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ARTICLE: REFORM IN NEW YORK: THE BUDGET, THE LEGISLATURE, AND THE GOVERNANCE PROCESS*

SEC-NOTE-1:

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SUMMARY:

... New York's fiscal practices have been regularly criticized by the Citizens Budget Commission and others. ... In New York State government, these coalitions commonly form along one of two dimensions: the partisan - Republicans against Democrats, or the institutional - executive branch against the legislative branch. ... Research has shown that a challenger has to spend more than an incumbent to be competitive since he or she is less known at the outset of a campaign. ... Independent revenue estimating allowed each legislative house to legitimize claims that made budgetary room for its own priorities. ... A real deadline with real consequences may force the members of the Albany triad to come to timely agreement on the state budget. ... New York should retain a constitutionally-based executive budget, but New York should also recognize and incorporate in its Constitution the legitimate and hard-won role of the State Legislature in budgeting. ...

TEXT:

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I. Introduction

New York once prided itself as being a leader in governance among the states. Now

mediocrity is the norm. One fifty-state study is particularly revealing. In 2001, *Governing* magazine, in collaboration with the Maxwell School of Syracuse University, graded the states in five key areas of government performance: Financial Management, Capital Management, Human Resources, Managing for Results, and Information Technology. New York received a "C+" average, and no grade higher than a "B." n1

Those who prefer to think of the glass as half full might be encouraged by the improvement over the state's "C-" average reported two years earlier. n2 But New York's improved *Governing* Grade Point Average, "GPA", was helped by a higher grade in Financial Management. n3 Knowing this, it would be understandable if those attentive to New York's fiscal practices and condition concluded that the state's movement from C-to C+ was evidence not of progress, but of grade inflation.

New York's fiscal practices have been regularly criticized by the Citizens Budget Commission and others. Recurring state revenues [*1022] do not cover recurring expenses. State budgets are "balanced" by extensive use of one shots, borrowing, movement of programs and activities off budget, and displacement of costs onto localities. This latter practice, along with a failure to address the state's complex overlapping arrangements for local governance, has resulted in one of the highest average per capita local property tax burdens in the nation. n4 In reaction to both the process and results of budgeting in New York, national rating agencies again downgraded state bonds in the summer of 2003. n5 New York's are now among the lowest rated in the nation. n6

More than any other single factor, the consistent lateness of the state budget has become a metaphor for the dysfunction in New York State government. The regularity of late adoption of the state budget in Albany - twenty years in a row - is annually grist for editorialists' mills and has become a leading symbol of state governmental nonperformance.

The 2001-02 and 2002-03 fiscal years were, some said, the worst for the American states since World War II ("WWII"). Virtually all states experienced serious revenue shortfalls. The resultant fiscal stress engendered a number of late state budgets. But in almost all the states - unlike in New York - budget deadlock has not been the norm. In a recent paper, Dall Forsythe and Donald Boyd indicated that only California has, in recent years, had late budgets with a frequency similar to that of New York. n7 But California is constrained in budgeting by the results of statewide initiatives that significantly limit legislative discretion by mandating spending and limiting taxation. n8 There is no initiative process in New York that has produced tax limits and spending requirements. Moreover, while New York limits state government discretion in borrowing - through a constitutional referendum [*1023] requirement authorizing general obligation borrowing - the legislature and governor have found numerous ways around it.

New York budgets were regularly adopted far in advance of the beginning of the state fiscal year until the mid-1960s - though more time was required during the Harriman

administration (1955-58), when partisan control of the government was divided, than in years of Republican control of the governorship and both legislative houses. n9 The first late budget in the post-WWII era came in 1965, during the Nelson Rockefeller governorship, after reapportionment and the Johnson landslide in the presidential election gave control of the legislature to the Democrats. n10 Budgets became consistently late following the mid-1970's fiscal crisis. n11 The average time between the opening of the fiscal year and adoption of the budget has lengthened, and indeed has come to exceed that in California, n12 as techniques have been developed in New York to allow the State to operate for months without a budget in place. n13

Table 1

[see org] [*1024] At about the same time that budget lateness was becoming the norm, successful legislative overrides of gubernatorial item vetoes emerged as another sign of stress in New York's budget process. The governor was given the item veto in New York in 1874 as a check against legislative depredations on the public purse. n14 The gubernatorial veto was regularly used and rarely overridden - in 104 years, from 1872 to 1976, neither the veto nor the item veto were overridden. n15 This record ended when the legislature overrode Governor Hugh Carey's veto of the Stavisky-Goodman bill, an effort to protect school funding from cuts during the mid-1970's fiscal crisis, later found unconstitutional. n16 In 1980, and extraordinarily frequently in 1982, Governor Hugh Carey had item vetoes overridden. n17 Governor Mario Cuomo took a more accommodating posture with the state legislature, and thereby avoided veto overrides. n18 Of course, the overrides of Governor George Pataki's item vetoes were a major story in the 2003 legislative session. n19

Frustrations with the performance of the peak political institutions of state government in New York are not limited to the fiscal arena. For example, observers again remarked upon the dearth of legislative productivity in the 2003 legislative session. The failure to bring to closure the multi-year effort to reform or repeal the draconian Rockefeller-era drug laws offers a [*1025] particularly visible example. Governor Pataki, Speaker Silver, and Majority Leader Bruno all said they were committed to this goal, but agreement was again not reached, the comic-opera intervention of hip-hop impresario Russell Simmons notwithstanding. n20

States commonly experience the use of litigation to compel action when their legislatures fail to deal with particularly thorny - often redistributive - issues. This has been the case across the country for elementary and secondary education finance reform, an area in which New York too must now act because of a decision of its high court. n21 But in New York, the persistence of inaction across a range of issues has been a long-time critical theme. In its final report issued almost a decade ago, the New York State Constitutional Revision Commission wrote:

We are on the edge of a dangerous cycle, in New York and in the nation as a whole. Problems worsen and pressure for their resolution intensifies. The machinery of government responds ineffectively. The public reacts with anger. Some politicians respond to this mood by attacking and dismantling government. As a consequence, government's effectiveness diminishes further. Unaddressed problems fester and grow more acute. The fabric of trust, accountability, and cooperation unravels. n22

The findings of a recent Cornell University survey, which found that 68% of New Yorkers had little or no trust and confidence in state government, indicate that this fear may not be misplaced. n23 Of the [*1026] seven groups or institutions mentioned in the survey, respondents' trust in state government was at about the same level as that in the media, and exceeded only that for large corporations. n24 Turnout rates for New York state elections, which are among the lowest in the nation, provide additional evidence that New Yorkers are detached from state government. n25

New York's persistent fiscal difficulties have led to calls for reform. One set of proposals focuses directly upon the state's budgetary processes. One idea is to shift the beginning of the fiscal year to July 1 - the practice in forty-six states - in order to allow the legislature more time to consider the executive budget proposal. This would also provide the legislature with better information about actual income tax collections, due April 15. n26 A second idea is to establish an authoritative - and perhaps politically disinterested - consensus process for revenue estimating. n27 A third idea calls for a staged, more inclusive process for legislator participation in budgetary decision-making, including the use of conference committees to resolve inter-house differences. n28

Another approach to reform, which is the one taken here, treats the budget process - the authoritative acquisition and allocation of scarce resources - as the state's core political activity. It begins from an understanding that, major executive/legislative conflict notwithstanding, the state budget process worked reasonably well from its inception in 1929 until about a quarter of a century ago. It [*1027] assumes that manifestations of stress in the budget process are indications of underlying institutional change. It thus seeks explanations for persistent deadlock in budgeting in the differences between the political and structural assumptions that underlay the budget process as enshrined in the state constitution in 1929 and the contemporary workings of the state's political and governmental systems. It concludes that reform of the budget process is needed, but insufficient to achieve fiscally responsible, responsive governance in New York State.

Figure 1

[see org] In order to understand this approach, it is necessary to assess how and why the operation of New York's peak political institutions changed just before and during the time

that delays in budgeting became the norm. I begin by establishing that the triadic constitutional structure of New York State government, like the government of the nation and most other states, has inherent tensions that must be overcome. I argue that the [*1028] professionalization of the legislature, accompanied by uniquely persistent divided partisan control of the two legislative houses, makes it harder to overcome these fundamental structural tensions. I look at the techniques and processes that have been used to overcome these tensions: strong legislative leadership; partisan organization; external power, pressure and/or deadlines; and sanctions for nonperformance. I argue that the political conditions that have evolved in New York reduce both the incentives for effective decision-making in the peak political institutions and the penalties for system non-performance. Additionally, I show that the combination of structural and political factors that has led to dysfunction in the New York budgetary process is unusual when comparisons are made with the situation in similar states.

II. The Albany Triad

It is commonplace that the constitutional design of the New York political system, like that of the nation and all but one of the states, creates a three-way relationship for peak political decision-making among the executive and each house of a bicameral legislature. n29 Political power has always been unequally distributed among the three participants in the Albany triad: the Governor, the Assembly, and the Senate. From the state's earliest history, the two legislative houses have been more or less equal in power, though their constitutional authority has differed in detail. n30 Initially, the governor was left less powerful than either of the legislative houses by the state constitution - though he was advantaged by being a unitary actor while each house of the legislature had to assemble majorities to act. n31 In modern New York, as a result of a long chain of constitutional changes and fundamental transformations in the social, economic, and political environment, the governor has become the most powerful actor in the triad. n32

Research in settings ranging from the nuclear family to the international arena has shown that triadic relationships in which [*1029] power is unequally distributed invite two-against-one coalitions, either to take action for the benefit of coalition partners or to prevent imposition of the more powerful upon the less powerful. n33 In New York State government, these coalitions commonly form along one of two dimensions: the partisan - Republicans against Democrats, or the institutional - executive branch against the legislative branch. n34 The former is more common and can be regarded as the "normal state," but the latter is always a potential, and emerges from time-to-time.

A reminiscence of Stanley Steingut, former Speaker of the Assembly, on budgeting in the mid-1970s is instructive on the two primary dimensions around which coalitions form in the Albany triad, and their interaction:

When [Hugh] Carey became Governor and I became Speaker, in the first year there was no dialogue between the Executive branch and the Majority party [in the Assembly]. Governor Carey never talked to us about his budget and what he was going to do. Frankly, we made up our minds that we were going to go our own way.

We teamed up with the Senate, and we disregarded the Governor's budget. We formed our own budget... . After that first experience there was a great desire on my part, as Speaker, and his part as Governor, for us to recognize that we had to work together or we wouldn't have a Democratic party or a Democratic Program. n35

Another triadic structure, the overall separation of powers system common in the United States - legislature, executive, judiciary - sometimes mitigates proper focus on the fundamental divide in the legislature that is so consequential for the triad within which peak political decision-making occurs. Even sophisticated analysts sometimes speak of "executive-legislative relationships" rather than [*1030] "executive-first, house-second relationships." A confrontation between the executive and the legislative branches - for example, the current litigation over the distribution of institutional power in budgeting - is evidence that the two less powerful members have joined along one major line of potential cleavage in the triad in an attempt to overcome the more powerful member. n36

Unlike in many other three-way situations - but similar to the situation in the national government and all states except Nebraska - participation of all three institutions in the Albany triad is almost always required to reach decisions. It is "almost always" because the constitution provides that the two houses of the legislature, if they can simultaneously assemble extraordinary majorities (two-thirds of each house), may join in a coalition and act without the governor. n37

An additional dimension of the Albany Triad is that the institutional relationships that comprise it are continuous. In a continuous situation, the social psychologist Theodore Caplow has written, "the members of the triad are permanently related to each other within a larger social system which requires them to interact... . Coalitions are formed for a variety of purposes, but the triad is expected to maintain some degree of unity despite its internal divisions." n38 In this situation, decisions are taken by each participant with the understanding that the other two will have to be dealt with again and again, in the context of the decisions already reached and the processes by which they were reached.

The continuous nature of the three-way relationship in the Albany triad may constrain the reactions of the losing third party in a specific two-against-one situation, even if that party is the single most powerful actor. For example, there was some angry rumbling from Executive Chamber staff in the wake of the veto overrides in 2003 that Governor Pataki

would extract a price from his co-partisans in the Senate for their joining with the Democratic Assembly majority to defeat him. n39 But retribution would have provided incentives to continue the legislative-executive cleavage and raised barriers to restoration of partisanship as the defining dimension in the three-way [*1031] relationships in the capitol. Though some help in fund-raising was withheld from individual Republican senators, n40 the governor later foreswore revenge.

Also, in a sequential process in which numerous decisions are required, the presence of continuous relationships is an incentive to reach agreement on less contentious, more routine matters; hence the familiar advice, "choose your battles." The continuous nature of the Albany triad, and the constitutional requirement that all participants almost always must concur before a decision is reached, work in some measure to overcome the structural predisposition to marginalize or confront one or the other actor. This is reinforced by the expectations for action by interested parties (interest groups) and attentive onlookers (the media).

III. Professional Legislature - Members and Resources

The professionalization of state legislatures was one of the major changes in governance in the United States in the later portion of the twentieth century. Professionalization was the result of a widespread purposive effort by a powerful reform coalition to make state government throughout the country more responsive to social and economic change, which began in the 1960s. n41 An authority on the New York legislature, Stuart Witt, wrote in 1974:

The climate of legislative reform ... [was] prepared by the Supreme Court's apportionment decisions, the American Assembly, the Citizens Conference on State Legislatures, the Ford and Carnegie Foundations, the National Municipal League, the National Conference of State Legislative Leaders, the Eagleton Institute, and the press. "Good government" once again has become good politics. n42

There are two major dimensions of legislative professionalization. The first is development of careers in elective legislative office. The second is the development in the legislature of its "capacity to perform its role in the policy-making process with an expertise, seriousness, and effort comparable to other actors in that process." n43

[*1032]

A. Careers in Legislative Office

Bob Nakamura and I wrote in 1991,

The most compelling evidence of the establishment of Assembly and Senator membership as a profession in New York is the change in the way members describe themselves... . In 1964 not a single member of either house listed their occupation as "Legislator" in the official guide to State Government... .By 1988, however, more than two-thirds of Assembly members and more than half of Senators were describing themselves not as lawyers, businessmen, or consultants but as legislators. n44

Professional legislators seek to hold onto their jobs. Reflecting the growth in professionalization, turnover rates in state legislatures (the percentage of members not continuing in office, for all reasons) generally dropped steadily over the last two-thirds of the twentieth century. n45 One fifty-state study showed that, on average, 51% of state Senate and 59% of state House seats turned over nationally in the 1930s; for the 1990s the numbers were 23% of Senate seats and 25% of House seats. n46 State-by-state averages for the last three decades of the century showed the New York State Senate and Assembly always to be among the ten state chambers with the lowest turnover. n47 In the 1990s the New York and Indiana Senates tied for third in lowest turnover of their seats. Among state Houses, the Assembly also ranked third. n48

Among the states with the highest scores on the legislature professionalism index (discussed below), New York and Pennsylvania emerged with the lowest turnover in both legislative chambers over [*1033] the past three decades. n49

Despite these trends - or perhaps because of them - there continues to be resistance in the United States to the idea of a career in public office. The adoption of legislative term limits in many states was a reaction to the development of careers in state legislatures. n50 Note in Table 2 the upturn in turnover rates of legislative seats during the 1990s in California and Ohio, and the halt of Michigan's downward trend. All of these are states in which term limits were adopted. There is, of course, no initiative and referendum process in New York. Thus this major barrier to a professional career as a legislator has not been put in place.

Table 2

[see org] [*1034] Viewing the matter from another perspective, Petersen and Stonecash show that the trend over the past century in New York has been for those elected to the legislature to seek re-election more frequently and to serve longer. n51 As summarized in Table 3, the proportion of incumbents seeking re-election to the Assembly and Senate, already quite high, reached the 90% range during the 1990s.

Re-election rates for incumbents to state legislative seats in the United States are generally high. Data compiled by the National Conference of State Legislatures for 1994 - the most

recent year for which fifty-state comparative information is available - shows that they have a 92% success rate in state Senates, and they win 90% of the time for state Houses. n52 In 1994 in New York, 96.2% of incumbent Assembly members and 100% of Senators who sought re-election were winners. n53 Average success rates for Assembly and Senate incumbents in the 1980s and 1990s exceeded 95%. n54 And this total does not include sitting Assembly members who successfully sought Senate seats.

Table 3

[see org] [*1035] In 2002, in the first election after the most recent reapportionment, only one of the fifty-four incumbents who sought re-election to the New York State Senate lost. He was Vincent Gentile, a Democrat in a Brooklyn district (much of which in the past had been represented by a Republican Senator). n55 In the Assembly, the only incumbent to lose of the 131 who sought re-election was a Republican, William Sanford, who had been placed by Democratic controlled redistricting into head-to-head competition with an incumbent Democrat, Joan Christiansen. n56

Greater availability for re-election and greater success at the polls has produced longer legislative careers. Between 1960 and 2000, the average tenure of a sitting Senator in New York doubled (from 7.9 to 15.8 years) and the average tenure of an Assembly member increased by almost 40% (from 8.2 to 11.4 years). n57

The professionalization of legislative service has been paralleled by diminished competitiveness of elections. In legislative elections in New York held between 1968 and 1995, the victor in 22% of the races received 60% or less of the vote; during the 1996-2002 period, only 11% of races were competitive by this standard. n58 According to Hamm and Moncreif, among states with professional legislatures, only in New Jersey and Pennsylvania did the percentage of competitive legislative elections drop more than it did in New York over these two periods. n59 And of the nine states with professional legislatures, only Massachusetts had a lower percentage of competitive legislative seats than did New York during the 1996-2002 period. n60 Only 24 of 211 contests (11.3%) in the 2002 elections were decided within the 40%-60% range - two in the Senate and twenty-two in the Assembly. Of these, eleven (45.8%) involved no incumbent. n61

New York ranks fifth among the states in the percentage of its legislative races that were contested by the major parties from [*1036] 1968-1995, and eighth from 1996-2002. n62 Yet the average percentage of contested races dropped from ninety in 1968-95 to eighty in 1996-2002. n63 In 2002 there were sixty-three legislative elections (29.9%) that were noncompetitive, meaning that there was either no contest from one of the major parties or there was no contest at all. n64 There was no contest at all - not even from a minor party - for eleven Senate and thirteen Assembly seats. n65 For an additional ten seats in the Senate and twenty-nine in the Assembly, one of the major parties had no candidate. n66 As shown in Table 4 the number of competitive seats actually declined following the required

decennial redistricting in the year 2000. n67

Table 4

[see org] "Legislators are increasingly independent," former Majority Leader Warren Anderson said in 1990, "They're communicating with constituents out there through mailings and newsletters, and are developing personalities that are not completely dependent upon some leader saying, "You're the guy and you ought to stay on for another two years.'" n68 The emergence of candidate-centered [*1037] politics for legislative seats during Anderson's tenure was an important concomitant of the development of legislative service as a career in New York.

In the 1930s, nominees for the state legislature were selected, and their candidacies funded, by county party organizations.n69 Primaries, though possible, were rare. n70 This practice persisted through the 1960s. n71 The influence county party organizations had over state legislatures began to change following the federal reapportionment decisions of the mid-1960s. n72 Though the effect was not fully evident at first, this structural change diminished the influence of county party leaders in the nominating process for the legislature. n73 Moreover, career legislators did not want their fate in the hands of others. In an era in which party loyalty was diminishing in the electorate, legislators began to organize personal campaigns apart from the overall party effort, to raise their own campaign funds, and to use the resources of incumbency to assure their persistence in office. n74

It is common across the country for incumbents at every level to attract more financial support than challengers. According to the Institute for the Study on Money in State Politics, in 2002, funds raised by Assembly incumbents exceeded those raised by challengers [*1038] by a ratio of better than six to one. n75 Senate incumbents collected more than four times as much money for their campaigns than did their challengers. n76 These data only roughly represent the incumbent advantage in New York. Averages for incumbents are depressed because data includes all Assembly and Senate candidacies, including the large number of districts in which there is no competition, and in which, therefore, less money is likely to be raised and spent. Comparison with other states is problematic because third-party candidacies are far more common in New York than elsewhere, and the funds raised by these minor party candidates are included in these data, thereby altering the ratios.

Table 5

[see org] Office holders' advantage in raising political money, when added to the already daunting edge given to them by their incumbency, made them almost insurmountable as they sought re-election. Research has shown that a challenger has to spend more than an incumbent to be competitive since he or she is less known at the outset of a campaign. n77 Not only were competitors hard-pressed to compete, but those most likely to be competitive

were often discouraged from entry into races with well-financed incumbents who had been regularly engaged in building the balances in their campaign coffers. n78

[*1039]

B. Institutional Development and the Case of Revenue Estimating

With regard to its legislature's institutional capacity, the high level of professionalization of the New York legislature is confirmed in comparative research. Using an index he developed based upon data from the fifty states on legislator compensation, lengths of legislative sessions and size of permanent professional staff, Peverill Squire found that New York's legislature was among the most professional in the United States. n79 Using a slightly different methodology, Keith Hamm and Gary Moncreif reached a similar result. They found that New York State ranked first in size of permanent staff, second in days in actual session, and third among the states in potential member compensation. n80

In addition to support provided directly to members, both legislative houses have, in the last four decades, developed extensive legal, policy, fiscal, and public affairs staffs. New York's 3,460 permanent legislative staff in 2002 was almost 30% larger than Pennsylvania's (2,680) and just under 40% larger than California's (2,510). n81 The growth of legislative capacity for fiscal analysis is especially important for this examination. As a result of reapportionment, Democrats gained control of both houses of the New York State legislature in 1964. n82 Frank J. Mauro, long time legislative observer and former Secretary of the Assembly Ways and Means Committee, identifies this year as the start of the "first big push toward professionalization of the legislature," with special focus in both houses on their fiscal staffs. n83

Democrats retained the Assembly majority until 1968, and persisted in their need for fiscal and policy expertise to offset that available to the executive. n84 Though Republicans regained control of the Senate in 1966, and the Governor was Republican, that house also sought to [*1040] build its staff - if only to remain coequal with the Assembly in the governing triad. Reflecting this fiscal staff buildup, the Assembly Ways and Means budget rose at about twice the rate of that of the Division of the Budget between 1963 and 1983, and the Senate Finance Committee budget grew almost as fast. The proposed budget for legislative fiscal staffs for 2003-2004 was \$ 10,750,652, divided equally between the two houses. n85

The circumstances of the development of the legislative staffs for revenue estimating are particularly instructive. Serving during a period of Democratic control of the governorship, Republican Assembly Ways and Means Chairman Abbott Low Moffatt realized in the 1930s the value to the legislature of a separate capacity for revenue estimating for offsetting executive fiscal power. Writing in 1937, Moffatt noted that the process of revenue estimating in connection with New York's constitutionally prescribed executive budgeting

allowed the governor to get credit for spending, while the legislature was blamed for taxing. n86 Decades later, among the staff assembled by the Assembly Ways and Means Committee Secretary Howard Miller (later budget director) in 1965 was an expert in revenue estimating to ""provide a focal point for intelligent opposition to executive fiscal initiatives."" n87

During 1979 and 1980, Governor Hugh Carey, a Democrat, sought to extend the fiscal discipline he had achieved during the mid-decade fiscal crisis - and justify tax cuts and spending limits - through very conservative revenue estimates. n88 Legislative leaders were embarrassed with their members, whom they had convinced to support the Governor's initiatives, when actual collections far exceeded predicted income. As a consequence, the Republican Senate turned to Wharton Econometrics for alternative revenue estimates. At about the same time, the Assembly too developed independent revenue estimating capacity, though it declined to enter the public debate with numbers different than the governor and Senate without all parties revealing their methodologies. n89

[*1041] Independent revenue estimating allowed each legislative house to legitimize claims that made budgetary room for its own priorities. A usual result during the last two decades has been a level of spending higher than that proposed by the governor. n90 Because the governor controlled the expenditure of appropriated funds, however, the two houses had no assurances that the money they added to appropriation bills would be spent. Therefore, beginning in 1984 the Senate and Assembly began inserting language mandating staffing levels to implement their spending goals for selected state agencies, and requiring reporting back to the fiscal committees so that they could determine if these were met. n91

Figure 2

[see org] [*1042] The members of the Albany triad approached the brink, but uncertainty about the effect on the distribution of institutional power kept all three from seeking a clear constitutional reading from the courts about whether language could be added by the two houses to appropriation bills, and, if so, whether such language could be vetoed by the governor. The Banker's Association of New York State, a party outside the triad but negatively affected by an audit fee provision added by the two houses to the 1990-91 state operating fund budget, was not constrained by institutional considerations. The Association sued and won a court ruling that the legislature was unambiguously limited by the state constitution to reducing or removing items of appropriation in the governor's budget, or adding items. n92

Notwithstanding the outcome of the battle over spending, the development of independent revenue estimating capacity in each house substantially shifted power relations in the Albany triad. New York's constitution writers assumed, as noted above, that revenue estimating would be an executive function. Once the executive lost this monopoly, the legislative houses were further empowered, and it became necessary to reconcile revenue

estimates within the Albany triad. The requirement to agree on revenues before considering a spending plan added a major item to the budget-making agenda, and has contributed significantly to delays in adopting a state budget.

In reaction, an oft proposed reform has been to take responsibility for revenue estimating out of the three-way negotiating process. As early as 1982, Governor Carey's Council on State Priorities called for "a permanent legislative/executive committee, headed by an independent, professional executive director and a professional staff charged with developing revenue estimates or reconciling executive and legislative projections." n93 This goal, directly derivative of the professionalization of the legislature, has been intermittently on the agenda of budget process reformers ever since.

C. Interactive Effects

Careerists in public office expect more institutional support. This support simultaneously makes legislative careers more attractive and provides added capacity to remain in office. Resources added during the late 1960s and through the 1970s for legislators included [*1043] individual offices in the capitol, district offices, staffs in each to provide constituent services, and extensive capacity to communicate with constituents (for example, publicly funded constituent newsletters and recording facilities in the capitol).

Statistical analysis shows the two aspects of professionalism - the parallel development of careers in legislative office and institutional capacity - to be closely interlinked. A major study that looked at the experience of 42,000 state legislators in elections dating from 1970 to 1989 concluded that "members of highly professionalized legislatures have a greater probability of winning than members of less professionalized bodies. Moreover, a high level of professionalism buffers incumbents from external political forces and the effects of national economic conditions." n94 The process is thus circular; professionalization of the legislature itself assists incumbent members in re-election, which enhances professionalism.

IV. Legislative Majorities and Leadership Power

As noted above, one advantage that the governor has over the other members of the Albany triad in peak political decision-making is that he or she is a unitary actor. The chief executive, of course, delegates extensive authority to others. He or she consults with advisors in taking positions and must assemble political support for these. Formal power within the executive branch, however, and ultimate responsibility, is vested in a single person.

In contrast, majorities must be assembled in the Assembly and Senate before they may act in a two-party situation. Organizing business on a partisan basis within each house provides a short-hand way of assuring a majority while reducing the size of the "winning coalition." All those outside the party are effectively excluded from sharing power, thus

increasing the portion of resources and power (the latter at least in concept) held by each member in the majority. Partisan organization also enhances efficiency within each house by removing the necessity to separately gather majorities for each vote.

Yet, majorities in legislative houses in Albany do not seek to achieve "minimum winning coalitions," as the well-known theory of William Riker might suggest.ⁿ⁹⁵ This is because exercising all power within [*1044] each house, and enjoying most of the attendant perquisites - bigger budgets, larger staffs, passage of sponsored bills, money for district projects, even better parking spaces - depends upon holding the majority. From an institutional perspective, the game in each two-year election cycle is zero-sum, all-or-nothing. Those who control the majorities within each house thus seek to capture as many seats as possible as a hedge against uncertainty.

There is another incentive to increasing the size of the majority in each house. Under provisions of the New York constitution, if the majority becomes big enough - two-thirds of the members plus one - and is kept cohesive, capacity is gained to overcome the governor's veto. The political demographics of New York State make the achievement of a two-thirds-plus-one Republican Senate majority virtually impossible.ⁿ⁹⁶ In the Assembly, however, it has been a stated goal of Speakers to achieve a "veto-proof" majority. This was achieved in 1992 (101 Democratic seats) and 2002 (103 Democratic seats) following the decennial reapportionments of 1990 and 2002.ⁿ⁹⁷

The institutional interest of each legislative majority to remain the majority typically converges with the interest of individual legislators to retain their seats; but when these two diverge, it is the institutional interests that prevail. In reapportionment, discussed later,ⁿ⁹⁸ some majority members (though not majority seats) may be sacrificed if this is seen as necessary to retain the majority, assure its cohesion, or comply with outside pressures.ⁿ⁹⁹ In allocating centrally gathered campaign resources, more secure members forego a share for those seeking open seats or at risk of losing their seats.ⁿ¹⁰⁰

A. Dominant Legislative Leaders

In 1960, Republican Assembly Speaker Joe Carlino told the New York Post:

[*1045]

The Legislature is more highly organized than any other in the world - bar none. Never once in the fifteen years I've been there have we failed to get a Republican majority for a "must" piece of legislation. We Republicans have a tradition of discipline. Any new member is immediately schooled in that tradition of Republican control.ⁿ¹⁰¹

Powerful legislative leaders are needed to keep partisan majorities cohesive. This is especially true where, as in New York, there is substantial diversity within the majorities,

whether based upon clashing geographic interests, racial and ethnic differences, or intra-party ideological distinctions. New York has very powerful legislative leaders. Richard Clucas rated the power of state House Speakers in the forty-nine states with lower houses on five dimensions: to select other legislative party leaders; to determine the number of committees and appoint committee members; to control political resources and staff appointments; to dominate the flow of business; and to serve continuously as leader. As measured by the index Clucas devised, New York's Assembly Speakership is among the most powerful in the United States. n102 The powers of the state Senate Majority Leader in New York in his house, though different in detail, are substantially similar to those of the Assembly Speaker. n103

Assembly Speaker Sheldon Silver has held his post since 1994; Joseph Bruno became Senate Majority Leader a year later. The authority of legislative leaders grows as they lengthen their tenure in the leadership and employ their powers to create support and obligation. n104 Each develops one-to-one relationships by using formal powers and political resources in ways responsive to individual member's goals and needs. In the Senate the leader may be distributive - something for everyone - because the majority has fewer members, but former Speaker Stanley Fink observed that his larger [*1046] majority in the Assembly gave him some leverage. He said that having to wait their turn for rewards controlled by the Speaker - for example, for committee chairmanships - made members more responsive to him. n105 The leader is also reinforced in power each time his or her party retains or extends its majority in a biennial election.

Governors are not a force for change in the strong leadership system. Out of deference to the separation of powers, and concern about precipitating less desirable coalitions in the governing triad, chief executives rarely involve themselves in the legislature's internal business. n106 Legislative leaders resist direct negotiations on policy between the governor and members of their majorities, as these tend to undermine the leaders' capacity to assure cohesion in their conferences. Moreover, dealing with a strong leader who can deliver a majority is more efficient for the executive than separately seeking to gather majorities one-by-one on a range of matters.

Two major developments over the past twenty-five years have enhanced the institutional power of New York's legislative leaders: the development of budgets controlled by the leader within each house to fund priorities of individual members in their districts, and the establishment of leadership-directed political campaign committees.

B. The Member Item System

The "member item" - to its critics - or "member initiative" - to its advocates - system became institutionalized in the early 1980s. "In 1984, \$ 26 million was allocated by legislative leaders outside the executive budget for projects favored by individual [majority party] members in their districts. Just two years later the amount had increased to \$ 80

million." n107 Regular processes were established in each house to claim and distribute these funds, outside of the structure of executive budgeting as constitutionally conceived. In 2003, a total of \$ 170 million controlled by the leaders of each house was appropriated to fund projects advanced by Senate Republicans and Assembly Democrats. n108

Additionally, each year's negotiations in the triad often [*1047] seek to assure that there are other funds available for expenditure at the discretion of the leader for projects, such as economic development. According to one account, in the 1998 election year a total of \$ 1.5 billion was available to Governor Pataki, Speaker Silver, and Majority Leader Bruno to separately allocate. n109 Giving these discretionary resources to legislative leaders is defended as a way of bypassing the state bureaucracy to fund needed projects in local areas, and attacked as wasteful, unneeded spending.

Pork barrel appropriations to benefit specific legislative districts, a long established practice in American politics, remain alive and well. For example, in 2003, the U.S. Congress, using an "earmarking" process, targeted \$ 2.012 billion for 1,964 scientific projects at 716 colleges and universities across the country. n110 Critics of earmarking complained - as did those of the member item process in New York - "members of Congress and their aides choose recipients of directed grants based on their own judgments ..." n111 No systematic assessment or peer review was involved. Defenders said - like those of member items in New York - that "the practice is a necessary alternative to help worthy projects that agencies have wrongly rejected or misjudged." n112 However, review has not identified - elsewhere than in New York - a budget process within the legislature that parallels the executive budget process, with funds spent entirely at the discretion of legislative leaders.

Majority party members in each house use public funds to build support in their constituencies, and have come to be judged in their home districts, in part at least, on their capacity to "bring home the bacon." n113 Clearly, the political effect of the member item system is to strengthen both the leaders - who control distribution of these funds - and the majority party in each house, which further entrenches both the strong leader system and divided partisan control.

C. Legislative Campaign Committees

Following the progressive reforms of the early 20th century, both partisan political power and governmental authority shifted from state party leaders to the governor. Because county parties remained [*1048] strong, Governors could use them as a means to discipline legislators. A concomitant of the development of legislative service as a profession in the states was the establishment in many states of campaign committees based in the legislative houses. n114 This re-centered legislative politics, shifting the primary institutional locus of the partisan effort from party committees - responsive to the governor - to the legislative houses themselves. New York was at the forefront of this trend.

First, steps were taken within the party out of power in the Assembly. Perry Duryea raised

resources and barnstormed on behalf of Republican Assembly candidates in the mid-1960s to gain the base for a successful challenge for the minority leadership, and then to win the majority. n115 Under the leadership of the minority leader Stanley Steingut, the Democratic Campaign Committee in the New York Assembly organized in the late 1960s and early 1970s to recruit candidates, provide campaign expertise, and conduct fund raising to displace the Republican majority. n116 After a Democratic majority was achieved in 1974 the committee's efforts turned toward defending it. For their part, Republicans in the Senate initially organized politically in 1974, under threat of the Watergate backlash, to defend their majority. n117 Minorities in both houses reacted with similar structures.

In 2002, Democrats in the Assembly raised \$ 7,506,885 to defend and extend their majority. n118 The total raised by Republicans in the Senate was \$ 14,736,106. In contrast the budget for Assembly Republicans was \$ 2,691,784 and Senate Democrats was \$ 3,770,416. n119 From his thorough study of legislative campaign committees in the states that gives special attention to New York, Daniel M. Shea concluded that they are "little more than independent consulting firms working for the benefit of the legislative caucus and its leadership." n120 Funds are controlled by the leaders in each house. Spending is primarily for campaign materials, services, and expertise - not for transfer of funds to candidate campaign committees - and is focused on the most competitive (or "marginal") races. n121 With the majorities entrenched [*1049] for almost three decades, groups interested in moving legislation behave pragmatically. As the imbalance of results in Table 6 suggests, these groups give to Democrats in the Assembly and Republicans in the Senate. n122 Again, leaders are further empowered and divided partisan control is reinforced.

Table 6

[see org]

D. Resistance to Change

In a legislative environment, organization to challenge the leader is daunting - and the potential consequences of failure are disastrous. Only one sitting Assembly Speaker or Senate Majority Leader has been defeated in New York's modern political history. With overt support from U.S. Senator Alfonse D'Amato and State Party Chairman Bill Powers - and the exceptional behind-the-scenes support of Governor-elect Pataki - Joseph Bruno defeated Ralph Marino for Majority Leader in 1994. n123 An attempt by Majority Leader Michael Bragman to defeat Assembly Speaker Sheldon Silver, based in part on a program of decentralizing power in the Assembly, failed in 2000. Bragman's legislative career ended [*1050] and the careers of most of those who supported him were severely set back. n124

Potential alternative locations of institutional power in each house of the legislature are the party caucuses - conferences in New York - and the legislative committees. Because of the lesser role played by committees and the invisibility of conference dynamics - assured

through specific amendment of the state open meetings law n125 - some have attacked the power of New York's legislative leaders as excessive and anti-democratic. n126 Others have defended the current distribution of power as necessary and responsive to the priorities of the majority conferences. n127 Clucas's comparative research supports the idea that leaders are powerful because concentration of power in their hands meets the expectations and needs of legislative members. n128

Marginal changes in legislative organization or functioning occur at times of leadership succession. Candidates for leadership offer members an agenda for change - for example, increase in member power and reduction of the influence of staff, or greater efficiency in the operations of the chamber - and feel constrained to act on these if they are selected. Partisan minorities in each house, systematically denied any real influence, are classically the source of proposals for change in the way the legislature does business. n129 In recent history, changes in leadership, or rare changes in partisan majorities, have not fundamentally altered the distribution of power in the legislature. This tends to reinforce the idea that majority party members in each house are not seriously out of tune with current arrangements.

As earlier noted, one proposed budget process reform is to decentralize institutional power to committees, based on the model of the United States Congress. n130 But as reform is considered, it is essential to understand that strong legislative leadership in the states is not unusual. This is especially the case in states like New York where legislative professionalism is advanced.

[*1051]

V. Partisanship and Persistent Divided Party Control of the Legislature

One of the primary axes for two against one coalitions is removed when all three major political institutions in the state are in the hands of a single party. Though the importance of party identification in the behavior of voters has diminished in recent decades, partisanship in government remains a core element of New York's political culture. Although - as previously shown - competitiveness in New York legislative politics has been minimal in recent decades, a national comparison continues to place New York among the two party competitive states. n131 Partisanship is enhanced because both major parties may still win major statewide offices and have substantial strength in local government.

Party majorities organize the legislature. Institutional power and the perquisites of office are distributed on a partisan basis. Minority party members in each house are almost always excluded from decision making. Because legislators, in general, are increasingly professional and careerist, party loyalty and reputation within the party is of particular significance to them. Though they work hard and are successful at decoupling their own continuance in office from the outcomes in other races (that is, to reduce the "coattail"

effect), the extent of legislators' influence and their career prospects remain closely linked to their party's success.

Partisan loyalty increases the prospects of career advancement for legislators and members of the legislative staff. As de-facto head of his or her party, the governor may influence nominations for other offices to which legislators may aspire. The legislature has long been a path to state judgeships. For positions that are held pursuant to an election, party nomination is required. For those positions that are appointed, nomination by the governor and ratification in the Senate is required. As the transitions from Malcolm Wilson to Hugh Carey and Mario Cuomo to George Pataki illustrate, at times of partisan change in the governorship, the governor-elect's legislative co-partisans are an important source of future state agency heads and key executive branch staffers. The fear that Republican Senators and their staffers would be cut off from influence and opportunity in the newly won executive branch because of enmity between Governor-elect [*1052] Pataki and Senate Majority Leader Ralph Marino was a significant element in the only successful removal of an incumbent legislative leader in modern New York political history.

The governor of New York remains an important figure in national politics. As Forsythe and Boyd pointed out, partisan behavior by his or her adversaries in the state legislature is encouraged and expected by their co-partisans outside the state. n132 Hence the ideas that Senate Republicans had an incentive to delay the New York State budget to keep governor Mario Cuomo from vigorously pursuing the presidential nomination, and that Assembly Democrats sought to bloody Governor Pataki in the budget process in part to diminish his national reputation and prospects.

In New York's highly charged partisan environment, divided partisan control of the institutions in the peak political triad has been the norm, not the exception. The state last had a governor and both legislative houses in the hands of a single party in 1974. In fact, there have been only two years since the adoption of the State's current constitution in 1894 during which Democrats simultaneously controlled the governorship, the State Senate, and the State Assembly.

The provisions for reapportionment written into the 1894 constitution n133 were the basis of former Democratic Governor Al Smith's description of both houses of the New York legislature as "constitutionally Republican." Democrats were able to win the governorship half the time during the twentieth century, but Republicans held the Senate majority for all but fifteen years in this period (and continuously since 1966). n134 The GOP also dominated the State Assembly until the reapportionment revolution, losing control only in 1913 and 1935. As a consequence of federal court forced reapportionment, a Democratic majority in the Assembly was achieved in 1965. n135 After a six-year Republican interlude between 1969 and 1974, the Democrats regained control of the Assembly.

Employing New York's unique bipartisan gerrymander, n136 the [*1053] Democrats

have kept it ever since. As Edward Schneier and John Brian Murtaugh (a former Assemblyman) have written: "the contemporary process of redistricting in New York boils down to this: the Democrats, who control the assembly, draw the assembly district lines; [and] the Republicans draw the state senate lines." n137

Over much of the twentieth century, both Republican and Democratic governors held office with Republican legislatures. n138 Control was thus divided; commonly with one party in charge of the executive branch and the other in both houses of the legislative branch. Indeed, some of the state's greatest achievements in governmental reform - including the adoption of the executive budget - were made during periods of divided control. The key difference in the contemporary period is that divided control has resulted from different parties consistently controlling each house of the legislature; the Republicans in the Senate and the Democrats in the Assembly. This assures divided control regardless of which party wins the governorship.

The presence of divided partisan control in New York is not unusual. This pattern has been increasingly evident in state government in the United States during the post World War II period. n139 Over the past two decades, half the states or more, were led by a governor of one major party, while either one or two of the legislative houses were controlled by the other party. n140 Part of this increase has come as a result of a growth in split control of state legislatures. n141

New York, however, is particularly known for having the longest period of persistent split control of the legislative houses. The persistence of split control in the New York legislature creates a shaping expectation in the state's political system that this pattern will continue and that it is "permanent." This in turn diminishes the attractiveness of legislative service for potentially competitive minority party candidates in each house. It also results in behaviors by interest groups - for example, campaign contributions and other support for majority party incumbents in each house - that reinforce the status quo.

[*1054] Finally, persistent divided partisan control over time tends to demoralize serving minority party legislators in each house, encouraging the most energetic and ambitious to leave for other opportunities when they can. n142 Minority Republicans in the Assembly often seek to move to the Senate majority, as evidenced in 2002 when three sitting Assembly Republicans ran for and won open Senate seats. Often advancement requires risking a career-killing primary election. In one famous example, Assemblyman George Pataki ran against incumbent Republican Senator Mary Goodhue to gain the nomination for the Senate seat from which he ran for governor. Democrats in the Senate rarely go to the Assembly, but seek to move on to Congress, or to city or county executive leadership positions. The current Mayor of Buffalo, Tony Masiello is a former Democratic State Senator, as is Gary Ackerman, now a member of Congress. n143

[see org] [*1055] Figure 4

[see org] As indicated in Table 7, all legislative chambers in states with professional legislatures had at least one change in partisan control during the period 1974-2003, except Massachusetts's two houses and the New York State Senate. Notwithstanding recent GOP gubernatorial victories there, Massachusetts has long been among the strongest Democratic bastions, with democrats overwhelmingly dominant in both legislative houses. n144 In contrast, Republicans have retained persistent Senate control in New York as the party's strength in the electorate has declined. In only the Wisconsin House, the Ohio House, and the California Senate, of the remaining state legislative chambers in this comparison, was change in the partisan majority as infrequent as in the New York State Assembly. n145 Of the twelve states with split partisan control of their legislatures in 2003 only two - New [*1056] York and New Jersey - also had a professional legislature. n146

Table 7

[see org] As it became more common at the national and state levels the past several decades, there has been considerable debate among political scientists about whether divided partisan control indeed contributes to governmental gridlock. n147 In an important essay published in 1999, Sarah Binder shows that most of the work denying the negative effects of divided control has failed to differentiate between the effects of a chief executive of one party facing both houses in a bicameral legislature controlled by the [*1057] other party and situations - like that in New York State - in which control of the legislature itself is split. n148 Examining issues before the national government between 1947 and 1996, Binder finds that "divided party control does appear to affect the broader ability of the political system to address major public problems," and that "bicameral differences have the greatest substantive influence on the level of gridlock." n149 At the state level, Cynthia J. Bowling and Margaret R. Ferguson looked at eight different policy areas in all fifty states for the 1994 legislative session to test various explanations for legislative gridlock. They found: "Clearly, compound divided government [division within the legislature] exhibits the gridlocking impact that is associated more generally with 'divided government.' In all policy areas except the environment, compound divided government produces the lowest probability of bill passage." n150

VI. Action Forcing Mechanisms

In the absence of common partisanship, a variety of other factors - some persistent, some more ephemeral - may work to align the governor and legislative houses for decision making.

One element is simply human. A positive personal relationship between leaders in the triad may mitigate partisan or institutional differences, while personal dislike may exacerbate

them. Partisan differences were tempered by personal friendship between Republican Governor Nelson Rockefeller and Democratic Assembly Speaker Anthony Travia. n151 In contrast, partisan differences have apparently been exacerbated by personal differences between Republican Governor George Pataki and Democratic Assembly Speaker Sheldon Silver. n152

[*1058] A second factor is situational. The need to respond to a sudden tragedy or crisis - for example, the September 11th attack on the United States in New York - may temporarily draw leaders and institutions together.

Three additional structural elements that may, individually or in concert, force action in the Albany triad are the requirements of an outside authority, the pendency of a deadline, and the presence of a credible sanction for non-performance. n153

A. An Outside Authority with Substantial Control Over All Actors in the Process

During the late nineteenth and early twentieth centuries, state party leaders controlled nominations to the governorship, to numerous other statewide offices and, through county organizations, to the state legislature. Through their dominance of the state legislature, they also controlled the selection of U.S. Senators. Party leaders held valued rewards and a credible sanction; they could advance political careers, or end them. When a single party controlled the governorship and both legislative branches, party leaders could direct policy making from outside the government. To cite one spectacular example, Thomas Collier Platt used his power as party chief to achieve the consolidation of New York City in 1897 despite the deep reservations of two governors and numerous Republican legislators. n154

The capacity of federal and state courts to force action in state government provides a more contemporaneous example of the effect of an authoritative outside actor. Here the best example is policy making on reapportionment, which combines the involvement of federal courts enforcing national constitutional and statutory requirements and a compelling deadline that directly engages legislators' self interest. n155 With the timing of the legislative election following the decennial census fixed and known, threats by federal judges to take reapportionment out of the legislature's hands by turning to a special master have regularly resulted in legislative decisions that have met the court's requirements. n156 Interestingly, the design of their districts [*1059] is of such compelling importance to members of both legislative houses (which may, as noted, act without them) that the most powerful member of the Albany triad - the governor - has come to take a passive role in this area of policy.

B. A Deadline

Near the close of the 2003 legislative session, with the expiration of the state's existing rent control laws pending, Governor George Pataki and Senate Majority Leader Joseph Bruno,

both Republicans, agreed to extend the law with relatively few changes. n157 A fait accompli was presented to Sheldon Silver, the Assembly Speaker, a Democrat. Silver and Bruno reached a compromise, leaving much of the law unchanged. n158 If it expired, the potential impact would be greatest in New York City, where all but two of sixty-five Assembly districts were represented by Democrats and almost a million residences were affected by rent regulation. n159 The risk of a period without rent control was unacceptable to Silver. The deadline was decisive. The law continued unchanged.

R. Eric Peterson and Jeffrey M. Stonecash report a different outcome driven by a deadline after the passage of federal welfare reform legislation in 1996. n160 Devolution vested substantial discretion in state governments. Governor Pataki sought benefit cuts, a five year lifetime limit on eligibility, the use of vouchers instead of cash for some benefits, mandatory retraining, drug testing, and denial of assistance to immigrants and those convicted of crimes. n161 Democrats, whose districts were most impacted, resisted benefit cuts. n162 Senate Republicans, with fewer constituents directly affected, did hear criticism of the likely cost of drug testing from suburban and rural county officials (county governments share these costs in New York). n163 With a federal deadline looming, the governor gave way to the Democratic Assembly on the question of cash benefits and some [*1060] upward adjustment of income eligibility thresholds to win passage of needed legislation. n164

In their highly regarded study on legislative bicameralism, George Tsebelis and Jeannette Money found that the house that can most easily accept delay is likely to prevail in two way negotiations. n165 Drawing upon examples from the French political system, they write that strong public disagreement occurs between two houses when there is no time limit for action and the two houses are controlled by opposite sides of the political arena. n166 The end of session "logjam," long a characteristic of the New York legislative process, finds explanation in this analysis. n167 Relatively few measures pass for months, and then there is a frantic rush to complete action on hundreds of measures in the session's waning hours. Without a deadline, both houses - always informed by what the governor is likely to accept - continue to press for their best outcome. The deadline, with potentially serious consequences for constituencies across the state, precipitates serious give-and-take and sometimes, successful outcomes.

A real deadline with real consequences may force the members of the Albany triad to come to timely agreement on the state budget. Forsythe and Boyd observe that most states continue to operate under the assumption that government must shut down if it does not have a budget by the beginning of the fiscal year. n168 Deadlines may be missed in particularly stressful fiscal circumstances, but - perhaps informed by the traumatic experience of the national government shutdown in 1995 - performance to deadline returns when the crisis has passed.

New York once operated under this assumption. Then after deadlines began to be missed,

the idea emerged that there were "natural barriers" to the degree of lateness, for example the onset of the Passover and Easter holidays and concomitant vacation plans for the holiday recess - including plane ticket expenses - of key state leaders. When these barriers were breached, the timing of the state's spring borrowing, crucial to provide scheduled aid payments for school districts, came to be the natural barrier. Replacement of short-term spring borrowing with long term bonds, a result of fiscal reform initiated in 1990 and completed in 1995, inadvertently removed this budget deadline.

[*1061] When state budgets were first late in New York, the phenomenon was broadly understood as dramatic, exceptional, and undesirable. This was reinforced by actions taken by state officials to deal with the situation. For example, to keep government operating, the Comptroller reached special short term loan agreements with banks, who agreed to honor vouchers issued to state workers that looked like paychecks but were stamped with the message: "This is not a check." n169 This got the immediate attention of hundreds of thousands of New Yorkers. Now, budget or no budget, workers get paychecks. Extensive use of emergency appropriations keeps the doors of state government open without visible impact on daily operations.

In 1975, a constitutional amendment was passed that allowed two-thirds of the members of each house to petition the leaders to call the legislature back into session (previously action of the governor was required to do this). n170 This power is rarely used; the legislature now recesses rather than adjourn, obviating the need to formally reconvene. n171 But legislative control of the likelihood and timing of special sessions, combined with the increased availability of full-time professional members after the regular session's close, diminishes the necessity for action by an end of regular session deadline.

A number of proposals have been made to create a credible deadline for budgeting in New York. One idea is automatically to bring into effect an alternative budget if the legislature fails to act on the governor's budget. One such alternative is a current services budget; another is the previous year's budget; a third is the previous year's budget discounted by some fixed percentage for all but mandated items. n172 A second idea is to limit to seven days the duration of continuing resolutions passed to keep state government operating in the absence of timely adoption of a budget. n173

C. A Credible Sanction

The prospect of losing re-election is the most riveting potential sanction for professional legislators. For those in the majority in each house, this is closely followed by the prospect of losing majority status. [*1062] As demonstrated, the Republicans in the Senate and Democrats in the Assembly have been enormously successful in using the powers and resources of government to assure that those in power stay in power. n174

Legislators are risk adverse. The need for re-election every two years produces an

irreducible minimum of risk. Republican Senators' willingness to override a governor of their own party in 2003, and assure that cuts in school aid were substantially restored, was driven in large by concerns that local property tax increases for schools would increase their risk of losing re-election. Majority members in both houses have learned from experience over decades that persistent budget imbalance, chronic lateness in budgeting, ever increasing debt burdens and attendant fiscal issues do not increase electoral risk. Re-election rates are not affected. Majority control in both houses does not change.

Absent accountability at the polls, legislation was passed to withhold pay to legislators if the state budget is late. It was part of a package that gave them a major pay increase in 1995 and was designed to put teeth into the fiscal year budget deadline. Some argued that this approach failed because it was too easily side-stepped. It was widely understood that there would eventually be a budget and members would eventually get paid. Loans were therefore easily negotiated to tide them over. A second argument was that the denial of paychecks to legislators sanctioned persons who had little to say in state budgeting. This is correct, and is at the nub of the problem.

In the face of continued budget lateness other punitive provisions have been advanced. One, for example, seeks to dock the pay of the governor and legislators for each day that the budget is late. n175 Another bill would require the legislature to convene daily and require members to stay in town if the budget deadline was missed. n176 Perhaps this bill reflects Ed Koch's negative view of the state capitol, famously expressed when he was a candidate for governor in 1982.

VII. Budgeting and an Accountable Legislature: The Need for Constitutional Change

The design of New York's peak governing institutions is unchanged. The state's provisions for executive budgeting remain intact. Yet the core political and governmental premises that underlay the design and adoption of the budget article in the State Constitution [*1063] three-quarters of a century ago are no longer valid.

More than in all but a few other states, legislators in New York are career professionals insulated from accountability at the polls. n177 Legislative leaders have captured public resources and organized political committees within each house to build institutional and personal power, and to serve the professional interests of majority members. n178 Governors can no longer hold legislative leaders and members accountable through the political party structure. Partisan division between the legislative houses is uniquely persistent, and reinforced by the expectation that it cannot be overcome.

The development of these political and institutional changes within the state Legislature, simultaneously with the unfolding of a long period of increased fiscal problems in New York, strongly suggests their linkage. Indeed, the struggle over budgeting in New York is the most visible manifestation of a larger phenomenon: a more politically and institutionally

autonomous bicameral Legislature demanding a greater role in policy making.

In the actual operation of New York's very strong constitutional provision for executive budgeting, even the minimal process role given the Legislature prior to budget adoption - its right to question the Governor and department heads about the executive budget - has long since been reduced to inconsequentiality. n179 Through the development of institutional resources for budgeting - especially for revenue estimating - the two houses of the Legislature have seized an extra-constitutional role. But in the ensuing separation of powers litigation, the state high court has not found a way to adjust the Constitution's provisions to new political realities. n180

The genie of resurgent legislative power in New York cannot be put back in the bottle, nor should it be. A vital legislature, with a central [*1064] role in taxing and spending, is fundamentally important to representative democracy on the classic American model. This is true so long as the members of that legislature are really accountable to the electorate.

The time is ripe for a redefinition in the New York Constitution of the State's budget process. New York should retain a constitutionally-based executive budget, but New York should also recognize and incorporate in its Constitution the legitimate and hard-won role of the State Legislature in budgeting. The inclusion of legislative priorities in the executive budget process removes the rationale for them to be separately recognized and funded outside that process. Such an approach thus attacks the basis for the member item system, an extra-constitutional dimension of budgeting that simply further entrenches the already very powerful leaders of both houses.

If the legislature is to be constitutionally empowered in budgeting to reflect current political realities, the state constitution must also be amended to assure greater accountability of members of both legislative houses. The linkage is crucial: constitutional recognition of more legislative power, but only with constitutional provision for more legislative accountability.

Recent failed efforts at budget change by rule or statute make amply clear the necessity to locate these changes in the State Constitution. n181 Only constitutional change will entrench a new balance in budgeting power, and drive participants in the system to a new understanding of this balance. And only constitutional change can provide greater legislative accountability.

The needed elements of a new constitutional budget process are already under discussion. A constitutionally defined staging process in the Legislature for considering the executive budget which engages key committees with conference committees to resolve differences may both build the legislative role and redistribute power within each house. A consensus system for revenue estimating built into this process may be acceptable to the legislative houses, if their powers in budgeting are otherwise assured in the Constitution. On the other

hand, the Governor may resist this change, as gubernatorial power in revenue estimating is already compromised. Such a change may be a "less bad" option for the executive, however, and if push came to shove, constitutional amendment may be achieved without the Governor's [*1065] participation.

One intriguing compromise idea is to leave revenue estimating to tripartite negotiations, but to give "tie-breaker" authority to the Comptroller or another outside party for those elements of the estimate for which agreement is not reached by a specified date. n182 Another - quite unlikely of adoption in New York where there is divided partisan control - is to create a nonpartisan legislative budget office to prepare revenue estimates for that branch. Such a step would transform negotiations from three-to two-way, easing the path to agreement. n183

Various proposals have called for a shift of the beginning of the fiscal year to May 1, June 1, or July 1. n184 Alteration of the beginning of the fiscal year - bringing New York's practice into conformance with that of other states - would allow the legislative houses the time to perform their roles. Because total income tax collections (due on April 15) would be known, they would also be proceeding in a context of more certain information about revenues. New York's fiscal year is not established in the State Constitution, and has previously been shifted. n185 Constitutionalization of the beginning of the fiscal year might be a first step toward establishing a real budget deadline. A requirement for the adoption of a balanced budget, certified by an outside body, might bring a measure of greater fiscal accountability.

More general changes in the allocation of governmental powers to the peak political institutions, less likely than more focused reform, are nevertheless worth considering as part of a synoptic effort to alter the balance of power in fiscal matters. For example, the majority in each house required for a veto override might be reduced. Or a two-term limit for service as governor, the pattern now in thirty-eight states, might be adopted in New York.

But these changes in the formal balance of powers in budgeting will be highly effective only if linked to steps taken to make legislative seats more competitive and less secure and to make it possible for partisan majorities in each house to change. Term limitation for legislators provides one idea. Though again unlikely - and a second best approach to establishment of real [*1066] accountability at the polls - the adoption of term limits would make certain greater turnover in the Legislature and also increase the possibility of changed partisan control in both houses.

Two less draconian but still fundamental steps are the adoption of legislative redistricting by commission and serious reform in campaign finance.

A. A Constitutionally-Based Redistricting Commission

Government is delegitimized in the eyes of the people when elected officials' behavior is palpably self-interested. With the possible exception of voting to increase their own salaries ... the most visibly self-interested behavior of members of the State Legislature occurs when they design their own districts to assure their own re-election and the continued control of their house by their party. n186

Distancing redistricting from the Legislature's two houses will hardly extract all partisanship from the process, nor will it remove all conflict based upon racial, ethnic, geographic or other differences. However, the experience of redistricting the New York City Council through the use of a commission (under the Charter reforms adopted in 1989) does show that it may well enhance fairness in the process, mitigate the appearance of self-interest, and - depending upon the composition of the decision making body for redistricting - add a degree of political uncertainty. n187

Among the states with the most professional legislatures, New Jersey, Ohio, and Pennsylvania employ redistricting commissions. Since 1974, these three states experienced a change in the partisan majority of five of their six legislative houses in at least one election immediately following decennial redistricting. n188

How might such a commission for New York be structured? One option is the design endorsed by the 1967 New York State Constitutional Convention - condemned in part for its domination by legislators. The draft constitution it adopted, but that failed at the polls, provided for redistricting by a five-person commission with each of four members appointed by one of the four legislative leaders [*1067] and the fifth member, the chair, chosen by the Court of Appeals. n189

B. Constitutionally-Based Public Campaign Finance

Enormous imbalance in the availability of campaign resources to incumbents and challengers contributes to the noncompetitiveness of New York elections and to the entrenchment of legislative majorities in both houses. n190 All the advantages of incumbents seeking re-election cannot be removed. But public financing of legislative election campaigns, with concomitant limits on direct and indirect (through legislative campaign committees) private funding, would be salutary. The need to raise campaign money would be removed both as a measure of credibility and as a barrier to entry for potential candidates. A reasonable basis for presenting a viable alternative in each legislative district would be established. The costs of elections would rightly be acknowledged as a legitimate public charge in a representative system.

A great range of other campaign finance reforms are available and have been tried in

various combinations to reduce the need for funds. Attempts have been made to limit the amount and sources of contributions, to constrain the purposes for which funds may be spent, requiring free access to some of the most expensive campaign resources (television time) and using the "sunshine" of disclosure as a disinfectant. Almost a century of experience with such regulations suggests that the administration of these is problematic, and that private money will find its way around limits and into campaigns. With such approaches the money chase remains a major preoccupation of those seeking public office. The influence of money in politics, and the corroding appearance of its influence, persists unattenuated. n191

Reforms that combine full public funding with the acceptance of spending limits have been adopted in Arizona, Maine, Massachusetts, and Vermont. n192 Current practice in New York City provides a model that has worked in New York. It combines limited, focused private fundraising with public support to finance legislative campaigns. [*1068] When a candidate reaches a specified threshold of contributions and contributors, the city provides four dollars of public matching funds for each dollar of private contributions of up to \$ 1,000 per contributor. n193 Corporate contributions and those from Political Action Committees not registered with the city Campaign Finance Board are barred. n194 Candidates are limited in what they may contribute to their own campaigns. Spending limits are established, and total public funds available to a candidate may not exceed 55% of these limits, or 66% if an opponent chooses to remain outside the public funding system. n195

For 2003, Council candidates had to receive \$ 5,000 in amounts of ten dollars or more from at least seventy-five contributors living in the boroughs in which their district was located to qualify for public funding. n196 If the contribution limit for City Council races was \$ 2,750; candidates might give their own campaigns three times this amount. The spending limit for these races was \$ 150,000. The recently instituted four-for-one match of private dollars for election campaigns in the city has increased the number of participating candidates and the number of campaign contributions and contributors. n197 With spending limits pegged near the level of funds actually raised by Legislators for Senate and Assembly races in 2002, the cost of a similar program for state legislative races in New York would be \$ 30-40 million.

At the state level, public financing should be accompanied by legislation - similar to that recently advanced by both the Assembly and the Governor - to limit soft money contributions, lower contribution limits, and strengthen enforcement of campaign finance laws. n198

The Legislative houses have not thus far fared well in the courts in their efforts to have the greater powers in budgeting for which they have struggled recognized as constitutional. Crucial matters regarding the separation of power in budgeting are currently before the Court of Appeals. If the Senate and Assembly are disappointed again in the outcomes of litigation, the incentive grows for them to change the Constitution. Changes commensurate

with new political [*1069] and governmental realities that legitimize the Legislative houses' hard won role in budgeting and that assure a more participatory and responsible process are crucially important. But they should not be passed, and are not likely to work, unless they are accompanied by equally crucial measures that assure greater political accountability and competitiveness in New York.

FOOTNOTES:

n1. See Grading the States 2001: A Report Card on Government Performance, Governing, Feb. 2001, at 20, 32-34, 81, available at <http://www.governing.com> (last visited June 3, 2004) (giving New York grades ranging from a low of "C-" for "Managing For Results" to a high of "B" for Information Technology). For a methodological explanation of the comparative approach used, see id. at 32-33, available at <http://www.governing.com> (last visited June 3, 2004).

n2. Id. at 34.

n3. See id. (raising New York's "Financial Management" grade from a "D+" in 1999 to "C+" in 2001).

n4. See The Public Policy Institute of New York State, Inc., Just the Facts 2001, Table 24, at <http://www.ppiny.org/reports/jtf/Table%2024.htm> (last visited June 3, 2004) (ranking New York as fourth highest in per capita property taxes in 1997).

n5. See Fitch Downgrades New York's Bond Rating, Bus. Rev., June 6, 2003, at <http://www.bizjournals.com/albany/stories/2003/06/02/daily52.html> (last visited June 3, 2004) (explaining that Fitch Ratings downgraded New York state bonds and agency bonds two weeks after Standard and Poors lowered New York's credit rating).

n6. See James C. McKinley Jr., Metro Briefing New York: State Bond Rating Cut, N.Y.

Times, June 6, 2003, at B5 (stating that after the downgrade, New York's bonds were among the seven lowest-rated state bonds in the country).

n7. Dall Forsythe & Donald Boyd, Budgeting in New York State: The Growth and Waning of Executive Power 7 (July, 2003) (draft typescript, on file with the author).

n8. Matthew McCubbins, Putting the State Back Into State Government: the Constitution and the Budget, in Constitutional Reform in California 353, 363-364 (Bruce E. Cain & Roger G. Noll eds., 1995).

n9. See generally The Modern New York State Legislature: Redressing the Balance 485-86, 491 (**Gerald Benjamin** & Robert T. Nakamura eds., 1991).

n10. Id. at 492-93.

n11. See *infra* Table 1.

n12. See *infra* Table 1.

n13. See James C. McKinley Jr., Politics Thicken the Molasses in Albany Budget Negotiations, N.Y. Times, June 1, 2001, at B1 (observing that "over the years ... the governor and the Legislature have perfected temporary spending bills that keep the government humming along at the previous year's levels").

n14. N.Y. Const. art. IV, 7. The State Comptroller in 1863 called the annual appropriation bill an "'abomination' ... 'a general avenue to the treasury for claimants and beggars of every description.'" N.Y. State Constitutional Convention Comm., Problems Relating to

Taxation and Finance 4 (1938).

n15. See Frank W. Prescott & Joseph F. Zimmerman, 2 The Politics of the Veto of Legislation in New York State 1167, 1217 n.2 (1980) (noting that the only exception was the override of four items vetoed by the governor in the legislative appropriation bill in 1917); Robert H. Connery & **Gerald Benjamin**, Rockefeller of New York: Executive Power in the Statehouse 98-99 (1979) (explaining that governors had come to rely on the threat of a veto, termed a "preveto," when negotiating with the legislature).

n16. Connery & Benjamin, supra note 15, at 448 n.46; see also **Gerald Benjamin**, The Carey Governorship, in Making Experience Count: Managing Modern New York in the Carey Era 248 (**Gerald Benjamin** & T. Norman Hurd eds., 1985) (indicating that this override "marked the realization that the veto would now be a somewhat less consequential gubernatorial power").

n17. **Gerald Benjamin**, A Century of Change: Executive and Legislative Roles in Budgeting in New York State (1986) (typescript, on file with the author) [hereinafter Benjamin, A Century of Change].

n18. See Forsythe & Boyd, supra note 7, at 11-14 (urging that Cuomo had watched Carey's vetoes be consistently overridden and believed that such action weakened the governor while strengthening the legislature).

n19. See generally Legislature Overrides Governor's Vetoes: Governor had Tried to Block Higher Income, Sales Taxes, and to Line Out \$ 1.3 Billion in Spending, Bus. Council of N.Y. State, Inc., May 2003, at <http://www.bcnys.org/whatsnew/2003/0514geppr.htm> (last visited June 3, 2004).

n20. See Al Baker, Hip-Hop Player Learns Albany's Game: On Drug Laws, a Supposedly Done Deal Comes Undone, N.Y. Times, July 20, 2003, at 29. At Governor Pataki's invitation, Mr. Simmons flew to Albany for a meeting with the Governor, Senate Majority

Leader Joseph L. Bruno, and Assembly Speaker Sheldon Silver that began about 6 p.m. and ended the following morning at 1 a.m. *Id.* Mr. Simmons came away from the meeting thinking a deal had been struck, and announced so to the press. *Id.* However, the deal, if it ever existed, quickly fell apart. *Id.* "An unwritten axiom of Albany government is that the more possible or probable it appears that lawmakers will be able to resolve a public policy quandary, the less likely it is to happen." *Id.* For his efforts, Mr. Simmons found himself the subject of a State Lobbying Commission investigation. *Id.*

n21. See *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 930-31 (2003). The New York Court of Appeals, after extensive litigation, ordered the State to determine the cost of "providing a sound basic education in New York City" and to enact the reforms appropriate to providing the same by July 30, 2004. *Id.*

n22. *The Temporary State Commission on Constitutional Revision, Effective Government Now for the New Century* 4 (1995).

n23. ILR Survey Research Inst., *New York Empire State Poll 2003* (on file with the Albany Law Review) [hereinafter *Empire State Poll*]. Copyright © 2004, ILR Survey Research Institute, Ithaca, New York. Reprinted with permission. Sample size was 888. Range of error was + or - 3.5 percent. *Id.* For results of the 1987 and 1992 surveys of trust and confidence in state government conducted by the U.S. Advisory Commission on Intergovernmental Relations, see *Americans Lose Trust and Confidence in All Government But Local Government Remains Most Trusted*, *Ill. Mun. Rev.*, Sept. 1992, at 11-13, <http://www.lib.niu.edu/ipo/im920911.html> (last visited Apr. 19, 2004). Variation in question wording precluded direct comparisons with more surveys of trust and confidence in institutions. For an example of another survey of trust in government, see *PollingReport.com, Major Institutions*, at <http://www.pollingreport.com/institut.htm> (last visited June 3, 2004).

n24. *Empire State Poll*, *supra* note 23.

n25. See John F. Bibby & Thomas M. Holbrook, *Parties and Elections*, in *Politics in the American States* 93 (Virginia Gray & Russell L. Hanson eds., 8th ed. 2004) (reporting that

for the years 1997-2002, voter turnout for gubernatorial elections in New York was below the fifty-state average).

n26. See McKinley, *supra* note 13, at B1 (noting that New York is the only state with a fiscal year beginning April 1, and that because that is two weeks before income taxes are due, revenue forecasts are difficult).

n27. See James C. McKinley Jr., *Democrats Pass a Plan To Speed Up State Budgets*, N.Y. Times, Feb. 10, 2004, at B6 (noting that an Assembly budget reform bill would have an independent budget office give an objective but nonbinding revenue estimate, while the Senate plan calls for the state comptroller to give a binding estimate of revenues).

n28. See Al Baker, *Joint Effort to End Years of Late Budgets*, N.Y. Times, Mar. 17, 2004, at B6 (observing a rare conference committee meeting between lawmakers from both parties held to resolve budget reform issues).

n29. The state of Nebraska has a unicameral legislature, as do all American local governments.

N30. See generally Peter J. Galie, *Ordered Liberty: A Constitutional History of New York* 26-27, 41 (1996) (detailing that beginning in the eighteenth century, concerns over sovereignty were expressed as between the governor and legislature, with the two houses in the legislature differing on issues such as apportionment and currency bill origination).

n31. See *id.* at 369 (noting that "in the nineteenth century the legislature dominated state government").

n32. *Id.*

n33. See Theodore Caplow, *Two Against One: Coalitions in Triads 1-5* (1968) (noting that "the most significant property of the triad is its tendency to divide into a coalition of two members against the third," and that the most distinctive feature of triadic social systems is "the transformation of strength into weakness and weakness into strength").

n34. Ideological or personal differences may also provide dimensions that affect coalition formation in the Albany triad. This was the case in New York in 1971, a year of unified Republican control of the executive and both legislative houses. Assembly Speaker Perry Duryea led a revolt against Governor Nelson Rockefeller's budget that delayed its adoption and resulted in deep cuts. The following year Duryea was indicted for election irregularities, and his ambition to run for governor was temporarily blocked, on the basis of evidence gathered by longtime Republican ally and running mate of the Governor, Attorney General Louis Lefkowitz. See Connery & Benjamin, *supra* note 15, at 86, 105-06.

n35. Interview with Stanley Steingut, in *The Modern New York State Legislature*, *supra* note 9, at 86-87.

n36. *Pataki v. N.Y. State Assembly*, 738 N.Y.S.2d 512 (Sup. Ct. 2002); *Silver v. Pataki*, 96 N.Y.2d 532 (2001). For a summary description of the issues in these cases, see John Caher, *Appeals Challenge Balance of Power: Cases Question Extent of Governor's and Legislature's Control Over State Budget Process*, N.Y. L. J., Sep. 2, 2003, at 1; John Caher, *Fiscal Powers of Governor and Legislature Debated*, N.Y. L. J., Sep. 4, 2003, at 1.

n37. N.Y. Const. art. III, 18; see also Peter J. Galie, *The New York State Constitution: A Reference Guide* 91-92 (1991).

n38. Caplow, *supra* note 33, at 5.

n39. See generally Elizabeth Benjamin, *Win or Lose, Pataki Survives*, *Times Union*,

Sunday May 11, 2003, at A1, available at 2003 WL 5014735.

n40. Id.

n41. See generally Citizens Conference on State Legislatures, *The Sometimes Governments: A Critical Study of the Fifty American Legislatures* (1971); Advisory Commission on Intergovernmental Relations, *The Question of State Government Capability*, Document A-98 (Washington: GPO, 1985).

n42. Stuart K. Witt, *Modernization of the Legislature*, in *Governing New York State: The Rockefeller Years 54-55* (Robert H. Connery & **Gerald Benjamin** eds., 1974).

n43. Christopher Z. Mooney, *Citizens, Structures, and Sister States: Influences on State Legislative Professionalism*, 20 *Legis. Stud. Q.* 47, 48 (Feb. 1995).

n44. *The Modern New York State Legislature*, supra note 9, at xviii. For a detailed analysis of the development of legislative careers in New York based upon data from 1931 and 1951 see Leonard Ruchelman, *Political Careers* (1970). Though none of the legislators he studied identified themselves professionally as "legislator," Ruchelman predicted that "career-oriented individuals will increase and continue to dominate the lawmaking body" in New York.

n45. Keith E. Hamm & Gary F. Moncrief, *Legislative Politics in the States*, in *Politics in the American States: A Comparative Analysis* 157, 172-74 (Virginia Gray & Russell L. Hanson eds., 8th ed. 2004). See also Table 6.4, id. at 172.

n46. Gary Moncrief et al., *Time, Turnover and Term Limits: Trends in Membership Turnover in U.S. State Legislatures* 16 (prepared for the 3rd Annual State Politics and Policy Conference, Tucson, AZ, March 14-15, 2003), available at <http://www.fsu.edu/>

statepol/conferences/2003/Papers/Moncrief-Niemi.doc.

n47. See *id.* at 14-15 (charting the turnover in the U.S. State Legislatures between 1971 and 2000).

n48. *Id.*

n49. See *infra* Table 2.

n50. See generally Mark P. Petracca, Rotation in Office: The History of an Idea, in *LIMITING LEGISLATIVE TERMS* 19, 19-20 (**Gerald Benjamin** & Michael J. Malbin eds., 1992). Term limits currently exist in fourteen states. Of these, three are among those with the most professionalized legislature: California, Michigan and Ohio. Term limits have been repealed by the legislatures of Idaho and Utah, and have been undone by court action in Massachusetts, Oregon and Washington. See Kavan Peterson, Term-Limit Movement is Running Out of Steam, at <http://www.stateline.org/stateline/?pa=story&sa=showStoryInfo&print=1&id=345735> (last visited Apr. 19, 2004); see also Joyce Howard Price, Wyoming Lawsuit Latest Blow to Term Limits, *Wash. Times*, Apr. 4, 2004, available at <http://washingtontimes.com/national/20040403-114031-6782r.htm> (last visited Apr. 19, 2004).

n51. See R. Eric Petersen & Jeffrey M. Stonecash, The Legislature, Parties, and Resolving Conflict, in *Governing New York State* 144-48 (Jeffrey M. Stonecash ed., 4th ed. 2001) (surmising that the most significant change in the New York legislature "has been the emergence of full-time legislators who seek to be reelected, who stay in office for numerous terms, and who devote full-time to the position").

n52. Hamm & Moncreif, *supra* note 45, at 167-68.

n53. Incumbent Reelection Rates in 1994 State Legislative Elections, at <http://ncsl.org/programs/legman/elect/incmb1.htm> (last visited Apr. 29, 2004).

n54. See *infra* Table 3.

n55. Eye on Albany Campaign 2002, Gotham Gazette, at <http://www.gothamgazette.com/eyeonalbany/senate/district22.shtml> (last visited Apr. 18, 2004).

n56. See generally Jonathan Bowles, 2002 NYS Legislative Election Statistics, Center for an Urban Future, at <http://www.nycfuture.org/content/reports/reportview.cfm?repkey=124> (last visited June 3, 2004).

n57. ROBERT B. WARD, NEW YORK STATE GOVERNMENT: WHAT IT DOES, HOW IT WORKS 112 (2002).

n58. Hamm & Moncreif, *supra* note 45, at Table 6.2, 166.

n59. *Id.*

n60. *Id.*

n61. Results of the Voting in the Races for the New York State Legislature, N.Y. Times, Nov. 7, 2002, at B17.

n62. Hamm & Moncreif, *supra* note 45, at Table 6.2, 166.

n63. Id.

n64. See Results, *supra* note 61; Jonathan Bowles, 2002 NYS Legislative Election Statistics, Center for an Urban Future (Nov. 11, 2002), *supra* note 56.

n65. Bowles, 2002 NYS Legislative Election Statistics, Center for an Urban Future, *supra* note 56.

n66. See Results, *supra* note 61.

n67. See *infra* Table 4.

n68. Interview with Warren Anderson, in *The Modern New York State Legislature*, *supra* note 9, at 63-64.

n69. See Mark D. Brewer & Jeffrey M. Stonecash, Political Parties and Elections, in *Governing New York State* 57 (Jeffrey M. Stonecash ed., 4th ed. 2001) (stating that "at one time, most political party activity was organized by county organizations... numerous accounts of the county party organizations indicate they had a significant role in shaping nominations, mobilizing volunteers, and raising money for candidates from the local area").

n70. Interview with former Assembly member, Lieutenant Governor, and Governor Malcolm Wilson (Albany: Unpublished Manuscript, files of the Rockefeller Institute of Government) (on file with author).

n71. See Stuart Kenneth Witt, *The Legislative - Local Party Linkage in New York State* 36-37 (1967) (unpublished Ph.D. dissertation, Syracuse University) (on file with the State University of New York Albany) (noting that executive committees of the county's organizations were able to exert control over the "party's electoral and patronage machinery within the county").

n72. See Edward Schneier & John Brian Murtaugh, *New York Politics: A tale of Two States* 85-86 (2001) (discussing *Baker v. Carr*, in which the United States Supreme Court enunciated the "one man, one vote" standard, holding that the Equal Protection Clause requires a bicameral state legislature to use population as the foundation upon which seats in both houses are apportioned).

n73. See Daniel M. Shea, *Transforming Democracy: Legislative Campaign Committees and Political Parties* 97-98 (1995) (noting that a legislator's relationship with county party leaders is not as important as it once was because legislative districts are now apportioned by population and often include multiple counties); see also Brewer & Stonecash, *supra* note 72, at 57 (noting that although county organizations still play a role in "interviewing candidates, gathering petition signatures, raising some funds, and performing various other activities," candidates have more independence in conducting their campaigns).

n74. Shea, *supra* note 73, at 98.

n75. See *infra* Table 5.

n76. See *infra* Table 5.

n77. See Gary C. Jacobson, *Money in Congressional Elections* 36-37 (1980) (stating that incumbents have the advantage because "the more information voters have about a candidate, other things equal, the more likely they are to vote for him").

n78. See Linda L. Fowler & Robert D. McClure, *Political Ambition: Who Decides to Run for Congress* 4-5 (1989) (noting that many "unseen candidates" stay away from a "bruising battle with an incumbent rich in resources").

n79. See Peverill Squire, *Legislative Professionalization and Membership Diversity in State Legislatures*, 17 *Legis. Stud. Q.* 69, 71-72 (1992) (ranking New York number one in legislative professionalization); see also Peverill Squire, *Uncontested Seats in State Legislative Elections*, 25 *Legis. Stud. Q.* 131, 142 (2000) (ranking New York third in legislative professionalization in an updated index, behind Michigan and California).

n80. Hamm & Moncreif, *supra* note 45, at Table 6-1, 158.

n81. *Id.*

n82. *The Modern New York State Legislature*, *supra* note 9, at 492.

n83. Interview with Frank J. Mauro, in *The Modern New York State Legislature*, *supra* note 9, at 327.

n84. *The Modern New York State Legislature*, *supra* note 9, at 494; see also Petersen & Stonecash, *supra* note 51, at 151-53 (noting that "there has been a tremendous increase in legislative staff during the last several decades" because legislators wanted to play a role in policy debates and gain greater independence from the executive branch).

n85. George E. Pataki, 2003-2004 New York State Executive Budget Appendix I 457, 461.

n86. Joint Legislative Comm. on State Fiscal Policies, Report 24-25 (1938) (Albany Legislative Document Number 41).

n87. New York State Division of the Budget, *The Executive Budget in New York State: A Half-Century Perspective* 146 (1981).

n88. Interview with Eugene K. Tyksinski, in *The Modern New York State Legislature*, *supra* note 9, at 259 (quipping that "any Budget Director worth his salt would always have at least \$ 200 million in his back pocket someplace").

n89. See *id.* at 259-61 (noting "both houses have developed an independent capability for measuring economic trends and translating that into resources," and describing the process of revenue estimating).

n90. Forsythe & Boyd, *supra* note 7, at 12; see also *infra* Figure 2.

n91. See Eric Lane, *Legislative Oversight of an Executive Budget Process: Impoundments in New York*, 5 *Pace L. Rev.* 211, 211-215, 252-55 (1985) (explaining that mandatory staffing levels and reporting requirements were the legislature's response to frustration over the 1983-1984 executive impoundments of staff appropriations made during budget negotiations).

n92. *N.Y. State Bankers Ass'n v. Wetzler*, 81 N.Y.2d 98, 104 (1993).

n93. The Council on State Priorities, *Report to the Governor* 63 (1982).

n94. William D. Berry et al., Legislative Professionalism and Incumbent Reelection: The Development of Institutional Boundaries, 94 Am. Pol. Sci. Rev. 859, 871 (2000).

n95. William H. Riker, The Theory of Political Coalitions 33 (1962). Riker posits that upon achieving a majority, political parties will maximize their membership only to the point of having a "subjective certainty of winning," and thereafter seek to maintain itself at that level. Id.

n96. See New York Public Interest Research Group, Reform New York: Redistricting, at <http://www.nypirg.org/goodgov/reformny/redist.html> (chiding the redistricting in New York, which has resulted in only eleven, out of sixty-two, State Senate voting districts that are considered competitive).

n97. Id.

n98. See *infra* notes 133-137 and accompanying text.

n99. See Schneier & Murtaugh, *supra* note 72, at 85-91 (stating that "the two kinds of gerrymanders most common in New York are those designed to protect (a) party advantages, and (b) incumbents in the state legislature," and describing how "Democrats, who control the assembly, draw the assembly district lines [while] the Republicans draw the state senate lines," to protect their majorities).

n100. Jeffrey M. Stonecash, Campaign Finance in New York Senate Elections, 15 Legis. Stud. Q. 247, 257-59 (1990); Jeffrey M. Stonecash & Sara E. Keith, Maintaining a Political Party: Providing and Withdrawing Party Campaign Funds, 2 Party Politics 313, 313-28 (1996).

n101. Ruchelman, *supra* note 44, at 153.

n102. Richard A. Clucas, Principal-Agent Theory and the Power of State House Speakers, 26 *Legis. Stud. Q.* 319, 324-28 (2001). It appears that in his categories "committee powers," "resource powers," and "procedural powers," Clucas may have underestimated the power of the New York Assembly Speaker.

n103. Alan G. Hevesi, *Legislative Politics in New York State: A Comparative Analysis* 6-8 (1975). Hevesi, a former Assembly member and current Comptroller of New York, states that, despite differences in procedural powers, "the powers of the two offices are about equal," given the Senate Majority Leader's ability to "control the votes of the majority." *Id.* at 8. See generally John J. Pitney Jr., *Leaders and Rules in the New York State Senate*, 7 *Legis. Stud. Q.* 491 (1982) (providing a case study of the majority leadership of the New York Senate).

n104. See Malcolm E. Jewell & Marcia Lynn Whicker, *Legislative Leadership in the American States* 195-98 (1994) (stating that "enhanced tenure has contributed to the emergence of stronger, more effective leaders").

n105. Interview with Stanley Fink, in *The Modern New York State Legislature*, *supra* note 9, at 120.

n106. A legendary exception was Republican Governor Nelson Rockefeller's intervention effectively to select the Democratic Party leader in the Senate and Assembly Speaker to break a months-long intra-party deadlock in 1965, after the surprise takeover of the legislature by the Democrats in the 1964 elections.

n107. Benjamin, *A Century of Change*, *supra* note 17 at 22.

n108. James M. Odatto, Lawmakers Pass Spending Bill, Times Union, Sep. 17, 2003, at B2. The measure provided for \$ 200 million in "member item" dollars, but, interestingly, \$ 30 million was earmarked for expenditure at the discretion of the Governor. *Id.* The governor's priorities were until recently met within the executive budget.

n109. See Schneier & Murtaugh, *supra* note 72, at 233.

n110. Jeffrey Brainard & Anne Marie Borrego, Academic Pork Barrel Tops \$ 2-Billion for the First Time, Chron. of Higher Educ., Sept. 26, 2003, at A18.

n111. *Id.* at A19.

n112. *Id.* at A19.

n113. *Id.* at A20.

n114. See Shea, *supra* note 77, at 89 (describing the emergence of these campaign committees in New York in the 1970's).

n115. Hevesi, *supra* note 103, at 160.

n116. Interview with Michael Del Giudice, in *The Modern New York State Legislature* *supra* note 9, at 300-01.

n117. See Interview with Warren Anderson, in *The Modern New York State Legislature*

supra note 9, at 64-66.

n118. See Table 6.

n119. Id.

n120. Shea, supra note 73, at 112.

n121. Jeffrey M. Stonecash, Working at the Margins: Campaign Finance and Party Strategy in New York Assembly Elections, 13 Leg. Stud. Q. 477, 484 (1988).

n122. The Institute on Money in Politics does not provide amounts given for each party committee in New York. Data for overall giving to state party committees by top PAC contributors between 1998 and 2002 show that they give extensively to both parties. See Follow the Money, supra note 81 available at [www.followthemoney.org/database/StateGlance/state party committees.phtml?si=2](http://www.followthemoney.org/database/StateGlance/state%20party%20committees.phtml?si=2) (last visited Apr. 15, 2004).

n123. See Kevin Sack, Republicans Elect Bruno Senate Leader, N.Y. Times, Dec. 2, 1994, at B5.

n124. See Schneier & Murtaugh, supra note 72, at 192-94.

n125. N.Y. Pub. Off. Law 108(2) (McKinney 1998).

n126. See Eric Lane, Albany's Travesty of Democracy, 7 City J. 49-56 (1997) (alleging

that the New York State Legislature is more consistent with "bossism and party machines" than with effective public representation).

n127. Petersen & Stonecash, *supra* note 51, at 155; Hevesi, *supra* note 103, at 161-62; see also Robert P. Weber, *The Speaker of the Assembly: Party Leadership in New York* (1975) (unpublished Ph.D. Dissertation, University of Rochester) (on file with author).

n128. Clucas, *supra* note 102, at 334-35.

n129. See John B. Sheffer, II, Chairman, *Project 1990: The Challenge of Effective Legislative Management in the State of New York* 50-51 (1985).

n130. See *supra* note 28, and accompanying text.

n131. See Bibby & Holbrook, *supra* note 25, at 88 (outlining, in Table 3-4, the inter-party competition for the control of government).

n132. Forsythe & Boyd, *supra* note 7, at 5.

n133. N.Y. Const. art. III, 3-5.

n134. Schneier & Murtaugh, *supra* note 72, at 95.

n135. *WMCA, Inc. v. Lomenzo*, 377 U.S. 633, 655 (1964).

n136. Cf. **Gerald Benjamin**, The Mandatory Constitutional Convention Question Referendum: The New York Experience in National Context, 65 Alb. L. Rev. 1017, 1030 (2002) (explaining that this bipartisan gerrymander has allowed the Republicans to rearrange Senate district lines to favor Republicans).

n137. Schneier & Murtaugh, *supra* note 72, at 89.

n138. National Conference of State Legislatures, Table of Partisan Control of State Legislatures, 1938-2000, at www.ncsl.org/programs/legman/elect/hstptyct.htm (last visited Apr. 27, 2004).

n139. See *supra* Figure 3.

n140. See Figures 3 & 4.

n141. See Figures 3 & 4.

n142. See generally Benjamin & Nakamura, *supra* note 9.

n143. Anthony M. Masiello, Mayor of Buffalo, Biography, available at <http://www.ci.buffalo.ny.us/document.asp?lid=19> (last visited Mar. 27, 2004); Congressman Gary Ackerman, Biography, available at <http://www.house.gov/ackerman/pages/biomain.html> (last visited Mar. 27, 2004).

n144. See Table 7.

n145. Id.

n146. In addition to New York and New Jersey, the states with split partisan control in their legislatures in 2003 were Delaware, Georgia, Indiana, Kentucky, Minnesota, Nevada, Oregon, North Carolina, Vermont, and Washington. See National Conference of State Legislatures, 2003 Partisan Composition of State Legislatures, available at <http://www.ncsl.org/ncsl/db/elect98/partcomp.cfm?years=2003> (last visited Apr. 18, 2004).

n147. See David R. Mayhew, *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946-1990* 1-4 (1991) (generating a considerable scholarly debate by suggesting that divided partisan control did not dampen the productivity of the national government); see also Morris Fiorina, *Divided Government* 2-3, 86-88 (1992) (noting that divided government has become "the normal state of affairs" in America; identifying inefficiency and ineffectiveness as the commonly assumed consequences of divided government; and indicating that recent research reveals this assumption to be poorly grounded).

n148. Sarah A. Binder, *The Dynamics of Legislative Gridlock, 1947-96*, 93 *Am. Pol. Sci. Rev.* 519, 519-22, 527-28, 530 (1999).

n149. Id. at 527-28.

n150. Cynthia J. Bowling and Margaret R. Ferguson, *Divided Government, Interest Representation, and Policy Differences: Competing Explanations of Gridlock in the Fifty States*, 63 *J. of Pol.* 182, 197 (2001).

n151. James E. Underwood & William J. Daniels, *Governor Rockefeller in New York: The Apex of Pragmatic Liberalism in the United States* 129-131 (1982).

n152. See, e.g., Joe Mahoney, No Falling For Recalls: N.Y. Pols Don't Want "em, N.Y. Daily News, Oct. 10, 2003, at 37 (referring to Speaker Silver's relationship with Governor Pataki as "rocky"); Andrea Bernstein, Mike and George are Speaking-But Not Much, N.Y. Observer, Sept. 29, 2003, at 1 (identifying Speaker Silver as Governor Pataki's "public enemy No. 1"); see also Lisa L. Colangelo & Joe Mahoney, Sales Tax Rise May Fall Flat, N.Y. Daily News, May 2, 2003, at 8 (reporting on Speaker Silver's portrayal of Governor Pataki as "vindictive" and accusing the Governor of throwing a "temper tantrum").

n153. See, e.g., Petersen & Stonecash, *supra* note 51, at 155-56.

n154. **Gerald Benjamin** & Richard P. Nathan, Regionalism and Realism: A Study of Governments in the New York Metropolitan Area 56-57 (2001).

n155. See, e.g., *Montano v. Suffolk County Legislature*, 263 F. Supp. 2d 644, 645-46 (E.D.N.Y. 2003) (detailing the complaint of violations of the U.S. Constitution, and the urgency of impending deadlines); *Diaz v. Silver*, 978 F. Supp. 96, 98, 115-16, 119, 121-22, 131 (E.D.N.Y. 1997) (elaborating on the incumbency protection concerns relating to redistricting decisions).

n156. See, e.g., *Montano*, 263 F. Supp. 2d at 645-46, 649-50 (discussing the possible appointment of a special master to resolve the redistricting controversy); *Diaz*, 978 F. Supp. at 99, 105-06, 115, 131 (contrasting the approaches of the state and federal courts to legislative redistricting controversies, elaborating on the involvement of the special master, demonstrating the power of the courts to require state legislatures to carry out their directives, and highlighting the deep level of court involvement often required for resolution of such matters).

n157. Petersen & Stonecash, *supra* note 51, at 156-57, 159.

n158. Id. at 159.

n159. Id. at 156.

n160. Id. at 155-56.

n161. Id. at 155.

n162. Id. at 155.

n163. See id. at 156 (noting that in addition to cost concerns, Republican county officials felt that most welfare recipients did not require drug testing).

n164. Id. at 156.

n165. George Tsebelis & Jeannette Money, *Bicameralism* 148-149 (1997).

n166. Id. at 146-49.

n167. James Ruhl, *The Legislative Logjam in the States: The Case of the New York State Senate* (1986) (unpublished doctoral dissertation, SUNY Albany).

n168. Forsythe & Boyd, *supra* note 7, at 15. (on file with author).

n169. *Id.*

n170. N.Y. Const. art. III, 18; N.Y. Const. art. IV, 3; Peter J. Galie, *The New York State Constitution: A Reference Guide* 91-92 (1991).

n171. Galie, *supra* note 30, at 92.

n172. Assem. 6500, 226th Leg. Sess. (N.Y. 2003) (offered by Assemblymember Galef); Sen. 2112, 226th Leg. Sess. (N.Y. 2003) (offered by Senator Morahan); Assem. 6501, 226th Leg. Sess. (N.Y. 2003) (offered by Assemblymember Galef); Sen. 2291, 226th Leg. Sess. (N.Y. 2003) (offered by Senator DeFrancisco).

n173. Sen. 4678, 226th Leg. Sess. (N.Y. 2003) (offered by Senator Krueger).

n174. See *supra* notes 29-67 and accompanying text.

n175. Sen. 3635, 226th Leg. Sess. (N.Y. 2003) (offered by Senator Oppenheimer).

n176. Sen. 4739, 226th Leg. Sess. (N.Y. 2003) (offered by Senate Minority Leader Paterson).

n177. See *supra* notes 44-54 and accompanying text.

n178. Id.

n179. Articles appearing in New York newspapers have repeatedly identified the ineffectiveness of the New York Legislature in negotiating a timely and acceptable annual budget. See, e.g. Richard Briffault, Even Bigger Than Albany's Budget Gap Is ... The Democracy Deficit, *Newsday*, Apr. 9, 1995, at A41; Michael Slackman, Seeking Answers On Late NY Budget/Personality Clashes, Leverage Holdout Cited, *Newsday*, May 28, 1997, at A21; Liam Pleven, Cut and Slash/Pataki Vetoes \$ 760 M From Election-Year Budget, *Newsday*, Apr. 27, 1998, at A03; State Senator Michael Nozzolio, Budget Process Needs To Be Retooled, *The Post Standard/Herald J.*, Jan. 29, 2004, at 16.

n180. The Committee on State Affairs of the Association of the Bar of the City of New York argues in a recent paper on the issues before the Court of Appeals in *Pataki v. Assembly and Silver v. Pataki* that the Budget Article of the State Constitution, when written, incorporated a substantial legislative role in budgeting. See *The New York State Budget Process and the Constitution: Defining and Protecting the "Delicate Balance of Power"* A.B.C.N.Y. Comm. on State Affairs, 1, 2, 18, 2-22.

n181. See, e.g. Assemb. 1279, 226th Leg. Sess. (N.Y. 2003); Assemb. 10419, 225th Leg. Sess. (N.Y. 2002); Assemb. 7714, 224th Leg. Sess. (N.Y. 2001).

n182. Assemb. 6266, 226th Leg. Sess. (N.Y. 2003).

n183. See Assemb. 9615, 227th Leg. Sess. (N.Y. 2004); Sen. 1611, 227th Leg. Sess. (N.Y. 2004); Sen. 4680, 226th Leg. Sess. (N.Y. 2003).

n184. See Assemb. 9615, 227th Leg. Sess. (N.Y. 2004); Assemb. 824, 226th Leg. Sess. (N.Y. 2003); Assemb. 5877, 226th Leg. Sess. (N.Y. 2003).

n185. See Interview With Abbot Low Moffat in *The Modern New York State Legislature* *supra* note 9 at 32-34 (explaining that there is no legal bar to changing the fiscal year).

n186. Temporary New York State Commission on Constitutional Revision, *Effective Government Now for the New Century*, *supra* note 22, at 27.

n187. See Frank J. Macchiarola & Joseph G. Diaz, *Decision Making in the Redistricting Process: Approaching Fairness*, 19 J. Legis. 199, 201, 205, 207-08, 217 (1993) (illustrating how the Commission, in this case, strove for more fair results).

n188. See Table 5.

n189. Henrik N. Dullea, *Charter Revision in the Empire State: The Politics of New York's 1967 Constitutional Convention*, 206-208 (1997).

n190. See Blair Horner, *Redistributing State Power: Redistricting, Campaign Finance Reform Hold the Key to More Competitive Elections in New York*, *Buffalo News*, Apr. 22, 2001, at H1 (displaying the troubling statistic that more than ninety-eight percent of state legislative incumbents were reelected).

n191. *Id.* (urging that the support that special interests give to candidates presents the appearance that money talks in current political campaigns).

n192. 18B Mass. Practice Series, 1941, 1944 (Pocket Part 2003); Me. Rev. Stat. Ann. tit. 21-A, 1125 (2003); Ariz. Rev. Stat. Ann., 16-941 (2003); V. Stat. Ann., tit. 17, 2805a (2003).

n193. N.Y.C. Charter and Admin. Code, tit. 3, 3-705(2) (Supp. 2003).

n194. Id. at 3-703(f).

n195. Id. at 3-705(2), 3-706(3)(a) (establishing the maximum limits according to the office for which the candidate is running).

n196. Id. at 3-703(2)(a)(iv).

n197. Robert Polner, *TERRORIST ATTACKS / Board Forges Ahead on Sept. 25 Primary*, *Newsday*, Sept. 16, 2001, at W32.

n198. See generally, Sen. 5553, 224th Leg. Sess. (N.Y. 2001); Assemb. 8524, 225th Leg. Sess. (N.Y. 2001).