

## Center for Judicial Accountability, Inc. (CJA)

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**From:** Richard Brodsky <RichardBrodsky@msn.com>  
**Sent:** Tuesday, April 18, 2017 12:27 PM  
**To:** James McGuire; Center for Judicial Accountability, Inc. (CJA); robert.bullock@rockinst.suny.edu  
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**Subject:** Re: In search of scholarship: "Budgets and the Balance of Power: The Lasting Impact of Silver v. Pataki and How It Shapes the Future of Government in New York State"-- June 16, 2015 forum

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

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

Respectfully submitted,

Richard Brodsky

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