

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

NO ON PROPOSAL ONE

The Association of the Bar of the City of New York has advocated throughout its history for reform of policy and procedure to ensure the efficient and accountable operation of state government. Most recently, the Association's Special Committee on State Governance released an interim report suggesting changes in the rules of the two Houses of the New York State legislature. The report adopted the themes of "representativeness, accessibility, and deliberativeness as the interrelated characteristics of successful democratic law making." The Association's Committee on State Affairs endorsed these goals in support of recent attempts to reform the committee and procedural processes in the state legislature.

As champions of effective government, the Association of the Bar of the City of New York *opposes* the proposed constitutional amendment, S. 1 (Proposal One), on the November 8, 2005 ballot.

Contingency Budget

The proposed amendment allows a contingency budget to go into effect when an agreement on the budget has not been reached by the start of the fiscal year. Accompanying legislation would move the start of the fiscal year from April 1st to May 1st. The contingency budget would take effect on the first day of the newly proposed fiscal year in the event that the Legislature has not approved the budget submitted by the Governor. If this were to occur, the previous year's appropriation level would remain in effect, with the exception of certain state aid budget lines where the legislature would have the power to pass supplemental spending bills to increase expenditures. The only recourse for the Governor to stop the legislature in this case would be to veto these bills. His veto can be overridden by a two-thirds vote in both houses.

While a contingency budget would provide certainty of level funding or the hope of increased appropriations to those who are dependent on state aid, the provision, in effect, allows the Legislature to stall and wrest control of the budget process by refusing to negotiate with the Governor until after time had lapsed on the proposed executive budget. The amendment does not balance power but gives the Legislature the mechanism to simply write its own spending plan if it does not agree with the Governor's budget. Far from providing parties more time during the legislative session to negotiate an agreement, this amendment gives the legislature a reason to stall the budget process and not engage in meaningful dialogue.

This proposal does not implement a “barebones” contingency budget which encourages negotiations. Allowing supplemental spending bills may result in increasing overall expenditures because legislators in key committees and in positions of influence may tend to focus on appropriating money in the interest of their own districts rather than focusing on the state’s overall finances. Also, this amendment does not temper the power of the legislature by connecting spending with binding revenue forecasts, it does not require that the adopted provisional budget be balanced in any meaningful way, and it contains no provision that would limit the ability to finance the budget with increased amounts of debt. In short, it does not reform the budget process; rather, it shifts the power from one branch to another without giving due consideration to the reasons the Executive Branch was granted its budget responsibilities nearly eighty years ago.

Gubernatorial Guidance of the Budget Process

The contingency budget plan undermines the budgetary power of the Governor, a power that was afforded to the Executive branch after long periods of deliberation. Until 1927, the legislature originated all budget bills, and the Governor held veto power over one or more appropriation items; the legislature could pass a bill with a two-thirds vote to override the Governor’s veto (NY Const of 1894, art IV, § 9).

The decision to grant the Executive branch the power to guide the budget process was made because previously, legislators had abused their budget powers to promote their parochial interests in order to be reelected. Legislators were not accountable to voters statewide. Also, the legislature does not administer state agencies and therefore lacked the day-to-day authority over those departments to inform their decisions. *See* Report of the Committee on State Finances, Revenues and Expenditures Relative to a Budget System for the State, Document No. 32, State of New York in Convention, August 4, 1915.

The report was explicit about the need to limit the role of the legislature. The proposal of the Committee on State Finances, Revenues and Expenditures Relative to a Budget System for the State stated: “The Legislature can cut down, the Legislature can strike out but they must approach it from the standpoint of a critic and not from the standpoint of a rival constructor. The budget must be protected against its being wholly superseded by a new legislative budget and a resort to the same situation that we have now.” (New York State Constitutional Convention 1915, Record [unrevised], vol. II, p. 1586)

The changes to the Constitution and Executive budget powers as outlined above were rejected by the voters in 1915, but became law in 1927 and they remain in effect today under Article VII, §§ 1-7 of the Constitution which now governs the budget process. Although the New York State Constitution grants the Executive branch authorship of the budget, the Legislature plays a significant role in formulating the budget under the Constitution as interpreted in the recent rulings in *Silver v. Pataki* and *Pataki v. New York State Assembly*. Article VII, § 4 allows the Legislature to reduce or delete the

Governor's appropriations and enact new appropriations of its own (balanced by the Governor's veto) or to refuse to act on the budget pending negotiations with the Governor. These mechanisms have all been successfully employed by the Legislature.

The Constitutional amendment before voters this year proposes to make legislators more than just critics; it proposes to give the Legislature the power construct the budget without the appurtenant state agency control or electoral authority. The proposed Constitutional amendment attempts to reduce the "gridlock" in the budgeting process. Other mechanisms of "gridlock" reduction must be explored before a change to the Constitution is made.

Restoring the "Delicate Balance" of Power

True reform of the budget process requires more than a proper application of existing constitutional provisions that define the State's budget process. It does not require passage of proposed constitutional amendment, S. 1 (Proposal One) and a shift of power to the legislature. The Association's report on *Silver v. Pataki* and *Pataki v. New York State Assembly*, "The New York State Budget and the Constitution: Defining and Protecting the "Delicate Balance" of Power," makes suggestions to restore a level playing field and ensure the balance of power. The reports two suggestions are:

**Limiting the Governor's power to include substantive language in the Budget; and
Empowering the Legislature to strike out or reduce non-monetary provisions attached to appropriations.**

Taken together, these two suggestions ensure that both branches have the proper tools to check the other while maintaining the traditional role of "constructor" and "critic."

The Court of Appeals decision in *Silver v. Pataki* and *Pataki v. New York State Assembly* was disappointing in its blanket support of the Governor's power and true reform is needed to ensure the efficient operation of government but reform is not achieved through this proposal. This proposal eliminates the "three men in a room" method of budgeting but replaces it with "two men in a room" where the Senate Majority Leader and Assembly Speaker are given the power to simply let the deadline pass on the Governor's budget and begin implementing their own budget.

For the above reasons, the Association opposes proposal 1.
