

Governor's Power To Veto Extended By Appellate Court

By PHILIP CARRIZOSA

SAN FRANCISCO — In a major victory for Gov. George Deukmejian, a state appeal court ruled Friday that the governor has the power to veto particular sections of non-money bills approved by the Legislature.

The ruling appears to expand the governor's powers dramatically since the governor's power to veto particular items in a bill has been seen as limited to appropriations measures.

A dissenting judge called the decision "alarming" because the "potential for direct legislation by the Governor is unleashed with no standards to restrain future chief executives."

But a majority of the three-judge court said the governor must have the power to perform so-called "item vetos" when the Legislature has attempted to structure a veto-proof bill.

"It cannot be argued seriously that the Legislature could negate the item veto by merely separating amount from subject and demanding an all-or-nothing veto," wrote Justice Betty Barry-Deal in *Harbor v. Deukmejian*, A029066.

"If a specified appropriation is directly linked to a particular subject, both the amount and the subject could be eliminated by item vetos," said Barry-Deal, with Justice James Scott concurring.

Dispute With Democrats

The case arose from a 1984 dispute between Deukmejian and a Democrat-controlled Legislature over benefits paid out under the Aid to Families with Dependent Children program. The Legislature wanted to change the program so that benefits would be paid on the same day that they were applied for, a change that would cost the state an estimated \$9.8 million a year.

Deukmejian opposed the change, saying benefits should not be paid until an AFDC applicant was found eligible for benefits. In an attempt to avoid a veto, the Legislature approved a lump sum appropriation of \$1.5 billion for all AFDC aid and ordered a change in the payment date in a separate budget implementation bill.

Deukmejian responded by breaking down the AFDC budget into its components, then exercising his item veto against the \$9.8 million. The governor also used his item veto against the section in the implementation bill dealing with the earlier date of payment.

When Linda McMahon, director of the state Department of Social Services, refused to disobey Deukmejian, the California Coalition of Welfare Rights Organizations asked the state appeal court to order compliance with the Legislature.

The appeal court summarily denied relief in October 1984. But in December, the state Supreme Court agreed to review the case. After sitting on the case for five months, the high court suddenly sent the matter back to the appeal court with instructions to hold arguments and issue a written opinion. The Legislature then joined in the suit on behalf of the welfare recipients.

'Intimately Related' Bill

In her 11-page opinion, Barry-Deal acknowledged that the state Constitution only says that the governor "may reduce or eliminate one or more items of appropriation while approving other portions of a bill." But, she said, that does not mean the governor cannot veto the subject-matter of a bill when it is "intimately related" to a dollar figure.

Justice Clinton White argued in his dissent for a literal interpretation of the Constitution, saying the majority had given the governor "potentially limitless authority to use the item veto to strike substantive programs."

"If the Legislature has made a measure more difficult to veto by placing it in a bill which includes legislation the Governor would prefer not to veto, the Governor must make the hard choice of letting the undesired measure go through or vetoing the entire bill," White said. "The majority's alternative . . . is both unprecedented and unnecessary."

Neither lawyers for the welfare groups nor the Legislature could be reached for immediate comment.