

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, April 18, 2017 1:02 PM
To: 'James McGuire'; 'Richard Brodsky'; 'robert.bullock@rockinst.suny.edu'
Cc: 'nylrc@albanylaw.edu'; 'pkiernan@schiffhardin.com'; 'benjamig@newpaltz.edu'; 'galie@canisius.edu'; 'cbopst@aol.com'; 'hnd1@cornell.edu'; 'vbonv@albanylaw.edu'; 'rsmith@fklaw.com'; 'greenbergh@gtlaw.com'
Subject: What are you talking about? -- RE: In search of scholarship: "Budgets and the Balance of Power: The Lasting Impact of Silver v. Pataki and How It Shapes the Future of Government in New York State"-- June 16, 2015 forum

Dear Messrs. McGuire and Brodsky,

Thank you for your responses. However, I haven't the slightest clue as to what either of you are talking about.

Mr. Brodsky, I have not "pooh-pooh[ed]" any suggestion for "academic and public research and debate" of the Court of Appeals' 2004 *Pataki v. Assembly & Senate/Silver v. Pataki* decision. To the contrary. I am calling for scholarship that apparently does not yet exist.

Mr. McGuire: I do not object to Stimson's proposals of executive budgeting, laid out by Article VII, §§1-7 of the New York State Constitution. To the contrary -- and scholarship would reveal -- whether and to what extent the executive budgeting design has, in fact, been faithfully followed since 1929 so as to give the People of the State of New York a superior and efficient budgeting scheme, fully within public view, upon the Governor's submission of his budget bills to the Legislature pursuant to Article VII, §3.

Thank you.

Elena Sassower

From: James McGuire [mailto:jmcguire@hsgllp.com]
Sent: Tuesday, April 18, 2017 12:48 PM
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Subject: RE: In search of scholarship: "Budgets and the Balance of Power: The Lasting Impact of Silver v. Pataki and How It Shapes the Future of Government in New York State"-- June 16, 2015 forum

Some may not know that Richard and I go back a long way and that the mutual respect is real. And I, for one, enjoy the great gift he has for farce; I've never seen that gift shine as brightly as it does in his email (saving, of course, the first sentence).

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From: Richard Brodsky [<mailto:RichardBrodsky@msn.com>]
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I stand second to no one in admiration for the intellect and integrity of Jim McGuire, That he is the architect of an undemocratic, dysfunctional and failed system of budgeting is also true, or at least arguable. And to pooh-pooh a suggestion that it is a subject ripe for academic and public research and debate does little to advance his arguments. What are you afraid of? Surely Pataki v. Silver is not chiseled in stone. Surely, the fact that all we have is plurality opinions leaves scope for debate. Surely the language in the opinions suggesting that executive overreach could be re-litigated has current application. Surely a budget system that distinguishes between appropriations and public policy can be maintained without return to legislative budgeting as it existed a century ago.

I respectfully suggest that Judge McGuire's positions can be characterized by a phrase more pungent than "stuff and nonsense".

Respectfully submitted,

Richard Brodsky

From: James McGuire <jmcguire@hsgllp.com>
Sent: Tuesday, April 18, 2017 11:21 AM
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This is all stuff and nonsense (indeed, to use Bentham’s delicious phrase, “nonsense on stilts”). The reason for the rule is discussed in the constitutional history – Stimson, in particular, as I recall – and in the briefs in the COA cases (and the lower courts). And it’s obvious: Without it, executive budgeting simply disappears; if the legislature can alter one item, it can alter all of them and you are right back to legislative budgeting and the entire purpose of the amendments that later landed in Article 7 is undone. In fact, if my recollection is correct, Stimson said, in words or substance, “Without it you have nothing.”

But I should not be understood as taking the position that my friend, Prof. Bonventre, will agree with me!

James M. McGuire

Holwell Shuster & Goldberg, LLP

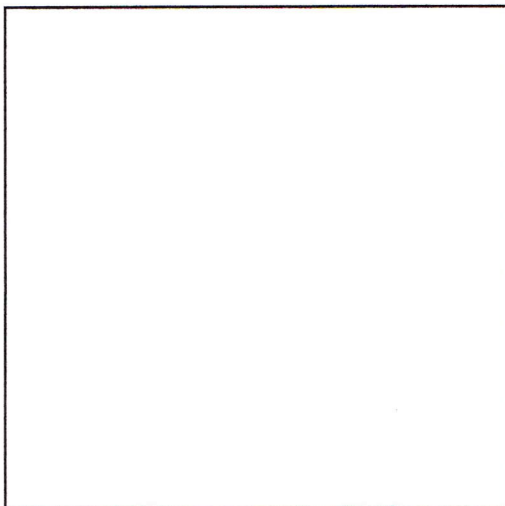
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