by Gotham Gazette Staff
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On October 26, 2005, the New York City Bar Association held a forum on Proposition 1, the state ballot initiative to change the state's budget process. The following is an edited transcript of the debate. The panel was moderated by Daniel Feldman, executive director of the New York State Trial Lawyers Association.

" Vote Yes " - Modest, But Important, Reforms" - Megan Quattlebaum, New York Common Cause
- Better Than the Status Quo" - Blair Horner, New York Public Interest Research Group

" Vote No " - A Classic Bait and Switch" - Gerald Benjamin, Professor of Political Science, SUNY New Paltz
- Making a Bad Process Worse" - Charles Brecher, Citizens Budget Commission

Introduction: Daniel Feldman

In New York, the turn of the 20th century was a period of fairly irresponsible spending by the New York State Legislature. It prompted a tremendous public outcry for what's called an executive budget. That is to say a budget drawn up by the governor with the legislature's role limited to rejection, deletions, reductions and criticism. In 1927, New York's new constitution incorporated that reform.

In the 1970's the State Legislature began to develop staff capability that really allowed it to engage in what I would characterize as increasingly serious budget analysis. While the legislature and the governor continued to joust over budget power, I would say it was generally the legislature, not the governor's office that imposed substantive conditions on budget items in the context of the budget process. From 1998 through 2004, however, the legislature and the governor engaged in more heated controversy over budget powers and exacted litigation over budget powers. The controversy centered really on the degree to which either could oppose substantive law in the context of budget bills.

When the dust finally settled on the litigation, known as Pataki v Assembly and Silver v. Pataki, just last year in 2004, the Court of Appeals essentially gave the governor, not the legislature, considerable leeway in imposing substantive policy though budget bills. In particular, the court upheld the governor's right to insert into a budget bill, pages of revisals and conditions.

In 2005, the governor and the legislature responded to public outrage over twenty years of continuously late budgets by passing the budget on time. Nonetheless, the decision of Pataki v Assembly, many would argue, leaves delay by the legislature as the only effective weapon left in attempting to combat the governors now increased leverage in budget negotiations.

I would think that it was largely in response to that “decision” that the legislature has placed Proposal 1 on the ballot.

The most significant element of ballot Proposal 1 would shift much budgeting power to the legislature in the event that the legislature could not or would not agree to the governor’s budget, even after imposing reductions in or elimination of budget items. The only limitations the legislature could make to the governor’s budget proposal.

This ballot proposal is a response by the legislature essentially to retake a very substantial increase in budget power and some would say it would take much more than the power the court has taken away from them. **“Vote Yes on Proposition 1: Modest, But Important, Reforms” Megan Quattlebaum, New York Common Cause**

Proposal 1 is part of a larger reform movement that we have been pushing for in Albany for over three decades.

So I want to step back a bit and talk a little about where we are now in the budget process in Albany. Common Cause has long criticized the budget process for being too secretive, too unaccountable and too uncertain.

For example, the Health Care Reform Act, which is approximately $4 billion in spending and revenue, is controlled entirely by the governor with very little oversight by the legislature and comptroller. In the past, Health Care Reform Act funds were used to create pay raises for the workers of the 1199 Service Employees Union. Those were the product of secret meetings between the governor and the head of that union and a few of the legislative leaders. That may have been a good decision or a bad decision, but we believe that it directly resulted in Pataki being endorsed by that union a few months later. We think that’s not a good way for budget decisions to be made.

Issues of secrecy, issues of accountability, issues of uncertainty â€“ these are the things that drive Common Cause to seek reform of the budget process in Albany.

For those problems, we think that Proposal 1 offers a modest, but important, solution. We would never refer to it as a panacea. But we do see it as part of the larger spectrum of reform. But Proposal 1 would take steps to making the budget more open, accountable, and certain.

It will put things like the Health Care Reform Act funds on budget.

It will create an Independent Budget Office to help take some of the spin off of the budget numbers coming out of Albany.

It will create a contingency budget so that if the governor and legislature cannot agree on a budget on time, there is always a budget in place for schools and agencies that rely on state funds.

And it will create two-year school budgets, so schools can plan ahead for the future.

These are some of the smaller, but equally important parts of Proposal 1. It is part of a larger reform movement.

“Vote Yes on Proposition 1: Better Than the Status Quo” Blair Horner, New York Public Interest Research Group

Anyone who is a student of the Albany process knows that you never get what you want, but you may get what you need, in the words of the famous British philosopher Mick Jagger.

The greatest point of debate on Proposal 1 is the contingency budget.

This passed in 2004 and in 2005, and the criticism is that it will create a power grab by the legislature that will lead to runaway spending. One Assemblymember said it was like letting children in a candy store without adult supervision; a pretty strong charge.

So we looked at how the power relationship outlined in this contingency budget stacks up against how budgets are done in the rest of the country.

What we found is that New York is one of four states with extremely powerful executives. The remainder of the country gives the legislature more budgetary authority than New York.

Now, no other state does exactly what this proposal calls for. But if you look at that relationship - where the legislature has a lot of authority subject to the line item veto of the governor â€“ it is a similar relationship in most states around the country.

The contingency budget along with the rest good things in this package are, on balance, better than the status quo.

That is the vote on November 8. There are only two choices. You keep things the way they are, or you change.

We think that the change â€“ the improved openness in the development of the executive budget, the Health Care Security Act funds being subject to scrutiny, the creation of an Independent Budget Office â€“ we think that as a package, Proposition 1 offers something better than what we have. **“Vote No on Proposal 1: A Classic Bait and Switch”**

Gerald Benjamin, Professor of Political Science, SUNY New Paltz

I regard this as a classic bait and switch. It proposes reform, when it in fact undoes the greatest reform ever made in the 20th century in New York governance â€“ the executive budget system. It undoes the executive budget system, which was adopted to a discredited 19th century legislative budgeting system.

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The motivation for Proposition 1 is the legislature's loss in the litigation of Pataki vs. Assembly, and Silver vs. Pataki, that closed the door on any hope that the legislature could alter its role in the budgeting under the current rules.

The legislature feels it has no other option than to change the State Constitution. The legislature is uniquely situated to change the Constitution without a convention. It can propose the change twice, and bring it to the people without the governor having a role in it.

The legislature is trying to replace the separation of powers - that is the core issue. The other issues are peripheral.

The legislature, in my opinion, is right. It has been unduly marginalized in budgeting by the decisions of the Court of Appeals. But it is overreaching in trying to establish itself as the sole power in budgeting.

Under Proposal 1, if the governor's budget is not adopted by the beginning of the fiscal year, the contingency budget goes into effect and the legislature has almost entire control.

The best reason to provide a contingency budget is to assure that it is never used. The contingency budget should be so offensive to both houses of the legislature and the governor that they work hard together to avoid it ever happening.

What we have here is a high incentive for the legislature to allow the contingency budget to come into force, and a very low incentive for the legislature to accept the governor's budget or to negotiate. So we have reversed the dynamic, but we have not remedied it.

We have an executive budget system for good reason. The elective chief executive is accountable to the whole polity. The legislature, as an institution, is distributive in its character; it has to please a lot of people who represent a lot of different interests and places. It is less situated institutionally to do the balancing of revenues and expenditures.

I agree that the legislature is far better situation to deal with budgeting and fiscal issues than it was in the early 20th century. But the fundamental institutional issue remains.

There is an alternative. It is legislation, called Senate 3195/Assembly 4630, which was given first passage this year. It requires the governor to propose changes in permanent law apart from and not within appropriation bills that the legislature may alter. If Proposition 1 fails, the legislature will advance it for second passage next year. And then it will be on the ballot.

The legislature is not going to quit. It is not going to accept the status quo with the governor. If it can't get its goal by overreaching, then it will accept a lesser goal.

Most New Yorkers think they are being presented with reform. The value of the reforms being advanced is overstated. The core issue being avoided is the undoing of a fundamental reform in New York government. We must resist and vote "no."

"Vote No on Proposition 1: Making a Bad Process Worse" Charles Brecher, Citizens Budget Commission

All of these arguably "modest improvements" â€" putting the Health Care Reform Act funds on the budget, the creation of an Independent Budget Office, and the instituting two-year school budgets - are not what you are voting on November 8th.

What you are voting on with Proposition 1 is the creation of a contingency budget if the legislature doesn't pass a budget on time.

That might be called a good thing, if it really were a tool. A contingency budget ought to be a hammer that you get hit over the head with if you don't pass a budget on time. That is not what this is.

This is an incentive for the legislature not to pass the budget on time because they get more power under the contingency budget. This is going to make this process that we all agree is bad, even worse. It is going guarantee that the budget is late because that is how to make the

legislature more powerful. If the contingency budget kicks in, they will have almost unlimited power to pass supplemental appropriations.

This would create a schizophrenic budget process. Up until May 1, the governor has all of the power. After that, the legislature has all the power. It’s a crazy way to do fiscal business in the state.

We have problems. This isn’t going to fix it. Don’t’ make it worse. Don’t’ vote for this. Let’s focus on the real issues.

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