, all unconstitutional provisions are “severable unless . . . it is apparent that . . . [the] provisions must operate in accord with one another.” *Id.* at 628.

⁹ See also *Phillips*, 265 Va. at 85-86, 574 S.E.2d at 272.

¹⁰ See also *City of Roanoke v. Elliott*, 123 Va. 393, 406, 96 S.E.2d 819, 824 (1918).

SUMMARY OF ARGUMENT

The Commonwealth's argument in favor of affirmance is straightforward.

First, the General Assembly has the constitutional authority to create the Northern Virginia Transportation Authority and to authorize it to impose taxes and fees. Although the United States Constitution is a delegation of powers to the federal Government, the Virginia Constitution is a limitation on powers of the sovereign State. Unless there is an explicit prohibition in the National or Virginia Constitutions, the State Government in general and the General Assembly in particular may enact a law. While the Virginia Constitution does impose limitations on the imposition of taxes and fees, those limitations are inapplicable here. Moreover, the NVTa is not a regional government.

Second, the bonds issued by the NVTa are not constitutional debt of the Commonwealth. Because the NVTa is a special purpose political subdivision rather than a state or regional government, its debt is not considered debt of the Commonwealth. The Commonwealth has no obligation to continue to provide taxing power to the Authority. Additionally, the Commonwealth's Full Faith and Credit are not pledged in support.

Third, as explained in the Brief in Opposition of the NVTa, the NVTa's bonds are negotiable instruments.

Finally, the Transportation Act of 2007 does not violate the single object provision of the Virginia Constitution. As this Court made clear, "matters germane to the object, made manifest by its title, may be included, and those things are germane which are allied, relative, or appropriate." *Commonwealth v. Dodson*, 176 Va. 281, 305, 11 S.E.2d 120, 131 (1940) (interpreting the 1902 Constitution's single object provision). All aspects of the Transportation Act are germane to improving Virginia's transportation system.

ARGUMENT

I. THE GENERAL ASSEMBLY MAY CREATE THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY AND MAY AUTHORIZE IT TO IMPOSE TAXES.

A. The General Assembly May Take Any Action Not Prohibited by the National or State Constitutions.

The United States and Virginia Constitutions are fundamentally different. “The Federal Constitution is one of delegated powers and specified authority; all powers not delegated to the United States or prohibited to the States are reserved to the States or to the people.” *Board of Educ. v. Nyquist*, 439 N.E.2d 359, 366 n.5 (N.Y. 1982).¹¹ “Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution.” *United States v. Morrison*, 529 U.S. 598, 607 (2000). In sharp contrast, the Virginia Constitution “is not a grant of legislative powers to the General Assembly, but is a restraining instrument only, and, except as to matters ceded to the federal government, the legislative powers of the General Assembly are without limit.” *Harrison v. Day*, 201 Va. 386, 396, 111 S.E.2d 504, 511 (1959) (emphasis added).¹² Thus, the General Assembly may enact any law or take any action “not prohibited by express terms, or by necessary implication, by the State Constitution.” *Kirkpatrick v. Board of Supervisors*, 146 Va. 113, 115, 136 S.E. 186, 190 (1926) (emphasis added). The legislature has full power to determine, within reasonable limits, what public convenience and public welfare require, and to effect that end it has full power to enact legislation, except so far as restrained by the Constitutions of this State and of the United States.” *City of Newport News*, 189 Va. at 836, 55 S.E.2d at 62.

¹¹ See also A.E. Dick Howard, “Introduction: A Frequent Recurrence To Fundamental Principles” in RECENT DEVELOPMENTS IN STATE CONSTITUTIONAL LAW xxiii (Bradley McGraw ed. 1984).

¹² See also *Elliott*, 123 Va. at 406, 96 S.E. at 824.

B. The General Assembly May Authorize the Northern Virginia Transportation Authority to Impose Fees and Taxes Within Certain Parameters.

Subject only to the United States and Virginia Constitutions, the General Assembly can create local governments and political subdivisions and can delegate power to these entities.¹³ See 2 A.E. Dick Howard, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 804-05 (1974). “A municipal corporation, unlike a state, is not a sovereign at common law. Municipalities are created by the state and may be abolished by it. The state may delegate certain of its powers to the municipality and change this delegation at will.” *Wright v. Norfolk Electoral Bd.*, 223 Va. 149, 152, 286 S.E.2d 227, 228 (1982).¹⁴ Thus, while *Virginia Const.* art. VII, § 7 provides that “[n]o ordinance or resolution ... imposing [local] taxes ... shall be passed except by a recorded affirmative vote of a majority of all members elected to the governing body,” nothing in the Constitution prohibits the General Assembly from *authorizing* NVTa to utilize fees and taxes within the parameters established by the General Assembly.¹⁵ The General Assembly can mandate the use of special revenues for special purposes. See *Virginia Code* § 58.1-1720 (An additional excise tax is imposed by “every county or city which is a member of

¹³ The NVTa expressly is designated as a political subdivision, *Virginia Code* § 15.2-4830. The issue of whether an entity is a political subdivision is controlled by “the language of the relevant enabling legislation.” *Short Pump Town Ctr. Cmty. Dev. Auth. v. Hahn*, 262 Va. 733, 745-46, 554 S.E.2d 441, 447 (2001).

¹⁴ Although the People have adopted multiple Constitutions for Virginia, the power of the General Assembly to authorize local governments to impose a tax consistently has been recognized. See *Langhorne & Scott v. Robinson*, 61 Va. (20 Gratt.) 661, 664 (1871) (1869 Constitution allowed a City to tax non-residents for projects that would benefit them); *Goddin v. Crump*, 35 Va. (8 Leigh) 120, 120 (1837) (1830 Constitution allowed the General Assembly to authorize a local government to impose a tax); *Case of County Levy*, 9 Va. 139 (5 Call.) 139, 140-42 (1804) (1776 Constitution allowed the General Assembly to authorize a local government to impose a tax).

¹⁵ Because the General Assembly is permitting the use of its taxing power within prescribed limits rather than enacting a local tax, there is no delegation of the taxing authority. Thus, *Wise County Bd. of Supervisors v. Wilson*, 250 Va. 482, 484-86, 463 S.E.2d 650, 651-52 (1995) is inapplicable.

any transportation district in which a heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter transportation system are owned”). The General Assembly could command that a local government adopt a local tax. *See Virginia Code* § 1-213 (“The governing body of a political subdivision shall be responsible for any duty or responsibility imposed upon its political subdivision.”). Indeed, the General Assembly requires, albeit indirectly, that local governments impose real property taxes for education. *See Virginia Code* § 22.1-95.¹⁶

Furthermore, the General Assembly routinely authorizes political subdivisions that are not a local or regional government to exercise governmental powers. For example, the power of eminent domain expressly has been delegated to a number of entities that are not local or regional governments.¹⁷ *See Hamer v. School Bd. of Chesapeake*, 240 Va. 66, 70, 393 S.E.2d 623, 626 (1990) (upholding the delegation of eminent domain power to entities that are not local or regional governments). If it is constitutional to allow an entity other than a local government to force people out of their homes, it certainly is constitutional to delegate to a political subdivision mechanisms to fund the purpose for which it was created.

¹⁶ That statute provides, “[e]ach county, city and town is authorized, directed and required to raise money by a tax on all property subject to local taxation at such rate as will insure a sum which, together with other available funds, will provide that portion of the cost apportioned to such county, city or town by law for maintaining an educational program meeting the standards of quality for the several school divisions prescribed as provided by law.”

¹⁷ *See Virginia Code* §§ 5.1-2.1, 5.1-2.2:1 (Virginia Aviation Commission); *Virginia Code* §§ 21-113, 21-118, 21-291.1 (Sanitary Districts); *Virginia Code* §§ 23-287, 23-288 (Jamestown-Yorktown Foundation); *Virginia Code* §§ 32.1-189, 32.1-193 (District Mosquito Control Commissions); *Virginia Code* §§ 33.1-1, 33.1-49 (Commonwealth Transportation Board); *Virginia Code* §§ 36-4, 36-19 (Local Redevelopment and Housing Authorities); *Virginia Code* §§ 36-1, 36-27 (Local Housing Authorities).

Rather than limiting the power of the General Assembly, *Virginia Const.* art. VII, § 7 simply defines the procedures that must be followed by a local or regional government when imposing a tax. *Wright*, 223 Va. at 152-53, 286 S.E.2d at 228-29. The procedural requirements in § 7 ensure that the People “through their right to elect local and *state officials* and to amend the Constitution [with the right to], retain ultimate control.” *Id.* at 153, 286 S.E.2d at 229 (emphasis added). The statutes at issue ensure that the People retain ultimate control. If the People do not approve of the General Assembly adopting a general law permitting a taxing mechanism that may be used by a special district to solve the region’s transportation problems, then the People can express their displeasure at the next election and can amend the Constitution.¹⁸ Moreover, the People, through the process of electing members of local governments that ultimately send representatives to the NVTA, can influence, albeit indirectly, the decisions of the NVTA. Because the People retain ultimate control and because the General Assembly is permitting the use of its taxing power within prescribed limits rather than enacting a local tax, there is no constitutional violation.

C. The NVTA Is Not A Regional Government.

The NVTA is not a regional government.¹⁹ By definition, a regional government must be “a unit of general government,” *Virginia Const.* art. VII, § 2, which has “a sufficient range or number of powers and basic functions so as to be considered organized for ‘general purposes.’”² Howard, *supra*, at 799. The NVTA is not organized to provide general governmental services

¹⁸ Moreover, as long as it follows the requirements of *Virginia Const.* art. VI, § 11, the General Assembly may impose the taxes in Northern Virginia but delegate to a special purpose political subdivision—the NVTA—the power to determine if the taxes should be collected and ultimately to collect them.

¹⁹ Marshall agrees that the NVTA is not a regional government. *Marshall Br.* at 13 n.4.

such as police protection, education, parks and recreation, or environmental protection. Rather, the NVTAs are limited to one special purpose—transportation. Entities that are organized for “special purposes” are not considered a “general government within the meaning of [the Constitution].” *Id.* at 799-800. Therefore, NVTAs cannot be considered a regional government.

Moreover, our constitutional history confirms that special districts, such as the NVTAs, are not considered “general governments” and, thus, are not regional governments. To explain, under the 1902 Constitution, there was no restriction on the ability of the General Assembly to establish a regional government. *Id.* at 799. Although the General Assembly never created an entity known as a regional government, it did pass the 1964 Transportation District Act, 1964 *Virginia Acts* ch. 631, at 934, 934-45. The Act allowed two or more counties or cities or combinations thereof to follow the prescribed procedure and create a transportation district. *Id.* at 936. Once created, the transportation district had certain powers including extensive authority over planning for transportation needs, entering into contracts, making rules and regulations, and accepting loans and grants. *Id.* at 938-41.

When the present Constitution was adopted in 1971, it imposed restrictions on the creation of a regional government. *See Virginia Const.* art. VIII, § 1. If special districts, such as the transportation districts, were considered regional governments, then one would expect a constitutional challenge to the existing transportation districts. However, in the thirty-six years since the adoption of the present Constitution, no one has asserted that special districts are unconstitutional because they are regional governments established outside the procedures outlined in *Virginia Const.* art. VIII, § 1. Instead, everyone has acquiesced in the notion that special districts are separate and distinct from regional governments. “Long acquiescence in such

an announced construction so strengthens it that it should not be changed unless plainly wrong.” *Dean*, 194 Va. at 227, 72 S.E.2d at 511. Additionally, to the extent that there is any doubt regarding whether the NVTA is a regional government, the doctrine of constitutional doubt requires this Court to conclude that it is a special purpose political subdivision. *St. Cyr*, 533 U.S. at 300; *Blue Cross of Virginia*, 221 Va. at 358, 269 S.E.2d at 832.

Because the NVTA is a special purpose political subdivision rather than a unit of general government, all constitutional provisions dealing with local and regional governments, including those contained in *Virginia Const.* art. VII, are inapplicable.

II. THE NVTA’S BONDS ARE NOT CONSTITUTIONAL DEBT OF THE COMMONWEALTH.

Although the Constitution prohibits the Commonwealth from incurring debt unless certain procedures are followed, *Virginia Const.* art. X, § 9, “the debt incurred by legislatively created, independent political subdivisions, whatever their title, is not the debt of the Commonwealth or of any other governmental unit.” *Dykes v. Northern Virginia Transp. Dist. Comm’n*, 242 Va. 357, 372-73, 411 S.E.2d 1, 9 (1991).²⁰ No debt is created for constitutional purposes if the state or county “incurred no legal liability to underwrite the project.” *Miller v. Watts*, 215 Va. 836, 845, 214 S.E.2d 165, 171 (1975). The debt created must involve a “binding and direct commitment,” *id.*, 214 S.E.2d at 172, a commitment that can be enforced against the maker. “There must be a *legal* obligation” on the part of the governmental unit. *Dykes*, 242 Va. at 375, 411 S.E.2d at 10 (emphasis in original). Because the NVTA is not a local

²⁰ See also *Button v. Day*, 204 Va. 270, 272-74, 130 S.E.2d 459, 461-62 (1963); *Farquhar v. Board of Supervisors*, 196 Va. 54, 61, 82 S.E.2d 577, 582 (1954); *Mumpower v. Housing Auth. of Bristol*, 176 Va. 426, 451-52, 11 S.E.2d 732, 742 (1940) (bonds issued by authorities are not those of the municipalities establishing them).

or regional government and there is no long-term binding commitment by any state, local, or regional government to support debt service, the bonds issued cannot be considered the debt of the Commonwealth or any locality thereof. *See Dykes*, 242 Va. at 372-73, 411 S.E.2d at 9.

Additionally, the constitutional restrictions on the ability of the Commonwealth to incur debt are inapplicable when “the full faith and credit of the Commonwealth is not pledged or committed.” *Baliles v. Mazur*, 224 Va. 462, 471-72, 297 S.E.2d 695, 699 (1982). Any bonds issued by the NVTA will depend upon revenues raised by the NVTA rather than the full faith and credit of the Commonwealth.²¹ There is no obligation on the part of the General Assembly to continue to permit the Authority to impose fees and taxes for any specific period. There is no legal obligation by the Commonwealth or any political subdivision thereof to repay the bonds other than NVTA and no obligation of the Commonwealth to maintain NVTA’s current funding mechanism in place. Therefore, the debt is not legal debt of the Commonwealth and any bonds issued are not pledge bonds.

III. THE NVTA’S BONDS ARE NEGOTIABLE INSTRUMENTS.

Marshalls’ claim that the NVTA’s bonds are not negotiable instruments does not directly raise a constitutional issue and, thus, does not directly implicate the Commonwealth. Nevertheless, for the reasons stated in the NVTA’s brief on the merits, this Court should affirm the circuit court on this issue.

²¹ Because the bonds are issued by NVTA rather than the Commonwealth, *Terry v. Mazur*, 234 Va. 442, 362 S.E.2d 904 (1987) is inapplicable. *Terry* involved “revenue bonds secured by highway user revenues” issued by an agency of the Commonwealth (the Commonwealth Transportation Board). *Id.* at 445, 362 S.E.2d at 905-06.

IV. THE TRANSPORTATION BILL DOES NOT VIOLATE THE SINGLE OBJECT RULE.

While the Constitution requires that all bills be limited to a single object, *Virginia Const.* art. IV, § 12, that provision simply means “that the subjects embraced in the statute, but not specified in the title, are congruous, have natural connection with, or are germane to, the subject expressed in the title.” *Commonwealth v. Brown*, 91 Va. 762, 772, 21 S.E. 357, 360 (1895) (interpreting the 1869 Constitution’s single object provision).

The constitutional provision was never intended to hamper honest legislation, nor to require that the title should be an index or digest of the various provisions of the act, and it is rare that the generality of the title is a valid objection thereto. The fact that many things of a diverse nature are authorized or required to be done in the body of the act, though not expressed in its title, is not objectionable, if what is authorized by the act is germane to the object expressed in the title, or has a legitimate and natural association therewith, or is congruous therewith, the title is sufficient.

Town of Narrows v. Board of Supervisors, 128 Va. 572, 582-83, 105 S.E. 82, 85 (1920) (interpreting the 1902 Constitution’s single object provision). In other words, “the title of an act may be general and cover seemingly diverse points if it gives notice of the *general* subject and interest likely to be affected.” 1 Howard, *supra*, at 529 (emphasis added). “Furthermore, if there is doubt as to the sufficiency of the title, the doubt must be resolved in favor of its sufficiency, as courts will not declare an act of the legislature unconstitutional unless it is plainly so.” *Dodson*, 176 Va. at 305-306, 11 S.E.2d at 131.

Although the Transportation Act of 2007 covers a variety of subjects, all of the subjects are related to transportation. That is all that is required.

If the title be not misleading and if those things are done which are germane to it, that is enough. This constitutional provision was intended to prevent the insertion of rights or reservations that cannot bear the light or public scrutiny and which, if uncovered, would not be tolerated. Where this is done that provision should be enforced to the letter.

West Bros. Brick Co. v. City of Alexandria, 169 Va. 271, 287, 192 S.E. 881, 887-88 (1937). Moreover, *Board of Supervisors v. American Trailer Co.*, 193 Va. 72, 68 S.E.2d 115 (1951), does not suggest a different result. Although that decision was one of the few times that this Court has invalidated a statute for violating the single object requirement, the case involved a title-identified state regulatory measure and a provision that involved local taxation. While there is, at best, a tenuous relationship between state regulation and local taxation, the relationship between transportation and the provisions of the Transportation Act of 2007 is clear and substantial.

CERTIFICATE OF SERVICE

I certify that on this 18th day of December 2007, 20 copies of the Brief of the Commonwealth of Virginia have been filed in the office of the Clerk of the Supreme Court of Virginia and three copies have been mailed by first class, postage prepaid, U. S. Mail to counsel listed below:

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