



The Public Policy Forum

Reforming the Budget Process: The Proposed Constitutional Amendment — Yea or Nay?

Panelists:

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Moderator: Richard P. Nathan, *Co-Director,*
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Richard P. Nathan:

We're glad to be here today on a very important subject. The first person to say a little bit about what we're going to cover and how we're going to proceed is Brian Stenson, the deputy director of the Rockefeller Institute, who is with our studio audience. Brian?

Brian Stenson:

Good morning. My name is Brian Stenson and I am deputy director of the Rockefeller Institute of Government. I want to welcome you to the Public Policy Forum on reforming the budget process in New York. This is an important and even historic question and the Rockefeller Institute plans to present more presentations and information on this topic in the months ahead. Today's forum is part of a series we hold to honor the public service contribution of Philip Weinberg, who held high-level positions in the executive chamber and in the State Assembly. Our recent forums have focused on homeland security, court reform, and managing in state government. Our website contains transcripts of previous sessions and a list of future events. The address on the web is <http://www.rockinst.org/>. This is the first time that we've held a Public Policy Forum away from the Institute's headquarters. I'll now turn it over to Michael Cooper, the Albany Bureau Chief of *The New York Times*. Michael has written extensively about the state budget process and is highly qualified to give his perspective on the issue and begins today's discussion. With that, here's Michael Cooper.

Michael Cooper:

Thank you, Brian. Joining me to discuss the proposed constitutional amendment that would overhaul the budget process are Richard P. Nathan, the co-director of the Rockefeller Institute; Barbara Bartoletti, the legislative director of the League of Women Voters; and David Shaffer, the president of the Public Policy Institute, which is the research affiliate of the Business Council of New York State.

Late budgets may be what New York State government is best known for and with some reason. Until the spell was broken this April, the state had gone 20 years in a row missing the April 1st budget deadline. It's true that over time the state has learned to mitigate the worst affects of late budgets. They no longer, for instance, have to pay state workers with scrip. They pass emergency spending bills to keep the government running. But late budgets still cause problems. The most vivid example is probably with local school districts, which are forced every year that there's a late budget to guess how much

state aid they're going to receive when they're drawing up their own school budgets or sending out local property tax bills. Sometimes this results in shortfalls as the school year opens. Other times it leaves them with windfalls that they're not really prepared to use and can't take full advantage of. So planning becomes very difficult.



Late budgets have other effects too. When as much as a third of the year goes by without a real budget in place, that means it goes by without the new policy initiatives that are included in the budget. So putting new plans into effect and new ideas becomes much harder. In Albany the competing issues are sometimes linked

together and it's often said that nothing gets done until everything gets done. Many people say the late budgets have an effect in delaying the passage of other legislation. So against that background, on the evening of March 31, 2004, the state was on the precipice of missing the budget deadline for the 20th year in a row. The two houses of the State Legislature got together and announced that they had reached a deal on a constitutional amendment that would overhaul the budget process. Supporters called it budget reform and said it would end late budgets and fix the process. Opponents called it budget deform and said it would shift power from the governor to the Legislature and virtually guarantee more late state budgets. The March announcement was followed by more than a year of political wrangling and gamesmanship, but eventually both Houses passed the legislation and overrode Governor George E. Pataki's veto. So voters will have to decide the matter in November.

The proposal's main points are these. They would change the start of the state's fiscal year from April 1st, which you'll notice is before the April 15th tax deadline, making it very difficult to calculate how much revenue the state can expect, to May 1st. It would accelerate the schedule for the governor to submit his budget plan and would require the Executive Branch to provide three-year financial plans for more long-

term fiscal planning. It would require that school budgeting go on a two-year spending cycle so that schools would have more time to predict what they would be getting. It would establish an independent budget office to provide the Legislature with annual economic and revenue forecasts, a three-year fiscal outlook, quarterly reports on state revenues, and fiscal impact statements on other proposed legislation. And probably the most hotly debated provision calls for a contingency budget to take effect immediately in the event that the new May 1st budget deadline is blown. The contingency budget would in effect hold spending mostly to the previous year's levels with a few exceptions. That contingency budget would remain in effect until both Houses of the Legislature pass a single, multiple appropriation bill that would alter it and take it out of the contingency period.

Why is that the most hotly debated provision? Well, supporters say that since spending grows every year in New York State, a contingency budget that keeps spending constant would be in effect a cut. So they argue that the contingency budget would act as a hammer that would force the Legislature and the governor to agree on a budget. But opponents see this as a way for the Legislature to usurp some of the power from the governor. They say it would give the Legislature a strong incentive to miss the budget deadline every year. That's because the state's current executive budget process, which goes back to Alfred E. Smith, gives the Legislature very little leeway in what it can do to amend the governor's proposed budgets. But the Legislature's budget reform proposal would allow it to essentially write a new budget from scratch once the contingency budget went into effect. While the Legislature's spending plan would still be subject to the governor's veto, opponents fear it would change the power dynamic in Albany.

So Barbara, you could tell us why the League of Women Voters supports this amendment?

Barbara Bartoletti:

Thank you very much, Michael, and thank you for having the League here today to discuss this important issue that actually we have had an interest in for a very long time. As many of you may be aware, the League of Women Voters is a nonpartisan volunteer organization working to promote political responsibility through informed and active participation in government. The League does not support or oppose any political party or candidate. It does support or oppose legislation after serious study and substantial agreement among its members.

In 1991, spurred by continuing late state budgets and the crisis that they created, the League began a two-year study of the New York State budget process. During the study, League members examined the process by which the state adopts its budget including budget timetable, format, public involvement, accountability, revenue forecasting, bond ratings, budget caps, and openness. In 1993, after that two-year study, a position was approved under which the League was able to educate and advocate for a timely, responsive budget done in an open process. I will not go over the entire position because it is quite lengthy, but it includes much of what is in the constitutional amendment and implementing legislation being discussed here today. After 12 years of lobbying efforts by League members across the state, we finally have before us the possibility of good reform, although not perfect reform. Compromise seldom is. But nonetheless, it is a possibility to change what we see as the status quo and move us forward toward a more transparent, timely, and responsive budget process.

As most state residents understand, the formation and passage of the state budget is one of the most important functions of state government. As Michael noted, school districts depend on what should be an on-time budget so that they may decide what kind of revenue they're going to have available to them. Another area is the not-for-profits. Not-for-profits in this state who take care of our most vulnerable populations often don't know, when a budget is late, if they are going to get money to continue their programs. They often cannot count on keeping their payroll going. The League saw that as another pressing issue along with funding of school districts.



First, I'd like to talk about the process under which this constitutional amendment has been adopted. For years, as part of our open government position, the League has said joint conferencing in the open with citizen input is the right way to develop legislation. To that end, a joint conference committee process began with

rank-and-file legislators. They had an opportunity over the course of many open conference committees to discuss the various issues before them. This was one of the best uses of a budget conference committee that many of us had seen in a very long time. Rank-and-file legislators debated complex issues. They did it in a civil manner. These conference committees showed legislators actually have a clear understanding, even though at times they disagreed about what was at stake in crafting legislation that would indeed move the budget process forward. As Michael said, that came to a head on March 31st and then the very necessary but tedious process of developing the actual language of the constitutional amendment began.

Parallel to the constitutional amendment legislation is implementing legislation, which would implement the constitutional amendment. The constitutional amendment process in this state takes two consecutively elected Legislatures to actually approve a constitutional amendment so that it can go on the ballot that subsequent November. This has happened. The first passage was in 2003. There was an election in November of 2004 and a new Legislature was seated in January 2005. Second passage occurred this last session and without any action by the governor this constitutional amendment will go to voters on the ballot in November.

This Forum, we hope, will be just the beginning of educating the public about what is in this amendment. However, let me just talk for a minute about the amendment's implementing language. The implementing legislation does exactly what it says it does. It implements elements of the constitutional amendment. This legislation is subject to the

governor's veto. It was passed by the Legislature, sent to the governor late in 2004, the governor vetoed it, and at that time neither house was able to override his veto. This session, however, with a new Legislature, we were able, in both houses with bipartisan support, to override the governor's veto. If voters vote in favor of the constitutional amendment, the implementing legislation will be allowed to implement the constitutional amendment.

Let me tell you a little bit now in the time that I have left about what is in the amendment and why we support it. First, it opens up and makes the process much more transparent. It gets the budget out more quickly, and actually decreases the 30-day amendment period the governor has to amend his own executive budget to 21 days. Agency budgets are available earlier for citizens to examine. We think this is very important for citizens so that they might see what actually is being proposed for the agencies. Once that process has been completed and there have been open joint conference committees, revenue forecasting would be done. The Legislature would begin the process of deciding what it is they want to add or delete from the governor's budget. If there is no agreement, and for 20 years we have had no agreement, the contingency period would begin.

Why do we like the contingency budget? Number one, it's in our position. After two years of study, we feel it is the best way to bring people to the table and avoid the status quo. The contingency budget is the prior year's funding with certain exceptions. First, federal law exempts items such as pensions and public assistance payments. A contingency budget provides certainty to the school districts because they will get two-year forward funding as a part of the contingency budget. It was an important aspect to my members.

Do we think a contingency budget is a good thing? Actually, as Michael said, no, we think it should be a hammer. We think because it is so onerous it has the best chance of bringing both the Legislature and the governor back to the table. Anybody who lobbies in Albany, who has walked the halls over the past 20 years, you have heard rumors that often negotiating goes on throughout the months of January, when the budget

is introduced, until August, when the latest budgets have been done. We get feedback that the negotiators are sitting around a table with their arms crossed, absolutely refusing to talk to one another for whatever reasons. We needed a way for the Legislature and the governor to come to the table with serious negotiations. This contingency budget does do that.

Once the contingency budget is in place constituents will start screaming. The governor and the Legislature will certainly have increased impetus to come to the table. The status quo just has not worked. So let's move forward with this more timely budget process. We also like the revenue forecasting in the legislation. Another provision of the implementing legislation is an independent budget office. Now, people will say, "Well, it's just more bureaucracy." Well, I would remind people that this is patterned after the Congressional Budget Office (CBO) in Congress. The CBO is made up of very professional budget policy people, national experts. This is what we envision for the independent budget office. The legislation provides for appointment on the Independent Budget Office (IBO). There's also an advisory committee, and the director has to be a nationally recognized expert on budget making.

We think this will take away one of the most serious problems we've had in budget making, the inability of the houses to decide what available revenues are in the budget. We call them avails. The Senate comes in with a number, the Assembly comes in with a number, and the executive comes in with a number, and they never match. Our hope is, with the introduction of the IBO, which we think will attain credibility and will be viewed much like the CBO, their number will be a credible number and we can move on toward making the hard decisions about where the available revenue is going to go. I said before that transparency is a big issue with us. It is. The three major components of this legislation for us are the transparency, the IBO, and the contingency budget. Together they change the status quo.

Albany is a mess. I don't think anybody is going to dispute that. The status quo hasn't worked. We need to move forward and indeed we think this is a very good way to begin that process. Therefore, we are in support of this constitutional amendment

and we do hope the voters of New York will say yes on November 2006 and put together a budget that's timely, responsive, and actually works for the citizens of New York.

Michael Cooper:

Now for the counterpoint. David, why does The Public Policy Institute oppose this constitutional amendment?

David F. Shaffer:

Michael, thanks for asking. I have to say it's a pleasure to be here. I should say to the audience outside the studio that in the room we have about 40 people with us who are probably the total number of people in the state right now who actually care about this issue. It's very important to me that we broaden the awareness and understanding of this because this is a very critical decision for the people.

In my view, this is not an on-time budget amendment. This is a runaway budget amendment. It's a serious threat to the taxpayers of the state and to the stable and orderly operation of government. It's going to be hard to get people excited about it. I think partly because it's a bit of an odd duck. In the first place, it's the solution to a problem that doesn't actually need to exist. As Barbara says, it's described as being aimed at this perennial problem in Albany of budgets being late. And, as Michael pointed out, in fact the Legislature first floated this in the midst of delaying last year's budget. It was as though they were saying, "Yes, we're late again, 20th year in a row, but it's not really our fault. It's a problem with the state Constitution. So we're going to fix that."

It sounds pretty good, except when you think about what happened this year. This amendment is not in place and yet they did pass the budget on time. In fact, if you look back in history, for 50 years after the time of Franklin Roosevelt, who first inaugurated this system, it was designed (as was pointed out by Al Smith and Charles Evan Hughes) so the Legislature did pass the budget on time. The reason the budget is

late in Albany is the behavior of the parties in Albany, not the Constitution, period, end of story.

Then there's more than that to this odd duck. The second thing I think you'll hear about is, I think, that it represents this huge power struggle between the executive and legislative branches in Albany. I'm worried how the public is going to react when they hear that, because I fear the instant instinct will be to say, "Well, pox on both your houses. Who cares? We're not going to get mixed up in that. We're tired of Albany." As Barbara said, people see it as a dysfunctional place. It's a big mess. They don't want to have anything to do with it.

But to my mind, why it is so important is the third wing of this odd duck. This is where the debate needs to focus and that's the aspect of it that will lead to runaway budgets, in my view. It's going to disembowel the one serious institutional restraint we have in our Constitution on New York State spending habits. That's bad for taxpayers and bad for the economy. And because the economy is the tax base, the long-term effect of the amendment ironically, in my view, will be to damage to the state's ability to spend. The very thing that the advocates of this amendment, I think, hope to expand.



The state of our economy in New York is not just an academic matter and not just a concern for business. That's why I want to bring it into this discussion. We all know that our young people have to go elsewhere to find work. In just ten years, upstate lost one-fourth of its age cohort between the ages of 20 and 35, the people that we're counting on to be our future taxpayers. We've lagged behind the nation's job growth for decades. I'll give you one little illustration, a situation that I stumbled across a couple months ago. Fifteen years ago, New York State had 1.1 million more jobs than Texas. Today, Texas has 1.1 million more jobs than New York. That's a sign of the opportunity cost involved in an economy that's not growing. The people who

want to spend the state's money need to focus on that because, if you think about it, for every 1 million private sector jobs that we don't have but that we should have in this state, state and local governments in New York lose \$12.7 billion a year in potential revenue. That's a lot of money for schools, Medicaid and health care, and everything else that everybody cares about. I'm not saying that high taxes and spending are the only cause of New York's economic problems, but they are a substantial part of the problem. High taxes are driven by high spending, and that's why we have to worry about this amendment.

I think it's almost a coup d'etat by the bipartisan party of high spending and high debt and ever-growing budget gaps in New York. If you think you've seen chaos and dysfunction in Albany already, wait until this thing becomes law — if it does. I know that's not the wish of the sponsors that drafted it. I think in a sense this amendment almost got on the ballot by accident. It's kind of a case of brinkmanship by people who should have pulled back before it was too late. They didn't. Now it's up to the voters to stop this.

So how did the accident happen? During the 2004 session, I think it was basically rushed out as a kind of an explanation for why they were late. "It's not our fault. It's the Constitution." They gave it first passage. It takes a second passage to get it on the ballot before the people. No real harm done by that gesture. But then this past December, the Court of Appeals did something very important. They issued a ruling in a case called *Silver v. Pataki*. The name of the case tells you the import and the key players. They declared that the Constitution gives the governor enormous power to make programmatic changes in state policy through the language that he puts in his annual budget bills. Well, through what the late Governor Malcolm Wilson used to call a "mellifluous concatenation of circumstances," the Legislature had included in this gesture from last year an interesting little provision that quite simply eliminates the governor's budget bills at a certain point. So they say to themselves, "We can put our amendment on the ballot. Tell everybody it's going to eliminate the late budget and we will end up with spending

powers that the Legislature of this state hasn't dreamed of in almost a century." And in fact, that will be the consequence.

I want to put aside the question of what to do about *Silver v. Pataki* because I think there are a lot of other ways to address this. This amendment is not only the nuclear option; it's the mutually assured destruction option of dealing with that problem. But it sounds innocent the way that Barbara described it. It does have these core provisions, which I think a lot of people can find reasonable at first. There is the provision that moves back the start of the state's fiscal year to May 1st and moves up the date by which the public budget discussion begins. Both of which should, other things being equal, facilitate a more open and public dialogue on what is in the budget. The second thing is that the budget would require that each year's state budget be a two-year school aid amendment. I think there are pros and cons on that, but again it's an interesting idea worth thinking about. The third thing is the use of a contingency budget if the Legislature fails to enact a budget on time. Again, that's a thing that you wouldn't dismiss out of hand. All three of those things, I think, are potentially reasonable ideas. I think they could all be done by statute without submitting them in the Constitution. We can do them by statute, see how they work for a few years, test them out, and reform them before we commit the state to it over the long haul. That isn't what they chose to do and I think there are reasons for that.

The reason is the gorilla in the room, which is the fourth key provision, the deal breaker from my point of view, the aspect of this that has led virtually every prominent newspaper in this state to editorialize against the amendment. It's why virtually every organization concerned about the state's fiscal stability is against it. It's why both Governor Pataki and Attorney General Spitzer are opposed to it. It's why the board of directors of the Business Council has voted to oppose adoption of this amendment. That fourth provision I can describe succinctly. The amendment enables the Legislature to seize control of state spending, drafting its own appropriation bills without any participation by the governor, and thereby taking New York back to the kind of fiscal chaos that prevailed back at the end of the last century when the current provisions were

drafted to put an end to those problems. The way it does that is that it has this provision that if passage of the budget does not occur before the start of the fiscal year then the governor's proposed budget is unceremoniously dumped and the Legislature starts over drafting its own appropriation bills. A couple things about that. In the first place, if you think about it, it quite simply rewards the Legislature for delaying the budget past the start of the fiscal year. I think anybody who thinks this is going to lead them to pass the budget on time is dreaming. I don't think they will see an on-time budget ever again under this amendment.

I think, secondly, if you noticed I said the governor's "budget bills" are dumped and the Legislature puts together its own "appropriation bills." I made a distinction in the language there for quite deliberate reasons. Under our Constitution when the governor submits his budget, it is a budget in the common ordinary meaning of the word. That is, he adds up what he would like to spend and then he balances that against what's going to be available to spend. In fact, he's required to submit a budget that he believes to be balanced. Under the proposed amendment, once the Legislature takes control over the process, which again it can do automatically if it simply delays passing the budget on time, all that stuff about budget and balance goes out the window. The Legislature would not be required to adopt a balanced budget. In fact, it wouldn't even be required to add up the appropriation bills to see what the total is. The governor's line item veto of legislative add-ons to the budget would be drastically weakened. Those are the controls we have and that's why we have to look at what's going to happen if there are no controls.

I think the authors of our constitutional system have looked at the past history of the state when we had a system much like what this would return us to and they just sat down and they were realistic. They said, "Constituents demand that legislators send money home." That's what they're sent here to do. That's the one cause to which legislators of both parties are most patiently devoted as people expect them to be. No criticism implied in it, but it has consequences. If there is a budget deficit, an individual legislator is sure it's caused by the thing that other guy added to the budget, not my thing.

The framers recognized that only the governor has to stay awake at night worrying about how the whole thing adds up and that's why they chose him to submit a balanced budget. That's why they allowed the governor to control changes to the formulas and entitlements that drive spending and not just the appropriations totals themselves. All those safeguards would be taken away by this amendment.

Now how much might the Legislature add to the budget given free reign to do so? I don't know. Frankly, if you follow the annual dialogue, they're not too open about what they would like to add. We can get a clue, I guess, by looking at what they have succeeded in adding over the years. For fiscal year 2003-04, the Legislature added \$2.3 billion to the governor's budget. For fiscal year 2004-05, it was \$1.3 billion. We're not actually sure about 2005-06 this year. But it's gone on like that for years and years. As Everett Dirksen said, "Sooner or later you're talking real money."

State government has grown more than twice as fast as the state's personal income, the tax base, since 2000. As Comptroller Hevesi says, that's a pattern of spending growth that is "unsustainable." Mind you, these are additions that the Legislature got the governor to agree to. They are just the tip of the iceberg of what they would want to add to the budget if released from supervision. I think also, by the way, that those add-ons put some perspective on the cries you hear about the poor, pitiful Legislature that has no power or influence under the existing system. They have in fact been able to add quite a lot to the budget. Again, I stress that they are simply trying to do what their constituents send them here to do, which is to bring home money. The governor on his part is simply trying to avoid the embarrassment of having the state go totally insolvent on his or her watch. Their differing positions are a logical outgrowth of their differing responsibilities, not a reflection on their characters, one way or the other.

But it is precisely these kinds of institutional conflicts that a Constitution is supposed to channel in the right direction, as the framers of the Constitution tried to do. I very much think that this proposed amendment, by contrast, would channel those conflicts in exactly the wrong direction, reward the Legislature for failing to adopt a budget on time, and give it vast new powers over state spending. The one state that needs

to restrain spending the most, it would give control over spending to the arm of government that is the least inclined to exercise it. It's going to lead to runaway spending and taxes. It is the runaway budget amendment. We think it must be defeated.

Richard P. Nathan:



Thank you both. Those were thought-provoking statements. What we're going to do now is that we're going to call first on Barbara to comment on what David has said and then David gets a chance to react and maybe a little bit to interact. I'm going to ask Michael Cooper as we go forward in this back and forth to jump in and tell us

what his reactions are and his thoughts are about the issues that have been so well brought up by all three of you. So first to you, Barbara, to respond to David Shaffer.

Barbara Bartoletti:

I think I would start by saying, yes, we did pass a budget on time this year. I think you and I would both agree exactly why this budget was passed on time. It had a great deal to do with politics and not as much to do with the Court of Appeals decision in December. That will be treated by another constitutional amendment. What I would tell you is New York's governor, the executive branch, is one of the most powerful in the United States. A study has noted that among states with executives, New York is one of the most powerful, if not probably the second most powerful in the country. Any governor, whichever party, doesn't lack for power.

Now, when you talk about the Legislature just waiting for the budget contingency period to begin and then they start from scratch and can develop their own budget, what you need to mention with that is that the governor still retains the power of the line-item veto. You will say, "Well yes, he can line-item veto, but then the

Legislature can override his vetoes,” which did happen, I think, back in 2004. They did override some of the governor’s vetoes.

However, with that said, our system is all about checks and balances. We need to have an open process and get rid of the status quo. I don’t think anybody is going to agree that the way the budget process works without this constitutional amendment is a good thing. So I think this constitutional amendment restores openness, the balance of powers, and the contingency budget, which allows a budget to go forward. It isn’t perfect by any means, but it allows the certainty of a budget that will allow funding to go forward. Meanwhile the parties are forced, because of the onerousness of the contingency budget, to come to the table and actually develop a new multi-appropriation bill, which then could be line item vetoed by the governor. He does not lose that power. They have the check and balance then if they can to override the governor’s vetoes.

David F. Shaffer:

The only provision in this that needs to be done by Constitution is the provision that lets the Legislature take over the drafting of the budget. All the rest of it could be done by statute. We could try it out. We could see how it works. We could fix the imperfections, which you referred to and do exist.

Barbara, you’re absolutely right that politics is the reason the budget passed on time this year. Politics is also the reason that the budget has been late for 20 years. The fundamental foundation of the political atmosphere in the state is created by the people. And the people need to do their job and rise to the occasion and let the Legislature and the governor know that they don’t like the status quo in Albany. The way to fix the status quo is to remove some of the status quo. Is that a phrase? Really what happened this year is that in November the people for the first time showed some sensitivity to the possibility of doing that. The Legislature very quickly got the message. They’re not slow learners. They had no problem figuring out that the people wanted change and they delivered change. I think that’s the way to keep the process rolling. I think you’re completely wrong that the governor’s line-item veto powers are protected. He does retain

the power to veto a line in the budget passed by the Legislature after it has drafted it. But the Legislature is the one who decides what the lines are.

The system that we have now is if the Legislature adds anything to the governor's budget that must be stated as a separate line that he can veto out. Under this amendment, once the Legislature drafts the appropriation bills, he can veto any line in it, but they can put all of something in a line. A good example is if the governor is trying to restrain Medicaid spending. Under the current system, if the Legislature wants to restore some Medicaid funding, they add that as a line, he can take it out, and you still have the core there. Under this system, the Legislature can put all of Medicaid in one line. To do anything about the growth, he's got to veto the whole thing. So, in my mind, that simply makes the line item veto more a myth than a reality. I don't think that it's going to be practical for him to affect it.

Richard P. Nathan:

Michael Cooper, you've been following this and writing about it. What do you extract from this good exchange? What you want to bring out or ask people to comment on?

Michael Cooper:

I think what you're hearing is sort of a microcosm of the broader debate about this budget amendment. You've seen a lot of the civic good government groups coming out in favor of it. You've seen a lot of the more fiscal watchdog groups, like the Business Council, the Citizens Budget Commission, the Manhattan Institute, come out against it. So I think a lot of what's driving this debate is the question of what would it ultimately do to spending in the state? I'm interested to ask David this: If it is a political problem, if the problem that has been leading to late budgets for these many years has been a problem of leaders with different priorities, folding their arms, and refusing to negotiate, what is the solution? You suggest that this won't be solved by a constitutional solution. But there is so much gerrymandering that it creates safe seats. The reelection rate in Albany is like Ivory Soap — 98 and 44/100 percent pure. What is the answer here?

David F. Shaffer:

Well, I think, in the first place, the Legislature this year without much change, got a very strong feeling that they weren't as secure as they thought they were. I think that's good. Let's keep it that way. That's the first thing to do.

Secondly, however, the political dynamic in this town changes from time to time and that's going to happen again. We've gone through 12 years of an administration. It may not be back. You're going to see a little change if that happens.

To me, what under-girds the political gridlock is a thing that relates indirectly to the economic decline that I talked about. As the private sector economy in New York has gotten weaker, our elected officials have tended to build up the public sector to try to compensate for it. We're becoming steadily more dependent on public sector finance jobs. Those jobs carry with them a system of organization, union dues, Dennis Rivera's war chest, the purpose of which is to ensure that the Legislature keeps growing government, keeps growing the taxpayer-funded side of the job market. By my calculations, since 1990 the nation's total job count has increased about 20 percent. Of those, about 24 percent are jobs that are either in government or outside government, but funded by taxpayer dollars. In New York in that same period, we've grown 2.9 percent total employment versus a national average of 20. Of those, the taxpayers finance 60 percent. That's a self-reinforcing cycle. If you come with me for a walk in the woods, you'll see vines growing on trees. Now a vine is a good thing. It produces grapes or berries or other things that birds eat. It looks nice, but if it gets too big it kills the tree. When the tree falls down that kills the vine. Ultimately, there is a danger that with ever-growing cycles of taxing and spending and debt in New York, we're going to do that to ourselves. So we have to put a stop to it.

Barbara Bartoletti:

I'm not going to argue with your knowledge of the business cycle here in New York State. I would totally agree with you that there's always that danger of losing jobs and

having service jobs replace them. It feeds on itself. With that said, we still have a mess in Albany. The status quo is still not a good thing. A budget is, as you know, as much a political document as it is a fiscal document. Legislators are representatives of the people and they get elected every two years. Yes, we can all talk about redistricting and all of the other problems that go into making elections here in New York less competitive and create safe seats, etc. However, we did see an example, as you just stated, this year that the Legislature got very nervous. So we know they can be responsive to the people.

We hope that we have a governor who is responsive to the people. I think that the mere fact that once they sit down and seriously negotiate, this governor, any governor, appears to be able to hammer out what indeed is the best for the citizens of New York. That's where our concern lies. Whether it's vulnerable populations, school districts, health care, education, etc., our concern is that a budget is timely and responsive. We have had neither for the last 20 years, barring as we said a political success this year. I don't think you can argue, David, that the status quo is good. The current Constitution continues to give this executive unparalleled power, so that the Legislature really has no choice as an institution but to sit and do nothing. That doesn't work for the people of the state. This Legislature needs to be able to have input and the contingency budget process allows that. It doesn't take so much power away from the governor that this would harm his ability to continue to have some fiscal restraint.

I know we disagree on the line item veto, but as you have noted in your first remarks, the budget has grown in New York State. That would appear to be a reflection of the negotiating done by the Legislature and the governor in spending both feel is necessary for the constituents in this state. That's a recognition that we can no longer have this status quo. It can't continue to be done behind closed doors with the bickering that goes on. Now, the joint conference committee is certainly a step in that direction, but we know much of the budget is still done behind closed doors. We need to get this more out in the open. Many of the things in this constitutional amendment will allow for that to happen. We think on balance that the citizens of the state are ready to have this happen.

David F. Shaffer:

Behind closed doors, now let's think about that a bit. Under this amendment, we would have a more open process of looking at, talking about, and holding hearings about the governor's budget, which the Legislature will have no intention whatsoever of passing. Then we will have the Legislature's appropriation bills, which will simply emerge from a process that is in no way outlined in the amendment. There are no provisions whatsoever in the amendment or the implementing legislation to make sure that process, of the real budget they're going to act on, is going to come out openly. There's absolutely nothing in it to make that open. Nothing.

Richard P. Nathan:

Let me get Michael Cooper back into this.

Michael Cooper:

Yes, let's go back to this issue. I think this is the crux of it. Barbara, why do you think the contingency budget is going to drive an agreement by May 1st? Why won't the Legislature act like Brer Rabbit and say, "Don't throw me in that briar patch," and then go past the deadline and start passing its own appropriation bills? Even if it was for a week or two of last year's spending, couldn't they vastly increase next year's spending?

Barbara Bartoletti:

That's a very good point, Michael. I think probably for those of us who watch what happens between January and, in this case, let's just say May 1st, there are constituents who clog the halls of the Legislature every Tuesday. You can see it on Monday to some degree, and you can certainly see it on Wednesday during the budget session. It falls off dramatically after the budget is agreed to, which would mean to us that there are lots of constituents out there who apply the pressure needed to their elected representatives and certainly to the governor's office. So this contingency budget happens and, yes, it will

provide certainty to the school districts. It really doesn't do anything else unless the negotiations are driven by interest groups, constituencies here in the state that the Legislature needs to be responsive to. They will not be able to leave the contingency budget as it is or they will hear from every one of those people who walk the halls. Many of them will hear about it because they won't have anybody at their fund-raisers. Now that would be a real problem in Albany.

Richard P. Nathan:

What would happen between January and May, if the Legislature simply says, "Hey, our moments coming. We'll just hang tough and wait." I think that's the issue that Michael's drawing us out on.

David F. Shaffer:

I think the Legislature during that period would begin quietly drafting its own appropriation bills. It would in effect put the governor's budget on the shelf from day one. Now the contingency budget does not strike me as a terrible threat to most of the spending groups in Albany. If you look at what it actually contains, it's not a flat budget. It's not something that's 5 percent below last year. It carries forward all the appropriations from the previous year. It adds in contractual obligations like pension contributions and things of that kind. It allows growth in spending on social services as driven by increases in the caseload. It allows the second year's school aid increase to kick in from the previous year's budget. What that means is, if you look at the normal budget debate in Albany, it is about the governor's cuts. Why is that? Well, that's because every year the Legislature passes a budget that builds in a gap of \$4 or 5 billion to the next year. So, of course, the governor has to come out with a budget that would make cuts. As soon as he does, every legislator begins a foot race to the microphones, saying, "This is a horrible thing and we're not going to let this happen because this is terrible." Well, except nobody ever says, "You're the guys who put us in this position to begin with. What do you expect?" So the debate every year is about the cuts. What the contingency budget does is that it puts in most of the major drivers of growth in state spending in

place, secure and untouchable. I don't know why anybody who wants to spend money would be paralyzed with fear over it happening.

Richard P. Nathan:

Michael, is there a key point you want to bring into this before we do that?

Michael Cooper:

I just think this is the question that we are going to hear debated up until November. What's an interesting point is to see what kind of campaigns are going to be mounted on either side of this issue going towards the ballot question. I know insomniacs who are watching public access or public television may largely drive it, but I think that you will see different interest groups rising up. I think you will be able to learn something from who they are and how they do it. I would be very interested to see, for instance, if there is a large union drive to get this passed. It might give some credence to David's points and that they think they will do better under this.

It will also be interesting to see, as people talk about the broader issues of reforming Albany, whether this becomes a rallying cry or not. Sometimes these things are very hard to predict and often things turn out completely different to what people would expect. Some people talk about the law of unintended consequences or sometimes it's just serendipity, but when the Court of Appeals ruled last year in *Silver v. Pataki*, the entire Legislature for example almost to a lawmaker got up and said, "This is going to guarantee that we will never have an on-time budget again," because the court decision said the only power the Legislature has is to delay. By waiting the governor out, they'll be able to do it. Well, in effect the Legislature figured out a way to turn that decision completely onto its head and they used it in a weird way to pressure the governor to make their agreements earlier by saying they were going to hold him responsible if he didn't change this budget language to the way they wanted. So I just to make that point that even though we're trying to predict how this might come out for good or bad, sometimes it's the thing that we're not looking at that we should be thinking about.

Richard P. Nathan:

Well, it's about hard politics and economics and things people care about. David, in a nutshell?

David F. Shaffer:

I think it's the runaway budget amendment. I think anybody who cares about taxes, debt, spending, and the health of the economy in this state should be against it. If you don't care about those things, you're probably on your way to Texas anyways.

Richard P. Nathan:

Barbara?

Barbara Bartoletti:

Texas wouldn't be my choice for any reason. I think what we have is a reform that creates greater transparency, greater accountability with the IBO, a greater certainty — the contingency budget ensures that there will always be a budget in place no matter how much of a mess Albany is. We know, and I think the citizens recognize, that they have to do something. This is dysfunction in Albany. I think citizens have tired of that. I think these reforms, although not perfect (nothing in the legislative process ever is completely perfect) certainly do give that degree of certainty and degree of transparency that the citizens of this state are looking for.

Richard P. Nathan:

We have just a few minutes left. What do you most want to say about this discussion as we close out our program? We plan to come back to this issue. This has been a good way to get into it. David, you go first this time, what do you want to say as a final comment?

David F. Shaffer:

Well, I hope the people of the state don't fall for the idea that the way to reform Albany is to go with the plan drafted by Albany. And that's what this is. I hope the people recognize that they've got to take some active role in instructing their representatives in what they want. I said that the Legislature is focused on spending because that's what the people want. That's one of the things the people have to back off on a little bit. We've got to recognize that we've got more needs in this state and an ever-growing state budget. We've got to get our economy growing. We've got to secure a future for our kids. We've got to make this thing work again before we spend it into the ground. This is a last-gasp effort in my view by the old guard to cling to the power bought through the taxpayers' money. We have a good chance to turn it down and take a different direction, and that's what we need to do.

Barbara Bartoletti:

The one thing I would like to leave with people is that this is a participatory democracy. People need to understand that. One of the things we will do is take a page from James Carville's book and we will keep it simple. We will talk about the fact that the status quo as they're well aware hasn't worked for the last 20 years. That Albany does revolve around political brinkmanship and spinning the numbers to get what it is they want. This is a reform that will move us down the road to making sure that there is certainty for many of the constituencies that people care about, whether it's our kids and how they get educated, how people are defended in court, whether people get housing, all of the vulnerable populations. This provides certainty to those vital not-for-profits and is a move in the right direction. People should support this.

Michael Cooper:

Read your budget stories. It may not be sexy. It may be like spinach, but it will make you strong and healthy and you can decide on issues of great matter and import like this.

Richard P. Nathan:

I am very pleased that we're here at the New York Network for what I think was a really good discussion. You both did a terrific job. Michael Cooper, having you bring your deep knowledge of this and special strong interest in it to the conversation has been also really good and helpful. This is going to be there on the voting machine not too far off in November. We want to help people get a handle on this and all three of you have done a great job. I'd like to thank you all.