

Center for Judicial Accountability

From: Center for Judicial Accountability <elena@judgewidth.org>
Sent: Thursday, April 07, 2016 12:06 PM
To: 'dliebschutz@albany.edu'
Cc: 'mpawluk@harrisbeach.com'; 'Tom Gais'; 'zimmer@albany.edu'; 'donboyd5@gmail.com'; 'capej@rockinst.org'; 'ldadayan@albany.edu'; 'dmatkin@albany.edu'; 'richardnathan55@gmail.com'; 'pstrach@albany.edu'; 'benjamig@newpaltz.edu'; richardbrodsky@gmail.com
Subject: Lawsuit challenge to the constitutionality and lawfulness of the NYS budget
Attachments: nys-constitution-article7-sections-1-7-and-article4-section7.pdf

Dear Professor Liebschutz—

Following up my voice mail message for you a short time ago, below is what I sent to other scholars & "good government" groups concerning the New York State budget, whose flagrant unconstitutionality and unlawfulness is being challenged by a citizen-taxpayer action.

Based on your 2011 article – "Legal History of the New York State Budget: An Overview" – in the New York State Bar Association's Government, Law and Policy Journal – <http://www.harrisbeach.com/files/2011/NYSBAArticleLegalHistoryoftheNYSBudget.pdf> – co-authored with Mitchell Pawluk, Esq., I would greatly appreciate your opinion of the lawsuit and assistance in facilitating dialogue and evaluation by your fellow scholars, including at the University of Albany's Rockefeller College of Public Affairs and Policy and at the Rockefeller Institute of Government – and by the New York State Bar Association, among others.

Thank you.

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From: Center for Judicial Accountability [<mailto:elena@judgewidth.org>]
Sent: Thursday, March 31, 2016 10:38 AM
To: Blair Horner (bhorner@nypirg.org); 'Hhorner106@gmail.com'; 'lawrence.norden@nyu.edu'; denora.getachew@nyu.edu; 'bbheck1@yahoo.com'; 'lwwny@lwwny.org'; 'slerner@commoncause.org'; pkatze@commoncause.org; (ddadey@citizensunion.org); twerber@citizensunion.org; 'jkaehny@reinventalbany.org'; dominic@reinventalbany.org; 'eric.lane@hofstra.edu'; zteacherout@law.fordham.edu; 'zteacherout@gmail.com'; 'EJM@EmpireCenter.org'; 'Bob Schulz'; 'info@empirecenter.org'; 'thoefer@empirecenter.org'; 'deutsch@fiscalpolicy.org'; 'mauro@fiscalpolicy.org'; 'lavigne@fiscalpolicy.org'; 'benjamig@newpaltz.edu'; 'dmuzz@aol.com'; 'zimmer@albany.edu'; 'rb34@columbia.edu'; 'richardbrodsky@gmail.com'; 'carey.institute@wagner.edu'; 'Seymour Lachman'; galie@canisius.edu; (jstone@sy.edu); 'Tom Gais'; 'cbopst@goldbergsegalla.com'; 'dfeldman@jjay.cuny.edu'; 'Bonventre, Vincent'; rward@osc.state.ny.us; jgard@buffalo.edu; 'James Gardner (law-jaecklecenter@buffalo.edu)'; 'mdoulis@cbcny.org'; 'dfriedfel@cbcny.org'; 'Bob Schulz'

Subject: Why are the "good government" groups & scholars of the constitution & public fisc not educating the media about what the NYS Constitution has to say about the NYS budget?

Why are the “good government” groups and scholars of the constitution and public fisc not educating the media about what the New York State Constitution has to say about the New York State budget?

How is the “three-men-in-a-room”, behind-closed-doors budget deal-making and their purportedly “on-time budget”, which, virtually without inspection, the Senate and Assembly are being strong-armed to pass, remotely constitutional?

See my below e-mail to the media & advise.

Thank you.

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From: Center for Judicial Accountability [<mailto:elena@judgewidth.org>]
Sent: Thursday, March 31, 2016 5:04 AM
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Cc: 'Bob Schulz'

Subject: Have you read what the NYS Constitution has to say about the NYS budget?

HAVE YOU READ WHAT THE NEW YORK STATE CONSTITUTION HAS TO SAY ABOUT THE NEW YORK STATE BUDGET?

Missing from ALL reporting and editorializing about the New York State budget is ANY reference to what the New York State Constitution has to say about how it is to be presented and enacted.

As it is IMPOSSIBLE to reconcile what has been taking place, with the constitutional design, take TEN MINUTES to read the relevant constitutional provisions, attached for your convenience.

These are NYS Constitution, Article VII, sections 1-7 and, additionally, Article IV, section 7.

Start with the three sentences of Article VII, section 4, as these identify that ALL the Governor's budget bills making appropriations and re-appropriations – other than his Legislative/Judiciary budget bill – become effective, "immediately without further action by the governor", once the Senate and Assembly reconcile their divergent amendments to those bills – and those amendments can only consist of reducing or striking out the Governor's proposed allocations.

As for such increases and additional appropriations as the Senate and Assembly may wish, Article VII, section 4 requires that these be "stated separately..." and section 5 requires that neither house may consider same "until all the appropriation bills submitted by the governor shall have been finally acted on by both houses, except on message from the governor certifying to the necessity of an immediate passage of such a bill."

In other words, by now, most of the Governor's executive budget should be in place by dint of the Senate and Assembly amendments to his appropriation bills, reconciled between them, having taken effect "immediately without further action by the governor" – with the only thing left, other than the Legislative/Judiciary budget bill, being the Legislature's separate and distinct bills for increased and additional appropriations, regulated by Article VII, sections 4, 6 and 7.

And, of course, this constitutional design for enactment of the state's budget – reposed as it is in the Legislature – is open to public view. In the words of Article III, section 10 of the New York State Constitution: "Each house of the legislature shall keep a journal of its proceedings, and publish same...The doors of each house shall be kept open..."

For your further convenience, here's the link to the Center for Judicial Accountability's "Budget Resource Page", posting the relevant Court of Appeals decisions, briefs, and other materials, whose explications of Article VII, sections 1-7 reinforce the blatant unconstitutionality of much of what you have been reporting and editorializing about relating to the budget as if it were sanctioned by law: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/supreme-ct/2016/budget-resource-page.htm>

Finally, for details as to the Legislature's violations of the constitutionally-mandated budgetary design – and of a mountain of statutory and legislative rule provisions pertinent thereto – replaced by "three-men-in-a-room", behind-closed-doors, budget deal-making – these are presented by the 12th, 13th (sections D & E), and 16th causes of action of the March 23, 2016 verified second supplemental complaint in CJA's citizen-taxpayer action against the Governor, Legislature, Attorney General, and Comptroller, seeking declarations of unconstitutionality and unlawfulness. The webpage for the second supplemental complaint is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/3-23-16-osc-2nd-supp-complaint.htm>.

I am available to answer questions – and would be pleased to assist you to the max to ensure the accuracy of your reporting and editorializing.

Thank you.

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